

# United States Senate

WASHINGTON, DC 20510

October 23, 2017

The Honorable Steven Mnuchin  
Secretary  
Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

Dear Secretary Mnuchin:

I am writing because of my concern over the Financial Stability Oversight Council's (FSOC's) September 29, 2017 decision to rescind its determination that American International Group is a Systemically Important Financial Institution (SIFI) that could pose a threat to the United States financial system. The FSOC's decision to remove AIG from the list of SIFIs reduces supervision and oversight of the insurance giant and puts taxpayers and our economy at risk less than a decade after the company's failure rocked the nation's financial system and forced taxpayers into a \$182 billion bailout.

You are one of ten voting members on the FSOC, and I am writing to you to seek answers about how the FSOC came to this decision, which is troubling for three reasons: (1) it appears to have been made with little substantive justification; (2) it appears that, to reach this decision, the FSOC ignored several of its own key procedural rules; and (3) the FSOC has yet to answer key questions about the influence of former Adviser to the President and AIG shareholder Carl Icahn on the FSOC decision - while additional actions by the FSOC raise questions about the extent to which the Council was working with insurance industry representatives in reaching the decision.

## **AIG's 2013 Designation - and 2014 and 2015 Re-Designation - as a SIFI**

At the height of the 2008 financial crisis, AIG was, as one FSOC member who voted to reduce oversight of the insurance company put it, "the proverbial poster child for ill-conceived business plans, internal control systems, and risk-management protocols."<sup>1</sup> AIG was "a basket case[.]" and "if the company did not receive help, AIG would fail."<sup>2</sup> To avoid the "catastrophic consequences" of such a failure, the government was forced into a taxpayer-funded \$182 billion

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<sup>1</sup> "Views of Financial Stability Oversight Council Members Regarding Rescission of Determination Regarding American International Group, Inc. (AIG)," *Department of the Treasury*, 12 (available at [https://www.treasury.gov/initiatives/fsoc/news/Documents/Member\\_Views.pdf](https://www.treasury.gov/initiatives/fsoc/news/Documents/Member_Views.pdf));

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federal bailout of AIG in which “Main Street bailed out Wall Street to help keep the entire U.S. economy afloat.”<sup>3</sup>

Under Dodd-Frank, the FSOC may designate a nonbank financial company as a SIFI if it determines either that (1) “material financial distress” at the company could pose a threat to U.S. financial stability, or (2) the “nature, scope, size, scale, concentration, interconnectedness, or mix of activities” of the company could pose a threat to U.S. financial stability.<sup>4</sup> In 2013, the FSOC concluded that material financial distress at AIG could pose a threat to U.S. financial stability due primarily to a high level of counterparty exposure, the risk of asset liquidation, and concerns regarding AIG’s resolvability – the “ability to shut AIG down in an orderly manner” without resorting to a federal bailout.<sup>5</sup>

On July 8, 2013, under these new rules, the FSOC unanimously voted to designate AIG as a SIFI, determining that “material financial distress at [AIG] could pose a threat to U.S. financial stability.”<sup>6</sup> In doing so, the FSOC subjected AIG to heightened oversight, including increased capital requirements, stress testing, and a requirement for living wills that would help prevent “too big to fail” institutions from forcing taxpayer bailouts. In 2014 and 2015, the FSOC reviewed the determination and “concluded that there had not been sufficient material changes” to rescind it.<sup>7</sup>

But on September 29, 2017, the FSOC announced that it had rescinded its 2013 determination and that AIG would no longer be classified as a SIFI, removing the enhanced oversight and supervision.

### **AIG Continues to Pose a Threat to U.S. Financial Stability**

In 2013, the FSOC concluded that material financial distress at AIG could pose a threat to U.S. financial stability - a conclusion that the FSOC reached again upon additional review in 2014 and 2015. But these risks still exist - meaning there is no substantive justification for the decision to de-designate AIG as a SIFI.

In 2013, the “core basis” for designating AIG as a SIFI was that “AIG had a large volume of liabilities subject to discretionary withdrawal.”<sup>8</sup> In other words, the company’s liabilities were “runnable” – AIG was at risk of having its liabilities called in by investors, and being forced to liquidate other assets to meet these calls. This meant that if AIG went into financial

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distress, those liabilities could all “run” in a short period of time, and AIG would be forced to rapidly liquidate a high volume of assets, resulting in a threat to U.S. financial stability. That risk is still high today. In fact, one FSOC member that voted to de-designate AIG noted that “AIG continues to hold significant exposure to annuity products.”<sup>9</sup>

AIG has decreased risk in certain exposures, but others have increased, “most notably in the life insurance and annuity business.”<sup>10</sup> Their life insurance and retirement business lines, identified by the FSOC in 2013 as areas of particular concern, constitute about one-quarter of the company’s business – “roughly the same portion” as they did in 2013.<sup>11</sup> Despite this liability, AIG has actually decreased their liquidity resources from \$16 billion to \$12 billion.<sup>12</sup> AIG holds \$134 billion in corporate bonds and \$20 billion in state and municipal bonds, down slightly from \$152 billion and \$36 billion in 2013, all of which could be at risk if a liquidity strain forces the company into a fire sale.<sup>13</sup> Such a fire sale would then reduce the value of these bonds across the sector, putting immense stress on the financial system.

As one FSOC member put it, “[n]othing about the liquidity characteristics of AIG’s liabilities and assets has changed to diminish the concerns originally raised by the FSOC.”<sup>14</sup> And as the FSOC decision to de-designate AIG stated, “[i]n the event of AIG’s material financial distress[,]” loss of access to internal funding could lead “to the loss of liquidity and possibly either insolvency or seizure by a regulator.”<sup>15</sup>

In 2013, the FSOC also determined that “a large number of corporate and financial entities have significant exposures to AIG” – essentially that such a large portion of the financial system relied on the insurance company that AIG’s failure could lead to a crisis in the U.S. financial system.<sup>16</sup> Today, those same large exposures remain. As of their most recent financial statements, AIG holds \$165 billion in total derivatives exposure and has \$32 billion in long-term debt, compared to \$215 billion and \$49 billion in those respective liabilities in 2013.<sup>17</sup> Although the company has decreased in size, it still insures 87 percent of all Fortune 500 companies.<sup>18</sup> The small decreases have not eliminated the risk to the U.S. financial system.

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<sup>9</sup> *Id.* at 13.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Supra* note 5.

<sup>12</sup> *Id.* This is a decrease in liquidity resources even after adjusting for the decrease in the overall size of AIG.

<sup>13</sup> *Id.*

<sup>14</sup> *Supra* note 1 at 5.

<sup>15</sup> “Notice and Explanation of the Basis for the Financial Stability Oversight Council’s Rescission of Its Determination Regarding American International Group, Inc. (AIG),” *Department of the Treasury*, 60 (available at [https://www.treasury.gov/initiatives/fsoc/designations/Documents/American\\_International\\_Group\\_Inc\\_\(Rescission\).pdf](https://www.treasury.gov/initiatives/fsoc/designations/Documents/American_International_Group_Inc_(Rescission).pdf)).

<sup>16</sup> *Supra* note 6 at 6.

<sup>17</sup> *Supra* note 5.

<sup>18</sup> *Id.*

Finally, in 2013, the FSOC concluded that AIG's "complicated organizational structure significantly increases the obstacles to a rapid and orderly resolution."<sup>19</sup> The same fact holds true today. As one FSOC member who voted to de-designate AIG admitted, "AIG remains a complex international insurance company with an embedded financial institutions component."<sup>20</sup> The company continues to operate in all 50 states and more than 80 countries, and the FSOC's recent decision itself even acknowledged that "the lack of a global framework for resolution may represent an obstacle to AIG's rapid and orderly resolution."<sup>21</sup>

FSOC member S. Roy Woodall, Jr., who voted last month to reduce the FSOC's oversight of AIG, issued an accompanying statement confessing that "I do believe [AIG] should continue to be monitored from a macro-prudential perspective."<sup>22</sup> The FSOC's oversight through the SIFI designation provides one of the most effective forms of macro-prudential regulation of nonbank financial companies in the United States, yet the FSOC, Mr. Woodall and his colleagues just voted to end its enhanced supervision of AIG.

AIG presents many of the same risks to U.S. financial stability today as the company did in 2013. The FSOC claimed that de-designation was appropriate in light of the "reduced...amounts of its total debt" and the fact that AIG is now "smaller in scope and size."<sup>23</sup> But to the extent that the company and its debt are smaller, it does not appear to have resulted in significantly reduced systemic risks. And the FSOC decision ignores the fact that earlier this year, the new CEO stated that he intended to reverse the company's contraction, clarifying that to "be clear, I am here to grow A.I.G....I didn't come here to break the company up. I came here to grow it."<sup>24</sup>

### **The FSOC Flouted Key Procedure Rules During the AIG Decision**

I am also concerned that the FSOC appears to have flouted basic procedural rules during the consideration of its decision to de-designate AIG.

First, the FSOC did not follow rules requiring public notice of all meetings at least one week in advance.<sup>25</sup> The public announcement of the "unusual last-minute" September 29, 2017

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<sup>19</sup> *Supra* note 6 at 10.

<sup>20</sup> *Supra* note 1 at 12.

<sup>21</sup> *Supra* note 15 at 62.

<sup>22</sup> *Supra* note 1 at 15.

<sup>23</sup> *Supra* note 15 at 5; Gregg Gelzins, "AIG is no longer too big to fail and taxpayers deserve to know why," *The Hill* (Oct. 10, 2017) (available at <http://thehill.com/opinion/finance/354610-aig-is-no-longer-too-big-to-fail-and-taxpayers-deserve-to-know-why>).

<sup>24</sup> Chad Bray, "I Am Here to Grow A.I.G., Its New C.E.O., Brian Duperreault, Pledges," *New York Times* (May 15, 2017) (available at [https://www.nytimes.com/2017/05/15/business/dealbook/aig-brian-duperreault-ceo.html?\\_r=0](https://www.nytimes.com/2017/05/15/business/dealbook/aig-brian-duperreault-ceo.html?_r=0)).

<sup>25</sup> "Transparency Policy for the Financial Stability Oversight Council," *Department of the Treasury* (available at <https://www.treasury.gov/initiatives/fsoc/Documents/The%20Council%27s%20Transparency%20Policy.pdf>); See Jesse Hamilton, "U.S. Is Said to Plan Freeing AIG From Systemic-Risk Label," *Bloomberg* (Sept. 28, 2017)

meeting was not made until 4:00 p.m. on September 28<sup>th</sup>, less than 24 hours before the meeting was opened.<sup>26</sup>

Second, the FSOC failed to follow the voting procedures outlined in the Dodd-Frank Act, which only give the FSOC authority to designate or de-designate an institution if “two-thirds of the voting members of the FSOC then serving” vote in favor of doing so.<sup>27</sup> The FSOC consists of 10 voting members, in addition to five non-voting members. This is important because while Chairman Clayton recused himself from the vote, he was still a voting member of the FSOC. The law does not merely require a two-thirds vote, but requires at least seven votes if there are ten voting members of the FSOC in office, as there were on the day that AIG was de-designated. While Chairman Clayton recused himself from this decision, a plain reading of the law indicates that he was still a “voting member” of FSOC who was still “serving.” Because only six of ten voting members voting to de-designate AIG, the vote should have failed and AIG should have remained a SIFI.

Secretary Mnuchin, however, excluded Chairman Clayton from the count of “voting members ... serving,” giving the FSOC six out of nine votes, and put this interpretation to the FSOC for a simple majority vote. The FSOC issued only a one-sentence explanation for this unusual decision, providing no details other than that “[t]he council determined that a member who is recused from participating in a matter is not included in the vote tally.” Such an arbitrary decision with no legal basis “puts the legality of the de-designation vote into question.”<sup>28</sup>

Finally, the FSOC failed to conduct an independent evaluation of “the nature, scope, size, scale...or mix of activities of” AIG as required by Section 113 of the Dodd-Frank law. The FSOC may designate an institution as a SIFI if it meets one of two standards: (1) if “material financial distress” at the company “could pose a threat to the financial stability” of the U.S., and (2) if the “nature, scope, size, scale, concentration, interconnectedness, or mix of activities” of the institution “could pose a threat to the financial stability” of the U.S.<sup>29</sup> In 2013, the FSOC found that AIG met the first test, but “did not evaluate AIG on the second standard, independent of the first.”<sup>30</sup> In reevaluating that designation last month, the FSOC concluded that AIG no longer met the requirements for the first standard, but proceeded to de-designate the company “without making the legal assessment required under Section 113’s second standard.”<sup>31</sup> As Mel Watt, Director of the Federal Housing Finance Agency and member of the FSOC stated, such an

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(available at <https://www.bloomberg.com/news/articles/2017-09-29/aig-s-label-as-systemic-risk-may-be-reconsidered-by-regulators>).

<sup>26</sup> See ‘Freeing AIG,’ *supra* note 25; see also “AIG is no longer too big to fail,” *supra* note 23.

<sup>27</sup> See “AIG is no longer too big to fail,” *supra* note 23.

<sup>28</sup> *Id.*

<sup>29</sup> “The Dodd-Frank Wall Street Reform and Consumer Protection Act,” 12 U.S.C. § 5323 (2010).

<sup>30</sup> *Supra* note 1 at 9.

<sup>31</sup> *Id.* at 11.

independent review is necessary “before a decision can be appropriately made to rescind the designation.”<sup>32</sup>

These procedural mishaps are profoundly troubling, particularly given the additional substantive concerns described above.

### **The Role of Carl Icahn and Other Questions about Industry Influence**

I also remain concerned about whether the FSOC may have been inappropriately influenced by and in conversations with industry officials prior to its decision to de-designate AIG. On July 27, 2017, I wrote a letter to Secretary Mnuchin requesting information on the contacts between Carl Icahn and members of the FSOC.<sup>33</sup> Mr. Icahn, who served earlier this year as “special adviser to the President on issues relating to regulatory reform,” owns a stake as “one of the largest investors.” While serving as a Presidential adviser, he had intervened in Administration policy and personnel decisions that affected his business interests.<sup>34</sup>

Reports indicate that, despite a long-held desire for AIG to break itself up in order to “avert the increased capital requirements and regulations associated with non-bank SIFI status,” Mr. Icahn suddenly began “easing off his demands for a breakup” of AIG earlier this year.<sup>35</sup> We know that Mr. Icahn had at least one meeting with an FSOC member, SEC Chairman Clayton. Following Chairman Clayton’s nomination, Mr. Icahn met privately with him.<sup>36</sup> According to Mr. Clayton, the meeting was about “the importance of activist investors in driving performance at companies.”<sup>37</sup>

In my letter, I asked a series of basic questions about whether Mr. Icahn had had any contact with or influence on FSOC member who voted on the AIG SIFI designation. Secretary Mnuchin did not respond to our letter until last week, well after the vote to de-designate AIG, and the response only (1) provided broad background information on FSOC conflict of interest requirements, and (2) confirmed that Mr. Clayton had recused himself from the AIG designation vote. The response ignored our questions about contacts that Mr. Icahn or his associates may

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<sup>32</sup> *Id.* at 9.

<sup>33</sup> Letter from Senator Warren to Secretary Mnuchin, *Senator Elizabeth Warren* (Jul. 27, 2017) (available at [https://www.warren.senate.gov/files/documents/2017\\_07\\_27\\_Mnuchin\\_Icahn\\_Letter\\_Final.pdf](https://www.warren.senate.gov/files/documents/2017_07_27_Mnuchin_Icahn_Letter_Final.pdf)).

<sup>34</sup> David Benoit, “Trump Names Carl Icahn as Adviser on Regulatory Overhaul,” *Wall Street Journal* (Dec. 21, 2016) (available at <https://www.wsj.com/articles/trump-to-name-icahn-as-adviser-on-regulatory-overhaul-1482354552>); Sonali Basak, “Icahn Said to Ease off Demand for AIG Breakup Under New CEO,” *Bloomberg* (Jun. 29, 2017) (available at <https://www.bloomberg.com/news/articles/2017-06-29/icahn-said-to-ease-off-demand-for-aig-breakup-after-ceo-switch>).

<sup>35</sup> “Carl Icahn Issues Open Letter to Peter Hancock, Chief Executive Officer of AIG,” *Carl Icahn* (Oct. 28, 2015) (available at <http://carlicahn.com/aig-ceo-letter/>); see “Icahn Said to Ease off Demand,” *supra* note 34.

<sup>36</sup> *Supra* note 33.

<sup>37</sup> Renae Merle, “Democrats skeptical about SEC nominee’s ties to Wall Street,” *Washington Post* (Mar. 23, 2017) (available at <https://www.washingtonpost.com/news/wonk/wp/2017/03/23/sec-nominee-to-face-tough-questions-on-wall-street-connections/>).



have had with FSOC members - meaning the existence of or precise extent and nature of any contacts is still unclear.

The timing of the FSOC announcement also indicates that insurance industry representatives and others individuals learned of the decision to de-designate AIG before it was announced publicly. Property Casualty Insurer's Association of America (PCI), an insurance industry trade association for nearly 1,000 companies, issued a release praising the FSOC for de-designating AIG minutes after a FSOC readout that made no mention of the decision.<sup>38</sup> It is unclear why or how insurance industry representatives knew of this decision at the time, which was not made public until approximately 30 minutes later, when a second FSOC readout with the announcement was released to the public. Public reports the day prior to the de-designation also indicated that "two people familiar with the discussion" were aware of and leaking information about the de-designation decision well in advance of the actual vote.<sup>39</sup>

The unusual timing by which individuals were aware of the decision before the vote, and by which the insurance industry announced the decision before it was publicly available raises concerns over the impartiality of the FSOC, the process by which the decision was made public, and about whether individuals may have had access to market-moving information before that information went public.

### **Conclusion and Questions**

The FSOC ignored strong evidence that AIG continues to pose a risk to U.S. financial stability, and failed to follow basic and important procedural requirements in making its decision. And information about the decision appears to have been leaked to the insurance industry and others prior to the formal vote and the public notice.

Given these concerns, I ask that you answer the following questions by October X, 2017, to provide greater clarity on the FSOC's decision and the potential ramifications to the U.S. financial system and to American taxpayers.

1. Has Mr. Icahn, or any individual working for or on behalf of Mr. Icahn, had any contact with you or any other FSOC official, or any staff member for any FSOC official, regarding AIG? If so, please list all contacts of which you are aware and describe the nature of any discussion with Mr. Icahn or his representatives.
2. What protections does FSOC have in place to ensure that individuals with an interest in pending FSOC decisions do not inappropriately influence or attempt to influence FSOC officials who will be deciding these matters? Were these policies and procedures followed by all FSOC members in the AIG case?


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<sup>38</sup> "AIG is no longer too big to fail," *supra* note 23.

<sup>39</sup> 'Freeing AIG,' *supra* note 25.

3. Did you, any other FSOC official, or the staff of any FSOC official contact the Property Casualty Insurer's Association of America (PCI), the U.S. Chamber of Commerce, or any other member of a trade organization or lobbying group representing the insurance industry, with information about the decision to de-designate AIG as a SIFI before FSOC's initial public announcement in its second readout at around 6:00 p.m. on September 29<sup>th</sup>? How did PCI learn about this decision in advance of the 6:00 PM notice?
4. Does FSOC have protections in place to prevent leaks of key decisions in advance of official public notice? If so, why and how were "two people familiar with the discussion" aware of the de-designation in advance of the vote, and why and how did these individuals leak this information to the press? Are you aware of whether the FSOC has investigated this matter, and if the Council has conducted an investigation, what did the investigation reveal?
5. Why did FSOC bypass its notice and transparency policies that require one week of advanced public notice of any hearing? Does the Council intend to follow these policies in all cases in the future?
6. Is there a legal memo advising Secretary Mnuchin on the interpretation of Dodd-Frank that allowed him pass the de-designation vote with only six of ten members in favor? If so, please provide my office with a copy of that memo and any other documents relating to that decision.
7. Did Chairman Clayton recuse himself only from the vote to de-designate AIG? Did he participate in any way in the discussion of this matter? Did he participate in the discussion of or vote to accept Secretary Mnuchin's interpretation of the voting rules despite recusing himself from the vote on the de-designation of AIG?
8. Why did FSOC decide that it was not necessary to conduct an independent evaluation of whether AIG met the second standard for SIFI designation? Please provide my office with a copy of all documents that relate to the decision not to conduct such an evaluation.

Sincerely,



Elizabeth Warren  
United States Senator



Sheldon Whitehouse  
United States Senator

# United States Senate

WASHINGTON, DC 20510

October 23, 2017

The Honorable Mel Watts  
Director  
Federal Housing Finance Agency  
400 7<sup>th</sup> Street SW  
Washington, D.C. 20219

Dear Director Watts:

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<sup>9</sup> *Id.* at 13.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Supra* note 5.

<sup>12</sup> *Id.* This is a decrease in liquidity resources even after adjusting for the decrease in the overall size of AIG.

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<sup>15</sup> “Notice and Explanation of the Basis for the Financial Stability Oversight Council’s Rescission of Its Determination Regarding American International Group, Inc. (AIG),” *Department of the Treasury*, 60 (available at [https://www.treasury.gov/initiatives/fsoc/designations/Documents/American\\_International\\_Group,\\_Inc.\\_\(Rescission\).pdf](https://www.treasury.gov/initiatives/fsoc/designations/Documents/American_International_Group,_Inc._(Rescission).pdf)).

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Finally, in 2013, the FSOC concluded that AIG's "complicated organizational structure significantly increases the obstacles to a rapid and orderly resolution."<sup>19</sup> The same fact holds true today. As one FSOC member who voted to de-designate AIG admitted, "AIG remains a complex international insurance company with an embedded financial institutions component."<sup>20</sup> The company continues to operate in all 50 states and more than 80 countries, and the FSOC's recent decision itself even acknowledged that "the lack of a global framework for resolution may represent an obstacle to AIG's rapid and orderly resolution."<sup>21</sup>

FSOC member S. Roy Woodall, Jr., who voted last month to reduce the FSOC's oversight of AIG, issued an accompanying statement confessing that "I do believe [AIG] should continue to be monitored from a macro-prudential perspective."<sup>22</sup> The FSOC's oversight through the SIFI designation provides one of the most effective forms of macro-prudential regulation of nonbank financial companies in the United States, yet the FSOC, Mr. Woodall and his colleagues just voted to end its enhanced supervision of AIG.

AIG presents many of the same risks to U.S. financial stability today as the company did in 2013. The FSOC claimed that de-designation was appropriate in light of the "reduced...amounts of its total debt" and the fact that AIG is now "smaller in scope and size."<sup>23</sup> But to the extent that the company and its debt are smaller, it does not appear to have resulted in significantly reduced systemic risks. And the FSOC decision ignores the fact that earlier this year, the new CEO stated that he intended to reverse the company's contraction, clarifying that to "be clear, I am here to grow A.I.G....I didn't come here to break the company up. I came here to grow it."<sup>24</sup>

### **The FSOC Flouted Key Procedure Rules During the AIG Decision**

I am also concerned that the FSOC appears to have flouted basic procedural rules during the consideration of its decision to de-designate AIG.

First, the FSOC did not follow rules requiring public notice of all meetings at least one week in advance.<sup>25</sup> The public announcement of the "unusual last-minute" September 29, 2017

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<sup>19</sup> *Supra* note 6 at 10.

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<sup>23</sup> *Supra* note 15 at 5; Gregg Gelzinis, "AIG is no longer too big to fail and taxpayers deserve to know why," *The Hill* (Oct. 10, 2017) (available at <http://thehill.com/opinion/finance/354610-aig-is-no-longer-too-big-to-fail-and-taxpayers-deserve-to-know-why>).

<sup>24</sup> Chad Bray, "'I Am Here to Grow A.I.G.,' Its New C.E.O., Brian Duperreault, Pledges," *New York Times* (May 15, 2017) (available at [https://www.nytimes.com/2017/05/15/business/dealbook/aig-brian-duperreault-ceo.html?\\_r=0](https://www.nytimes.com/2017/05/15/business/dealbook/aig-brian-duperreault-ceo.html?_r=0)).

<sup>25</sup> "Transparency Policy for the Financial Stability Oversight Council," *Department of the Treasury* (available at <https://www.treasury.gov/initiatives/fsoc/Documents/The%20Council%27s%20Transparency%20Policy.pdf>); See Jesse Hamilton, "U.S. Is Said to Plan Freeing AIG From Systemic-Risk Label," *Bloomberg* (Sept. 28, 2017)

meeting was not made until 4:00 p.m. on September 28<sup>th</sup>, less than 24 hours before the meeting was opened.<sup>26</sup>

Second, the FSOC failed to follow the voting procedures outlined in the Dodd-Frank Act, which only give the FSOC authority to designate or de-designate an institution if “two-thirds of the voting members of the FSOC then serving” vote in favor of doing so.<sup>27</sup> The FSOC consists of 10 voting members, in addition to five non-voting members. This is important because while Chairman Clayton recused himself from the vote, he was still a voting member of the FSOC. The law does not merely require a two-thirds vote, but requires at least seven votes if there are ten voting members of the FSOC in office, as there were on the day that AIG was de-designated. While Chairman Clayton recused himself from this decision, a plain reading of the law indicates that he was still a “voting member” of FSOC who was still “serving.” Because only six of ten voting members voting to de-designate AIG, the vote should have failed and AIG should have remained a SIFI.

Secretary Mnuchin, however, excluded Chairman Clayton from the count of “voting members ... serving,” giving the FSOC six out of nine votes, and put this interpretation to the FSOC for a simple majority vote. The FSOC issued only a one-sentence explanation for this unusual decision, providing no details other than that “[t]he council determined that a member who is recused from participating in a matter is not included in the vote tally.” Such an arbitrary decision with no legal basis “puts the legality of the de-designation vote into question.”<sup>28</sup>

Finally, the FSOC failed to conduct an independent evaluation of “the nature, scope, size, scale...or mix of activities of” AIG as required by Section 113 of the Dodd-Frank law. The FSOC may designate an institution as a SIFI if it meets one of two standards: (1) if “material financial distress” at the company “could pose a threat to the financial stability” of the U.S., and (2) if the “nature, scope, size, scale, concentration, interconnectedness, or mix of activities” of the institution “could pose a threat to the financial stability” of the U.S.<sup>29</sup> In 2013, the FSOC found that AIG met the first test, but “did not evaluate AIG on the second standard, independent of the first.”<sup>30</sup> In reevaluating that designation last month, the FSOC concluded that AIG no longer met the requirements for the first standard, but proceeded to de-designate the company “without making the legal assessment required under Section 113’s second standard.”<sup>31</sup> As Mel Watt, Director of the Federal Housing Finance Agency and member of the FSOC stated, such an

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(available at <https://www.bloomberg.com/news/articles/2017-09-29/aig-s-label-as-systemic-risk-may-be-reconsidered-by-regulators>).

<sup>26</sup> See ‘Freeing AIG,’ *supra* note 25; see also “AIG is no longer too big to fail,” *supra* note 23.

<sup>27</sup> See “AIG is no longer too big to fail,” *supra* note 23.

<sup>28</sup> *Id.*

<sup>29</sup> “The Dodd-Frank Wall Street Reform and Consumer Protection Act,” 12 U.S.C. § 5323 (2010).

<sup>30</sup> *Supra* note 1 at 9.

<sup>31</sup> *Id.* at 11.

independent review is necessary “before a decision can be appropriately made to rescind the designation.”<sup>32</sup>

These procedural mishaps are profoundly troubling, particularly given the additional substantive concerns described above.

### **The Role of Carl Icahn and Other Questions about Industry Influence**

I also remain concerned about whether the FSOC may have been inappropriately influenced by and in conversations with industry officials prior to its decision to de-designate AIG. On July 27, 2017, I wrote a letter to Secretary Mnuchin requesting information on the contacts between Carl Icahn and members of the FSOC.<sup>33</sup> Mr. Icahn, who served earlier this year as “special adviser to the President on issues relating to regulatory reform,” owns a stake as “one of the largest investors.” While serving as a Presidential adviser, he had intervened in Administration policy and personnel decisions that affected his business interests.<sup>34</sup>

Reports indicate that, despite a long-held desire for AIG to break itself up in order to “avert the increased capital requirements and regulations associated with non-bank SIFI status,” Mr. Icahn suddenly began “easing off his demands for a breakup” of AIG earlier this year.<sup>35</sup> We know that Mr. Icahn had at least one meeting with an FSOC member, SEC Chairman Clayton. Following Chairman Clayton’s nomination, Mr. Icahn met privately with him.<sup>36</sup> According to Mr. Clayton, the meeting was about “the importance of activist investors in driving performance at companies.”<sup>37</sup>

In my letter, I asked a series of basic questions about whether Mr. Icahn had had any contact with or influence on FSOC member who voted on the AIG SIFI designation. Secretary Mnuchin did not respond to our letter until last week, well after the vote to de-designate AIG, and the response only (1) provided broad background information on FSOC conflict of interest requirements, and (2) confirmed that Mr. Clayton had recused himself from the AIG designation vote. The response ignored our questions about contacts that Mr. Icahn or his associates may

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<sup>32</sup> *Id.* at 9.

<sup>33</sup> Letter from Senator Warren to Secretary Mnuchin, *Senator Elizabeth Warren* (Jul. 27, 2017) (available at [https://www.warren.senate.gov/files/documents/2017\\_07\\_27\\_Mnuchin\\_Icahn\\_Letter\\_Final.pdf](https://www.warren.senate.gov/files/documents/2017_07_27_Mnuchin_Icahn_Letter_Final.pdf)).

<sup>34</sup> David Benoit, “Trump Names Carl Icahn as Adviser on Regulatory Overhaul,” *Wall Street Journal* (Dec. 21, 2016) (available at <https://www.wsj.com/articles/trump-to-name-icahn-as-adviser-on-regulatory-overhaul-1482354552>); Sonali Basak, “Icahn Said to Ease off Demand for AIG Breakup Under New CEO,” *Bloomberg* (Jun. 29, 2017) (available at <https://www.bloomberg.com/news/articles/2017-06-29/icahn-said-to-ease-off-demand-for-aig-breakup-after-ceo-switch>).

<sup>35</sup> “Carl Icahn Issues Open Letter to Peter Hancock, Chief Executive Officer of AIG,” *Carl Icahn* (Oct. 28, 2015) (available at <http://carlicahn.com/aig-ceo-letter/>); see “Icahn Said to Ease off Demand,” *supra* note 34.

<sup>36</sup> *Supra* note 33.

<sup>37</sup> Renae Merle, “Democrats skeptical about SEC nominee’s ties to Wall Street,” *Washington Post* (Mar. 23, 2017) (available at <https://www.washingtonpost.com/news/wonk/wp/2017/03/23/sec-nominee-to-face-tough-questions-on-wall-street-connections/>).



have had with FSOC members - meaning the existence of or precise extent and nature of any contacts is still unclear.

The timing of the FSOC announcement also indicates that insurance industry representatives and others individuals learned of the decision to de-designate AIG before it was announced publicly. Property Casualty Insurer's Association of America (PCI), an insurance industry trade association for nearly 1,000 companies, issued a release praising the FSOC for de-designating AIG minutes after a FSOC readout that made no mention of the decision.<sup>38</sup> It is unclear why or how insurance industry representatives knew of this decision at the time, which was not made public until approximately 30 minutes later, when a second FSOC readout with the announcement was released to the public. Public reports the day prior to the de-designation also indicated that "two people familiar with the discussion" were aware of and leaking information about the de-designation decision well in advance of the actual vote.<sup>39</sup>

The unusual timing by which individuals were aware of the decision before the vote, and by which the insurance industry announced the decision before it was publicly available raises concerns over the impartiality of the FSOC, the process by which the decision was made public, and about whether individuals may have had access to market-moving information before that information went public.

### **Conclusion and Questions**

The FSOC ignored strong evidence that AIG continues to pose a risk to U.S. financial stability, and failed to follow basic and important procedural requirements in making its decision. And information about the decision appears to have been leaked to the insurance industry and others prior to the formal vote and the public notice.

Given these concerns, I ask that you answer the following questions by October X, 2017, to provide greater clarity on the FSOC's decision and the potential ramifications to the U.S. financial system and to American taxpayers.

1. Has Mr. Icahn, or any individual working for or on behalf of Mr. Icahn, had any contact with you or any other FSOC official, or any staff member for any FSOC official, regarding AIG? If so, please list all contacts of which you are aware and describe the nature of any discussion with Mr. Icahn or his representatives.
2. What protections does FSOC have in place to ensure that individuals with an interest in pending FSOC decisions do not inappropriately influence or attempt to influence FSOC officials who will be deciding these matters? Were these policies and procedures followed by all FSOC members in the AIG case?

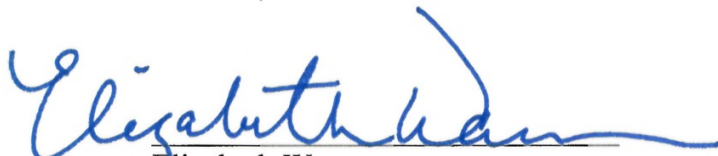
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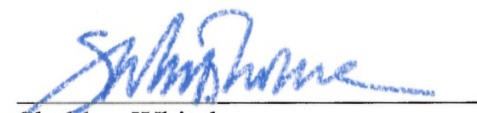
<sup>39</sup> 'Freeing AIG,' *supra* note 25.

3. Did you, any other FSOC official, or the staff of any FSOC official contact the Property Casualty Insurer's Association of America (PCI), the U.S. Chamber of Commerce, or any other member of a trade organization or lobbying group representing the insurance industry, with information about the decision to de-designate AIG as a SIFI before FSOC's initial public announcement in its second readout at around 6:00 p.m. on September 29<sup>th</sup>? How did PCI learn about this decision in advance of the 6:00 PM notice?
4. Does FSOC have protections in place to prevent leaks of key decisions in advance of official public notice? If so, why and how were "two people familiar with the discussion" aware of the de-designation in advance of the vote, and why and how did these individuals leak this information to the press? Are you aware of whether the FSOC has investigated this matter, and if the Council has conducted an investigation, what did the investigation reveal?
5. Why did FSOC bypass its notice and transparency policies that require one week of advanced public notice of any hearing? Does the Council intend to follow these policies in all cases in the future?
6. Is there a legal memo advising Secretary Mnuchin on the interpretation of Dodd-Frank that allowed him pass the de-designation vote with only six of ten members in favor? If so, please provide my office with a copy of that memo and any other documents relating to that decision.
7. Did Chairman Clayton recuse himself only from the vote to de-designate AIG? Did he participate in any way in the discussion of this matter? Did he participate in the discussion of or vote to accept Secretary Mnuchin's interpretation of the voting rules despite recusing himself from the vote on the de-designation of AIG?
8. Why did FSOC decide that it was not necessary to conduct an independent evaluation of whether AIG met the second standard for SIFI designation? Please provide my office with a copy of all documents that relate to the decision not to conduct such an evaluation.

Sincerely,



Elizabeth Warren  
United States Senator



Sheldon Whitehouse  
United States Senator

# United States Senate

WASHINGTON, DC 20510

October 23, 2017

The Honorable Jay Clayton  
Chairman  
Securities & Exchange Commission  
100 F Street NE  
Washington DC, 20549

Dear Chairman Clayton:

I am writing because of my concern over the Financial Stability Oversight Council's (FSOC's) September 29, 2017 decision to rescind its determination that American International Group is a Systemically Important Financial Institution (SIFI) that could pose a threat to the United States financial system. The FSOC's decision to remove AIG from the list of SIFIs reduces supervision and oversight of the insurance giant and puts taxpayers and our economy at risk less than a decade after the company's failure rocked the nation's financial system and forced taxpayers into a \$182 billion bailout.

Although you recused yourself from the AIG designation vote, you are one of ten voting members on the FSOC, and I am writing to you to seek answers about how the FSOC came to this decision, which is troubling for three reasons: (1) it appears to have been made with little substantive justification; (2) it appears that, to reach this decision, the FSOC ignored several of its own key procedural rules; and (3) the FSOC has yet to answer key questions about the influence of former Adviser to the President and AIG shareholder Carl Icahn on the FSOC decision - while additional actions by the FSOC raise questions about the extent to which the Council was working with insurance industry representatives in reaching the decision.

## **AIG's 2013 Designation - and 2014 and 2015 Re-Designation - as a SIFI**

At the height of the 2008 financial crisis, AIG was, as one FSOC member who voted to reduce oversight of the insurance company put it, "the proverbial poster child for ill-conceived business plans, internal control systems, and risk-management protocols."<sup>1</sup> AIG was "a basket case[.]" and "if the company did not receive help, AIG would fail."<sup>2</sup> To avoid the "catastrophic consequences" of such a failure, the government was forced into a taxpayer-funded \$182 billion

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<sup>1</sup> "Views of Financial Stability Oversight Council Members Regarding Rescission of Determination Regarding American International Group, Inc. (AIG)," *Department of the Treasury*, 12 (available at [https://www.treasury.gov/initiatives/fsoc/news/Documents/Member\\_Views.pdf](https://www.treasury.gov/initiatives/fsoc/news/Documents/Member_Views.pdf));

<sup>2</sup> *Id.*

federal bailout of AIG in which “Main Street bailed out Wall Street to help keep the entire U.S. economy afloat.”<sup>3</sup>

Under Dodd-Frank, the FSOC may designate a nonbank financial company as a SIFI if it determines either that (1) “material financial distress” at the company could pose a threat to U.S. financial stability, or (2) the “nature, scope, size, scale, concentration, interconnectedness, or mix of activities” of the company could pose a threat to U.S. financial stability.<sup>4</sup> In 2013, the FSOC concluded that material financial distress at AIG could pose a threat to U.S. financial stability due primarily to a high level of counterparty exposure, the risk of asset liquidation, and concerns regarding AIG’s resolvability – the “ability to shut AIG down in an orderly manner” without resorting to a federal bailout.<sup>5</sup>

On July 8, 2013, under these new rules, the FSOC unanimously voted to designate AIG as a SIFI, determining that “material financial distress at [AIG] could pose a threat to U.S. financial stability.”<sup>6</sup> In doing so, the FSOC subjected AIG to heightened oversight, including increased capital requirements, stress testing, and a requirement for living wills that would help prevent “too big to fail” institutions from forcing taxpayer bailouts. In 2014 and 2015, the FSOC reviewed the determination and “concluded that there had not been sufficient material changes” to rescind it.<sup>7</sup>

But on September 29, 2017, the FSOC announced that it had rescinded its 2013 determination and that AIG would no longer be classified as a SIFI, removing the enhanced oversight and supervision.

### **AIG Continues to Pose a Threat to U.S. Financial Stability**

In 2013, the FSOC concluded that material financial distress at AIG could pose a threat to U.S. financial stability - a conclusion that the FSOC reached again upon additional review in 2014 and 2015. But these risks still exist - meaning there is no substantive justification for the decision to de-designate AIG as a SIFI.

In 2013, the “core basis” for designating AIG as a SIFI was that “AIG had a large volume of liabilities subject to discretionary withdrawal.”<sup>8</sup> In other words, the company’s liabilities were “runnable” – AIG was at risk of having its liabilities called in by investors, and being forced to liquidate other assets to meet these calls. This meant that if AIG went into financial

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<sup>3</sup> *Id.*

<sup>4</sup> “The Dodd-Frank Wall Street Reform and Consumer Protection Act,” 12 U.S.C. § 5323 (2010).

<sup>5</sup> Gregg Gelzins, “Deregulating AIG Was a Mistake,” *Center for American Progress* (Oct. 11, 2017) (available at <https://www.americanprogress.org/issues/economy/reports/2017/10/11/440570/deregulating-aig-mistake/>).

<sup>6</sup> “Basis of the Financial Stability Oversight Council’s Final Determination Regarding American International Group, Inc.,” *Department of the Treasury*, 1 (Jul. 8, 2013) (available at <https://www.treasury.gov/initiatives/fsoc/designations/Documents/Basis%20of%20Final%20Determination%20Regarding%20American%20International%20Group,%20Inc.pdf>).

<sup>7</sup> *Supra* note 1 at 5.

<sup>8</sup> *Id.*



distress, those liabilities could all “run” in a short period of time, and AIG would be forced to rapidly liquidate a high volume of assets, resulting in a threat to U.S. financial stability. That risk is still high today. In fact, one FSOC member that voted to de-designate AIG noted that “AIG continues to hold significant exposure to annuity products.”<sup>9</sup>

AIG has decreased risk in certain exposures, but others have increased, “most notably in the life insurance and annuity business.”<sup>10</sup> Their life insurance and retirement business lines, identified by the FSOC in 2013 as areas of particular concern, constitute about one-quarter of the company’s business – “roughly the same portion” as they did in 2013.<sup>11</sup> Despite this liability, AIG has actually decreased their liquidity resources from \$16 billion to \$12 billion.<sup>12</sup> AIG holds \$134 billion in corporate bonds and \$20 billion in state and municipal bonds, down slightly from \$152 billion and \$36 billion in 2013, all of which could be at risk if a liquidity strain forces the company into a fire sale.<sup>13</sup> Such a fire sale would then reduce the value of these bonds across the sector, putting immense stress on the financial system.

As one FSOC member put it, “[n]othing about the liquidity characteristics of AIG’s liabilities and assets has changed to diminish the concerns originally raised by the FSOC.”<sup>14</sup> And as the FSOC decision to de-designate AIG stated, “[i]n the event of AIG’s material financial distress[,]” loss of access to internal funding could lead “to the loss of liquidity and possibly either insolvency or seizure by a regulator.”<sup>15</sup>

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<sup>24</sup> Chad Bray, “I Am Here to Grow A.I.G.,’ Its New C.E.O., Brian Duperreault, Pledges,” *New York Times* (May 15, 2017) (available at [https://www.nytimes.com/2017/05/15/business/dealbook/aig-brian-duperreault-ceo.html?\\_r=0](https://www.nytimes.com/2017/05/15/business/dealbook/aig-brian-duperreault-ceo.html?_r=0)).

<sup>25</sup> “Transparency Policy for the Financial Stability Oversight Council,” *Department of the Treasury* (available at <https://www.treasury.gov/initiatives/fsoc/Documents/The%20Council%27s%20Transparency%20Policy.pdf>); See Jesse Hamilton, “U.S. Is Said to Plan Freeing AIG From Systemic-Risk Label,” *Bloomberg* (Sept. 28, 2017)

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Secretary Mnuchin, however, excluded you from the count of “voting members ... serving,” giving the FSOC six out of nine votes, and put this interpretation to the FSOC for a simple majority vote. The FSOC issued only a one-sentence explanation for this unusual decision, providing no details other than that “[t]he council determined that a member who is recused from participating in a matter is not included in the vote tally.” Such an arbitrary decision with no legal basis “puts the legality of the de-designation vote into question.”<sup>28</sup>

Finally, the FSOC failed to conduct an independent evaluation of “the nature, scope, size, scale...or mix of activities of” AIG as required by Section 113 of the Dodd-Frank law. The FSOC may designate an institution as a SIFI if it meets one of two standards: (1) if “material financial distress” at the company “could pose a threat to the financial stability” of the U.S., and (2) if the “nature, scope, size, scale, concentration, interconnectedness, or mix of activities” of the institution “could pose a threat to the financial stability” of the U.S.<sup>29</sup> In 2013, the FSOC found that AIG met the first test, but “did not evaluate AIG on the second standard, independent of the first.”<sup>30</sup> In reevaluating that designation last month, the FSOC concluded that AIG no longer met the requirements for the first standard, but proceeded to de-designate the company “without making the legal assessment required under Section 113’s second standard.”<sup>31</sup> As Mel Watt, Director of the Federal Housing Finance Agency and member of the FSOC stated, such an

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independent review is necessary “before a decision can be appropriately made to rescind the designation.”<sup>32</sup>

These procedural mishaps are profoundly troubling, particularly given the additional substantive concerns described above.

### **The Role of Carl Icahn and Other Questions about Industry Influence**

I also remain concerned about whether the FSOC may have been inappropriately influenced by and in conversations with industry officials prior to its decision to de-designate AIG. On July 27, 2017, I wrote a letter to Secretary Mnuchin requesting information on the contacts between Carl Icahn and members of the FSOC.<sup>33</sup> Mr. Icahn, who served earlier this year as “special adviser to the President on issues relating to regulatory reform,” owns a stake as “one of the largest investors.” While serving as a Presidential adviser, he had intervened in Administration policy and personnel decisions that affected his business interests.<sup>34</sup>

Reports indicate that, despite a long-held desire for AIG to break itself up in order to “avert the increased capital requirements and regulations associated with non-bank SIFI status,” Mr. Icahn suddenly began “easing off his demands for a breakup” of AIG earlier this year.<sup>35</sup> We know that Mr. Icahn had at least one meeting with you, an FSOC member. Following your nomination, you met privately with Mr. Icahn.<sup>36</sup> You indicated that the meeting was about “the importance of activist investors in driving performance at companies.”<sup>37</sup>

In my letter, I asked a series of basic questions about whether Mr. Icahn had had any contact with or influence on FSOC member who voted on the AIG SIFI designation. Secretary Mnuchin did not respond to our letter until last week, well after the vote to de-designate AIG, and the response only (1) provided broad background information on FSOC conflict of interest requirements, and (2) confirmed that you had recused yourself from the AIG designation vote. The response ignored our questions about contacts that Mr. Icahn or his associates may have had with you or any other FSOC members - meaning the existence of or precise extent and nature of any contacts is still unclear.

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<sup>32</sup> *Id.* at 9.

<sup>33</sup> Letter from Senator Warren to Secretary Mnuchin, *Senator Elizabeth Warren* (Jul. 27, 2017) (available at [https://www.warren.senate.gov/files/documents/2017\\_07\\_27\\_Mnuchin\\_Icahn\\_Letter\\_Final.pdf](https://www.warren.senate.gov/files/documents/2017_07_27_Mnuchin_Icahn_Letter_Final.pdf)).

<sup>34</sup> David Benoit, “Trump Names Carl Icahn as Adviser on Regulatory Overhaul,” *Wall Street Journal* (Dec. 21, 2016) (available at <https://www.wsj.com/articles/trump-to-name-icahn-as-adviser-on-regulatory-overhaul-1482354552>); Sonali Basak, “Icahn Said to Ease off Demand for AIG Breakup Under New CEO,” *Bloomberg* (Jun. 29, 2017) (available at <https://www.bloomberg.com/news/articles/2017-06-29/icahn-said-to-ease-off-demand-for-aig-breakup-after-ceo-switch>).

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<sup>36</sup> *Supra* note 33.

<sup>37</sup> Renae Merle, “Democrats skeptical about SEC nominee’s ties to Wall Street,” *Washington Post* (Mar. 23, 2017) (available at <https://www.washingtonpost.com/news/wonk/wp/2017/03/23/sec-nominee-to-face-tough-questions-on-wall-street-connections/>).

The timing of the FSOC announcement also indicates that insurance industry representatives and others individuals learned of the decision to de-designate AIG before it was announced publicly. Property Casualty Insurer's Association of America (PCI), an insurance industry trade association for nearly 1,000 companies, issued a release praising the FSOC for de-designating AIG minutes after a FSOC readout that made no mention of the decision.<sup>38</sup> It is unclear why or how insurance industry representatives knew of this decision at the time, which was not made public until approximately 30 minutes later, when a second FSOC readout with the announcement was released to the public. Public reports the day prior to the de-designation also indicated that "two people familiar with the discussion" were aware of and leaking information about the de-designation decision well in advance of the actual vote.<sup>39</sup>

The unusual timing by which individuals were aware of the decision before the vote, and by which the insurance industry announced the decision before it was publicly available raises concerns over the impartiality of the FSOC, the process by which the decision was made public, and about whether individuals may have had access to market-moving information before that information went public.

### **Conclusion and Questions**

The FSOC ignored strong evidence that AIG continues to pose a risk to U.S. financial stability, and failed to follow basic and important procedural requirements in making its decision. And information about the decision appears to have been leaked to the insurance industry and others prior to the formal vote and the public notice.

Given these concerns, I ask that you answer the following questions by October X, 2017, to provide greater clarity on the FSOC's decision and the potential ramifications to the U.S. financial system and to American taxpayers.

1. Has Mr. Icahn, or any individual working for or on behalf of Mr. Icahn, had any contact with you (other than those previously disclosed) or any other FSOC official, or any staff member for any FSOC official, regarding AIG? If so, please list all contacts of which you are aware and describe the nature of any discussion with Mr. Icahn or his representatives.
2. What protections does FSOC have in place to ensure that individuals with an interest in pending FSOC decisions do not inappropriately influence or attempt to influence FSOC officials who will be deciding these matters? Were these policies and procedures followed by all FSOC members in the AIG case?
3. Did you, any other FSOC official, or the staff of any FSOC official contact the Property Casualty Insurer's Association of America (PCI), the U.S. Chamber of Commerce, or any

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<sup>38</sup> "AIG is no longer too big to fail," *supra* note 23.


<sup>39</sup> 'Freeing AIG,' *supra* note 25.




other member of a trade organization or lobbying group representing the insurance industry, with information about the decision to de-designate AIG as a SIFI before FSOC's initial public announcement in its second readout at around 6:00 p.m. on September 29<sup>th</sup>? How did PCI learn about this decision in advance of the 6:00 PM notice?

4. Does FSOC have protections in place to prevent leaks of key decisions in advance of official public notice? If so, why and how were "two people familiar with the discussion" aware of the de-designation in advance of the vote, and why and how did these individuals leak this information to the press? Are you aware of whether the FSOC has investigated this matter, and if the Council has conducted an investigation, what did the investigation reveal?
5. Why did FSOC bypass its notice and transparency policies that require one week of advanced public notice of any hearing? Does the Council intend to follow these policies in all cases in the future?
6. Is there a legal memo advising Secretary Mnuchin on the interpretation of Dodd-Frank that allowed him pass the de-designation vote with only six of ten members in favor? If so, please provide my office with a copy of that memo and any other documents relating to that decision.
7. Did you recuse yourself only from the vote to de-designate AIG? Did you participate in any way in the discussion of this matter? Did you participate in the discussion of or vote to accept Secretary Mnuchin's interpretation of the voting rules despite recusing yourself from the vote on the de-designation of AIG?
8. Why did FSOC decide that it was not necessary to conduct an independent evaluation of whether AIG met the second standard for SIFI designation? Please provide my office with a copy of all documents that relate to the decision not to conduct such an evaluation.

Sincerely,



Elizabeth Warren  
United States Senator



Sheldon Whitehouse  
United States Senator

# United States Senate

WASHINGTON, DC 20510

October 23, 2017

The Honorable Richard Cordray  
Director  
Consumer Financial Protection Bureau  
1625 Eye St. NW  
Washington, DC 20006

Dear Director Cordray:

I am writing because of my concern over the Financial Stability Oversight Council's (FSOC's) September 29, 2017 decision to rescind its determination that American International Group is a Systemically Important Financial Institution (SIFI) that could pose a threat to the United States financial system. The FSOC's decision to remove AIG from the list of SIFIs reduces supervision and oversight of the insurance giant and puts taxpayers and our economy at risk less than a decade after the company's failure rocked the nation's financial system and forced taxpayers into a \$182 billion bailout.

You are one of ten voting members on the FSOC, and I am writing to you to seek answers about how the FSOC came to this decision, which is troubling for three reasons: (1) it appears to have been made with little substantive justification; (2) it appears that, to reach this decision, the FSOC ignored several of its own key procedural rules; and (3) the FSOC has yet to answer key questions about the influence of former Adviser to the President and AIG shareholder Carl Icahn on the FSOC decision - while additional actions by the FSOC raise questions about the extent to which the Council was working with insurance industry representatives in reaching the decision.

## **AIG's 2013 Designation - and 2014 and 2015 Re-Designation - as a SIFI**

At the height of the 2008 financial crisis, AIG was, as one FSOC member who voted to reduce oversight of the insurance company put it, "the proverbial poster child for ill-conceived business plans, internal control systems, and risk-management protocols."<sup>1</sup> AIG was "a basket case[,] and "if the company did not receive help, AIG would fail."<sup>2</sup> To avoid the "catastrophic consequences" of such a failure, the government was forced into a taxpayer-funded \$182 billion

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<sup>1</sup> "Views of Financial Stability Oversight Council Members Regarding Rescission of Determination Regarding American International Group, Inc. (AIG)," *Department of the Treasury*, 12 (available at [https://www.treasury.gov/initiatives/fsoc/news/Documents/Member\\_Views.pdf](https://www.treasury.gov/initiatives/fsoc/news/Documents/Member_Views.pdf));

<sup>2</sup> *Id.*

federal bailout of AIG in which “Main Street bailed out Wall Street to help keep the entire U.S. economy afloat.”<sup>3</sup>

Under Dodd-Frank, the FSOC may designate a nonbank financial company as a SIFI if it determines either that (1) “material financial distress” at the company could pose a threat to U.S. financial stability, or (2) the “nature, scope, size, scale, concentration, interconnectedness, or mix of activities” of the company could pose a threat to U.S. financial stability.<sup>4</sup> In 2013, the FSOC concluded that material financial distress at AIG could pose a threat to U.S. financial stability due primarily to a high level of counterparty exposure, the risk of asset liquidation, and concerns regarding AIG’s resolvability – the “ability to shut AIG down in an orderly manner” without resorting to a federal bailout.<sup>5</sup>

On July 8, 2013, under these new rules, the FSOC unanimously voted to designate AIG as a SIFI, determining that “material financial distress at [AIG] could pose a threat to U.S. financial stability.”<sup>6</sup> In doing so, the FSOC subjected AIG to heightened oversight, including increased capital requirements, stress testing, and a requirement for living wills that would help prevent “too big to fail” institutions from forcing taxpayer bailouts. In 2014 and 2015, the FSOC reviewed the determination and “concluded that there had not been sufficient material changes” to rescind it.<sup>7</sup>

But on September 29, 2017, the FSOC announced that it had rescinded its 2013 determination and that AIG would no longer be classified as a SIFI, removing the enhanced oversight and supervision.

### **AIG Continues to Pose a Threat to U.S. Financial Stability**

In 2013, the FSOC concluded that material financial distress at AIG could pose a threat to U.S. financial stability - a conclusion that the FSOC reached again upon additional review in 2014 and 2015. But these risks still exist - meaning there is no substantive justification for the decision to de-designate AIG as a SIFI.

In 2013, the “core basis” for designating AIG as a SIFI was that “AIG had a large volume of liabilities subject to discretionary withdrawal.”<sup>8</sup> In other words, the company’s liabilities were “runnable” – AIG was at risk of having its liabilities called in by investors, and being forced to liquidate other assets to meet these calls. This meant that if AIG went into financial

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<sup>3</sup> *Id.*

<sup>4</sup> “The Dodd-Frank Wall Street Reform and Consumer Protection Act,” 12 U.S.C. § 5323 (2010).

<sup>5</sup> Gregg Gelzini, “Deregulating AIG Was a Mistake,” *Center for American Progress* (Oct. 11, 2017) (available at <https://www.americanprogress.org/issues/economy/reports/2017/10/11/440570/deregulating-aig-mistake/>).

<sup>6</sup> “Basis of the Financial Stability Oversight Council’s Final Determination Regarding American International Group, Inc.,” *Department of the Treasury*, 1 (Jul. 8, 2013) (available at <https://www.treasury.gov/initiatives/fsoc/designations/Documents/Basis%20of%20Final%20Determination%20Regarding%20American%20International%20Group,%20Inc.pdf>).

<sup>7</sup> *Supra* note 1 at 5.

<sup>8</sup> *Id.*

distress, those liabilities could all “run” in a short period of time, and AIG would be forced to rapidly liquidate a high volume of assets, resulting in a threat to U.S. financial stability. That risk is still high today. In fact, one FSOC member that voted to de-designate AIG noted that “AIG continues to hold significant exposure to annuity products.”<sup>9</sup>

AIG has decreased risk in certain exposures, but others have increased, “most notably in the life insurance and annuity business.”<sup>10</sup> Their life insurance and retirement business lines, identified by the FSOC in 2013 as areas of particular concern, constitute about one-quarter of the company’s business – “roughly the same portion” as they did in 2013.<sup>11</sup> Despite this liability, AIG has actually decreased their liquidity resources from \$16 billion to \$12 billion.<sup>12</sup> AIG holds \$134 billion in corporate bonds and \$20 billion in state and municipal bonds, down slightly from \$152 billion and \$36 billion in 2013, all of which could be at risk if a liquidity strain forces the company into a fire sale.<sup>13</sup> Such a fire sale would then reduce the value of these bonds across the sector, putting immense stress on the financial system.

As one FSOC member put it, “[n]othing about the liquidity characteristics of AIG’s liabilities and assets has changed to diminish the concerns originally raised by the FSOC.”<sup>14</sup> And as the FSOC decision to de-designate AIG stated, “[i]n the event of AIG’s material financial distress[,]” loss of access to internal funding could lead “to the loss of liquidity and possibly either insolvency or seizure by a regulator.”<sup>15</sup>

In 2013, the FSOC also determined that “a large number of corporate and financial entities have significant exposures to AIG” – essentially that such a large portion of the financial system relied on the insurance company that AIG’s failure could lead to a crisis in the U.S. financial system.<sup>16</sup> Today, those same large exposures remain. As of their most recent financial statements, AIG holds \$165 billion in total derivatives exposure and has \$32 billion in long-term debt, compared to \$215 billion and \$49 billion in those respective liabilities in 2013.<sup>17</sup> Although the company has decreased in size, it still insures 87 percent of all Fortune 500 companies.<sup>18</sup> The small decreases have not eliminated the risk to the U.S. financial system.

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<sup>9</sup> *Id.* at 13.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Supra* note 5.

<sup>12</sup> *Id.* This is a decrease in liquidity resources even after adjusting for the decrease in the overall size of AIG.

<sup>13</sup> *Id.*

<sup>14</sup> *Supra* note 1 at 5.

<sup>15</sup> “Notice and Explanation of the Basis for the Financial Stability Oversight Council’s Rescission of Its Determination Regarding American International Group, Inc. (AIG),” *Department of the Treasury*, 60 (available at [https://www.treasury.gov/initiatives/fsoc/designations/Documents/American\\_International\\_Group,\\_Inc.\\_\(Rescission\).pdf](https://www.treasury.gov/initiatives/fsoc/designations/Documents/American_International_Group,_Inc._(Rescission).pdf)).

<sup>16</sup> *Supra* note 6 at 6.

<sup>17</sup> *Supra* note 5.

<sup>18</sup> *Id.*



Finally, in 2013, the FSOC concluded that AIG's "complicated organizational structure significantly increases the obstacles to a rapid and orderly resolution."<sup>19</sup> The same fact holds true today. As one FSOC member who voted to de-designate AIG admitted, "AIG remains a complex international insurance company with an embedded financial institutions component."<sup>20</sup> The company continues to operate in all 50 states and more than 80 countries, and the FSOC's recent decision itself even acknowledged that "the lack of a global framework for resolution may represent an obstacle to AIG's rapid and orderly resolution."<sup>21</sup>

FSOC member S. Roy Woodall, Jr., who voted last month to reduce the FSOC's oversight of AIG, issued an accompanying statement confessing that "I do believe [AIG] should continue to be monitored from a macro-prudential perspective."<sup>22</sup> The FSOC's oversight through the SIFI designation provides one of the most effective forms of macro-prudential regulation of nonbank financial companies in the United States, yet the FSOC, Mr. Woodall and his colleagues just voted to end its enhanced supervision of AIG.

AIG presents many of the same risks to U.S. financial stability today as the company did in 2013. The FSOC claimed that de-designation was appropriate in light of the "reduced...amounts of its total debt" and the fact that AIG is now "smaller in scope and size."<sup>23</sup> But to the extent that the company and its debt are smaller, it does not appear to have resulted in significantly reduced systemic risks. And the FSOC decision ignores the fact that earlier this year, the new CEO stated that he intended to reverse the company's contraction, clarifying that to "be clear, I am here to grow A.I.G....I didn't come here to break the company up. I came here to grow it."<sup>24</sup>

### **The FSOC Flouted Key Procedure Rules During the AIG Decision**

I am also concerned that the FSOC appears to have flouted basic procedural rules during the consideration of its decision to de-designate AIG.

First, the FSOC did not follow rules requiring public notice of all meetings at least one week in advance.<sup>25</sup> The public announcement of the "unusual last-minute" September 29, 2017

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<sup>19</sup> *Supra* note 6 at 10.

<sup>20</sup> *Supra* note 1 at 12.

<sup>21</sup> *Supra* note 15 at 62.

<sup>22</sup> *Supra* note 1 at 15.

<sup>23</sup> *Supra* note 15 at 5; Gregg Gelzimis, "AIG is no longer too big to fail and taxpayers deserve to know why," *The Hill* (Oct. 10, 2017) (available at <http://thehill.com/opinion/finance/354610-aig-is-no-longer-too-big-to-fail-and-taxpayers-deserve-to-know-why>).

<sup>24</sup> Chad Bray, "'I Am Here to Grow A.I.G.,' Its New C.E.O., Brian Duperreault, Pledges," *New York Times* (May 15, 2017) (available at [https://www.nytimes.com/2017/05/15/business/dealbook/aig-brian-duperreault-ceo.html?\\_r=0](https://www.nytimes.com/2017/05/15/business/dealbook/aig-brian-duperreault-ceo.html?_r=0)).

<sup>25</sup> "Transparency Policy for the Financial Stability Oversight Council," *Department of the Treasury* (available at <https://www.treasury.gov/initiatives/fsoc/Documents/The%20Council%27s%20Transparency%20Policy.pdf>); See Jesse Hamilton, "U.S. Is Said to Plan Freeing AIG From Systemic-Risk Label," *Bloomberg* (Sept. 28, 2017)



meeting was not made until 4:00 p.m. on September 28<sup>th</sup>, less than 24 hours before the meeting was opened.<sup>26</sup>

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<sup>34</sup> David Benoit, “Trump Names Carl Icahn as Adviser on Regulatory Overhaul,” *Wall Street Journal* (Dec. 21, 2016) (available at <https://www.wsj.com/articles/trump-to-name-icahn-as-adviser-on-regulatory-overhaul-1482354552>); Sonali Basak, “Icahn Said to Ease off Demand for AIG Breakup Under New CEO,” *Bloomberg* (Jun. 29, 2017) (available at <https://www.bloomberg.com/news/articles/2017-06-29/icahn-said-to-ease-off-demand-for-aig-breakup-after-ceo-switch>).

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<sup>37</sup> Renae Merle, “Democrats skeptical about SEC nominee’s ties to Wall Street,” *Washington Post* (Mar. 23, 2017) (available at <https://www.washingtonpost.com/news/wonk/wp/2017/03/23/sec-nominee-to-face-tough-questions-on-wall-street-connections/>).

have had with FSOC members - meaning the existence of or precise extent and nature of any contacts is still unclear.

The timing of the FSOC announcement also indicates that insurance industry representatives and others individuals learned of the decision to de-designate AIG before it was announced publicly. Property Casualty Insurer's Association of America (PCI), an insurance industry trade association for nearly 1,000 companies, issued a release praising the FSOC for de-designating AIG minutes after a FSOC readout that made no mention of the decision.<sup>38</sup> It is unclear why or how insurance industry representatives knew of this decision at the time, which was not made public until approximately 30 minutes later, when a second FSOC readout with the announcement was released to the public. Public reports the day prior to the de-designation also indicated that "two people familiar with the discussion" were aware of and leaking information about the de-designation decision well in advance of the actual vote.<sup>39</sup>

The unusual timing by which individuals were aware of the decision before the vote, and by which the insurance industry announced the decision before it was publicly available raises concerns over the impartiality of the FSOC, the process by which the decision was made public, and about whether individuals may have had access to market-moving information before that information went public.

### **Conclusion and Questions**

The FSOC ignored strong evidence that AIG continues to pose a risk to U.S. financial stability, and failed to follow basic and important procedural requirements in making its decision. And information about the decision appears to have been leaked to the insurance industry and others prior to the formal vote and the public notice.

Given these concerns, I ask that you answer the following questions by October X, 2017, to provide greater clarity on the FSOC's decision and the potential ramifications to the U.S. financial system and to American taxpayers.

1. Has Mr. Icahn, or any individual working for or on behalf of Mr. Icahn, had any contact with you or any other FSOC official, or any staff member for any FSOC official, regarding AIG? If so, please list all contacts of which you are aware and describe the nature of any discussion with Mr. Icahn or his representatives.
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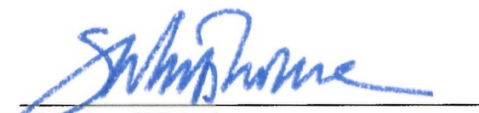
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4. Does FSOC have protections in place to prevent leaks of key decisions in advance of official public notice? If so, why and how were "two people familiar with the discussion" aware of the de-designation in advance of the vote, and why and how did these individuals leak this information to the press? Are you aware of whether the FSOC has investigated this matter, and if the Council has conducted an investigation, what did the investigation reveal?
5. Why did FSOC bypass its notice and transparency policies that require one week of advanced public notice of any hearing? Does the Council intend to follow these policies in all cases in the future?
6. Is there a legal memo advising Secretary Mnuchin on the interpretation of Dodd-Frank that allowed him pass the de-designation vote with only six of ten members in favor? If so, please provide my office with a copy of that memo and any other documents relating to that decision.
7. Did Chairman Clayton recuse himself only from the vote to de-designate AIG? Did he participate in any way in the discussion of this matter? Did he participate in the discussion of or vote to accept Secretary Mnuchin's interpretation of the voting rules despite recusing himself from the vote on the de-designation of AIG?
8. Why did FSOC decide that it was not necessary to conduct an independent evaluation of whether AIG met the second standard for SIFI designation? Please provide my office with a copy of all documents that relate to the decision not to conduct such an evaluation.

Sincerely,



Elizabeth Warren  
United States Senator



Sheldon Whitehouse  
United States Senator



# United States Senate

WASHINGTON, DC 20510

October 23, 2017

The Honorable Janet Yellen  
Chair  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue NW  
Washington, DC 20551

Dear Chair Yellen:

I am writing because of my concern over the Financial Stability Oversight Council's (FSOC's) September 29, 2017 decision to rescind its determination that American International Group is a Systemically Important Financial Institution (SIFI) that could pose a threat to the United States financial system. The FSOC's decision to remove AIG from the list of SIFIs reduces supervision and oversight of the insurance giant and puts taxpayers and our economy at risk less than a decade after the company's failure rocked the nation's financial system and forced taxpayers into a \$182 billion bailout.

You are one of ten voting members on the FSOC, and I am writing to you to seek answers about how the FSOC came to this decision, which is troubling for three reasons: (1) it appears to have been made with little substantive justification; (2) it appears that, to reach this decision, the FSOC ignored several of its own key procedural rules; and (3) the FSOC has yet to answer key questions about the influence of former Adviser to the President and AIG shareholder Carl Icahn on the FSOC decision - while additional actions by the FSOC raise questions about the extent to which the Council was working with insurance industry representatives in reaching the decision.

## **AIG's 2013 Designation - and 2014 and 2015 Re-Designation - as a SIFI**

At the height of the 2008 financial crisis, AIG was, as one FSOC member who voted to reduce oversight of the insurance company put it, "the proverbial poster child for ill-conceived business plans, internal control systems, and risk-management protocols."<sup>1</sup> AIG was "a basket case[.]" and "if the company did not receive help, AIG would fail."<sup>2</sup> To avoid the "catastrophic consequences" of such a failure, the government was forced into a taxpayer-funded \$182 billion

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<sup>1</sup> "Views of Financial Stability Oversight Council Members Regarding Rescission of Determination Regarding American International Group, Inc. (AIG)," *Department of the Treasury*, 12 (available at [https://www.treasury.gov/initiatives/fsoc/news/Documents/Member\\_Views.pdf](https://www.treasury.gov/initiatives/fsoc/news/Documents/Member_Views.pdf));

<sup>2</sup> *Id.*

federal bailout of AIG in which “Main Street bailed out Wall Street to help keep the entire U.S. economy afloat.”<sup>3</sup>

Under Dodd-Frank, the FSOC may designate a nonbank financial company as a SIFI if it determines either that (1) “material financial distress” at the company could pose a threat to U.S. financial stability, or (2) the “nature, scope, size, scale, concentration, interconnectedness, or mix of activities” of the company could pose a threat to U.S. financial stability.<sup>4</sup> In 2013, the FSOC concluded that material financial distress at AIG could pose a threat to U.S. financial stability due primarily to a high level of counterparty exposure, the risk of asset liquidation, and concerns regarding AIG’s resolvability – the “ability to shut AIG down in an orderly manner” without resorting to a federal bailout.<sup>5</sup>

On July 8, 2013, under these new rules, the FSOC unanimously voted to designate AIG as a SIFI, determining that “material financial distress at [AIG] could pose a threat to U.S. financial stability.”<sup>6</sup> In doing so, the FSOC subjected AIG to heightened oversight, including increased capital requirements, stress testing, and a requirement for living wills that would help prevent “too big to fail” institutions from forcing taxpayer bailouts. In 2014 and 2015, the FSOC reviewed the determination and “concluded that there had not been sufficient material changes” to rescind it.<sup>7</sup>

But on September 29, 2017, the FSOC announced that it had rescinded its 2013 determination and that AIG would no longer be classified as a SIFI, removing the enhanced oversight and supervision.

### **AIG Continues to Pose a Threat to U.S. Financial Stability**

In 2013, the FSOC concluded that material financial distress at AIG could pose a threat to U.S. financial stability - a conclusion that the FSOC reached again upon additional review in 2014 and 2015. But these risks still exist - meaning there is no substantive justification for the decision to de-designate AIG as a SIFI.

In 2013, the “core basis” for designating AIG as a SIFI was that “AIG had a large volume of liabilities subject to discretionary withdrawal.”<sup>8</sup> In other words, the company’s liabilities were “runnable” – AIG was at risk of having its liabilities called in by investors, and being forced to liquidate other assets to meet these calls. This meant that if AIG went into financial

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<sup>3</sup> *Id.*

<sup>4</sup> “The Dodd-Frank Wall Street Reform and Consumer Protection Act,” 12 U.S.C. § 5323 (2010).

<sup>5</sup> Gregg Gelzini, “Deregulating AIG Was a Mistake,” *Center for American Progress* (Oct. 11, 2017) (available at <https://www.americanprogress.org/issues/economy/reports/2017/10/11/440570/deregulating-aig-mistake/>).

<sup>6</sup> “Basis of the Financial Stability Oversight Council’s Final Determination Regarding American International Group, Inc.,” *Department of the Treasury*, 1 (Jul. 8, 2013) (available at <https://www.treasury.gov/initiatives/fsoc/designations/Documents/Basis%20of%20Final%20Determination%20Regarding%20American%20International%20Group,%20Inc.pdf>).

<sup>7</sup> *Supra* note 1 at 5.

<sup>8</sup> *Id.*

distress, those liabilities could all “run” in a short period of time, and AIG would be forced to rapidly liquidate a high volume of assets, resulting in a threat to U.S. financial stability. That risk is still high today. In fact, one FSOC member that voted to de-designate AIG noted that “AIG continues to hold significant exposure to annuity products.”<sup>9</sup>

AIG has decreased risk in certain exposures, but others have increased, “most notably in the life insurance and annuity business.”<sup>10</sup> Their life insurance and retirement business lines, identified by the FSOC in 2013 as areas of particular concern, constitute about one-quarter of the company’s business – “roughly the same portion” as they did in 2013.<sup>11</sup> Despite this liability, AIG has actually decreased their liquidity resources from \$16 billion to \$12 billion.<sup>12</sup> AIG holds \$134 billion in corporate bonds and \$20 billion in state and municipal bonds, down slightly from \$152 billion and \$36 billion in 2013, all of which could be at risk if a liquidity strain forces the company into a fire sale.<sup>13</sup> Such a fire sale would then reduce the value of these bonds across the sector, putting immense stress on the financial system.

As one FSOC member put it, “[n]othing about the liquidity characteristics of AIG’s liabilities and assets has changed to diminish the concerns originally raised by the FSOC.”<sup>14</sup> And as the FSOC decision to de-designate AIG stated, “[i]n the event of AIG’s material financial distress[,]” loss of access to internal funding could lead “to the loss of liquidity and possibly either insolvency or seizure by a regulator.”<sup>15</sup>

In 2013, the FSOC also determined that “a large number of corporate and financial entities have significant exposures to AIG” – essentially that such a large portion of the financial system relied on the insurance company that AIG’s failure could lead to a crisis in the U.S. financial system.<sup>16</sup> Today, those same large exposures remain. As of their most recent financial statements, AIG holds \$165 billion in total derivatives exposure and has \$32 billion in long-term debt, compared to \$215 billion and \$49 billion in those respective liabilities in 2013.<sup>17</sup> Although the company has decreased in size, it still insures 87 percent of all Fortune 500 companies.<sup>18</sup> The small decreases have not eliminated the risk to the U.S. financial system.

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<sup>9</sup> *Id.* at 13.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Supra* note 5.

<sup>12</sup> *Id.* This is a decrease in liquidity resources even after adjusting for the decrease in the overall size of AIG.

<sup>13</sup> *Id.*

<sup>14</sup> *Supra* note 1 at 5.

<sup>15</sup> “Notice and Explanation of the Basis for the Financial Stability Oversight Council’s Rescission of Its Determination Regarding American International Group, Inc. (AIG),” *Department of the Treasury*, 60 (available at [https://www.treasury.gov/initiatives/fsoc/designations/Documents/American\\_International\\_Group\\_Inc\\_\(Rescission\).pdf](https://www.treasury.gov/initiatives/fsoc/designations/Documents/American_International_Group_Inc_(Rescission).pdf)).

<sup>16</sup> *Supra* note 6 at 6.

<sup>17</sup> *Supra* note 5.

<sup>18</sup> *Id.*

Finally, in 2013, the FSOC concluded that AIG's "complicated organizational structure significantly increases the obstacles to a rapid and orderly resolution."<sup>19</sup> The same fact holds true today. As one FSOC member who voted to de-designate AIG admitted, "AIG remains a complex international insurance company with an embedded financial institutions component."<sup>20</sup> The company continues to operate in all 50 states and more than 80 countries, and the FSOC's recent decision itself even acknowledged that "the lack of a global framework for resolution may represent an obstacle to AIG's rapid and orderly resolution."<sup>21</sup>

FSOC member S. Roy Woodall, Jr., who voted last month to reduce the FSOC's oversight of AIG, issued an accompanying statement confessing that "I do believe [AIG] should continue to be monitored from a macro-prudential perspective."<sup>22</sup> The FSOC's oversight through the SIFI designation provides one of the most effective forms of macro-prudential regulation of nonbank financial companies in the United States, yet the FSOC, Mr. Woodall and his colleagues just voted to end its enhanced supervision of AIG.

AIG presents many of the same risks to U.S. financial stability today as the company did in 2013. The FSOC claimed that de-designation was appropriate in light of the "reduced...amounts of its total debt" and the fact that AIG is now "smaller in scope and size."<sup>23</sup> But to the extent that the company and its debt are smaller, it does not appear to have resulted in significantly reduced systemic risks. And the FSOC decision ignores the fact that earlier this year, the new CEO stated that he intended to reverse the company's contraction, clarifying that to "be clear, I am here to grow A.I.G....I didn't come here to break the company up. I came here to grow it."<sup>24</sup>

### **The FSOC Flouted Key Procedure Rules During the AIG Decision**

I am also concerned that the FSOC appears to have flouted basic procedural rules during the consideration of its decision to de-designate AIG.

First, the FSOC did not follow rules requiring public notice of all meetings at least one week in advance.<sup>25</sup> The public announcement of the "unusual last-minute" September 29, 2017

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<sup>19</sup> *Supra* note 6 at 10.

<sup>20</sup> *Supra* note 1 at 12.

<sup>21</sup> *Supra* note 15 at 62.

<sup>22</sup> *Supra* note 1 at 15.

<sup>23</sup> *Supra* note 15 at 5; Gregg Gelzimis, "AIG is no longer too big to fail and taxpayers deserve to know why," *The Hill* (Oct. 10, 2017) (available at <http://thehill.com/opinion/finance/354610-aig-is-no-longer-too-big-to-fail-and-taxpayers-deserve-to-know-why>).

<sup>24</sup> Chad Bray, "'I Am Here to Grow A.I.G.,' Its New C.E.O., Brian Duperreault, Pledges," *New York Times* (May 15, 2017) (available at [https://www.nytimes.com/2017/05/15/business/dealbook/aig-brian-duperreault-ceo.html?\\_r=0](https://www.nytimes.com/2017/05/15/business/dealbook/aig-brian-duperreault-ceo.html?_r=0)).

<sup>25</sup> "Transparency Policy for the Financial Stability Oversight Council," *Department of the Treasury* (available at <https://www.treasury.gov/initiatives/fsoc/Documents/The%20Council%27s%20Transparency%20Policy.pdf>); See Jesse Hamilton, "U.S. Is Said to Plan Freeing AIG From Systemic-Risk Label," *Bloomberg* (Sept. 28, 2017)



meeting was not made until 4:00 p.m. on September 28<sup>th</sup>, less than 24 hours before the meeting was opened.<sup>26</sup>

Second, the FSOC failed to follow the voting procedures outlined in the Dodd-Frank Act, which only give the FSOC authority to designate or de-designate an institution if “two-thirds of the voting members of the FSOC then serving” vote in favor of doing so.<sup>27</sup> The FSOC consists of 10 voting members, in addition to five non-voting members. This is important because while Chairman Clayton recused himself from the vote, he was still a voting member of the FSOC. The law does not merely require a two-thirds vote, but requires at least seven votes if there are ten voting members of the FSOC in office, as there were on the day that AIG was de-designated. While Chairman Clayton recused himself from this decision, a plain reading of the law indicates that he was still a “voting member” of FSOC who was still “serving.” Because only six of ten voting members voting to de-designate AIG, the vote should have failed and AIG should have remained a SIFI.

Secretary Mnuchin, however, excluded Chairman Clayton from the count of “voting members ... serving,” giving the FSOC six out of nine votes, and put this interpretation to the FSOC for a simple majority vote. The FSOC issued only a one-sentence explanation for this unusual decision, providing no details other than that “[t]he council determined that a member who is recused from participating in a matter is not included in the vote tally.” Such an arbitrary decision with no legal basis “puts the legality of the de-designation vote into question.”<sup>28</sup>

Finally, the FSOC failed to conduct an independent evaluation of “the nature, scope, size, scale...or mix of activities of” AIG as required by Section 113 of the Dodd-Frank law. The FSOC may designate an institution as a SIFI if it meets one of two standards: (1) if “material financial distress” at the company “could pose a threat to the financial stability” of the U.S., and (2) if the “nature, scope, size, scale, concentration, interconnectedness, or mix of activities” of the institution “could pose a threat to the financial stability” of the U.S.<sup>29</sup> In 2013, the FSOC found that AIG met the first test, but “did not evaluate AIG on the second standard, independent of the first.”<sup>30</sup> In reevaluating that designation last month, the FSOC concluded that AIG no longer met the requirements for the first standard, but proceeded to de-designate the company “without making the legal assessment required under Section 113’s second standard.”<sup>31</sup> As Mel Watt, Director of the Federal Housing Finance Agency and member of the FSOC stated, such an

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(available at <https://www.bloomberg.com/news/articles/2017-09-29/aig-s-label-as-systemic-risk-may-be-reconsidered-by-regulators>).

<sup>26</sup> See ‘Freeing AIG,’ *supra* note 25; see also “AIG is no longer too big to fail,” *supra* note 23.

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<sup>28</sup> *Id.*

<sup>29</sup> “The Dodd-Frank Wall Street Reform and Consumer Protection Act,” 12 U.S.C. § 5323 (2010).

<sup>30</sup> *Supra* note 1 at 9.

<sup>31</sup> *Id.* at 11.

independent review is necessary “before a decision can be appropriately made to rescind the designation.”<sup>32</sup>

These procedural mishaps are profoundly troubling, particularly given the additional substantive concerns described above.

### **The Role of Carl Icahn and Other Questions about Industry Influence**

I also remain concerned about whether the FSOC may have been inappropriately influenced by and in conversations with industry officials prior to its decision to de-designate AIG. On July 27, 2017, I wrote a letter to Secretary Mnuchin requesting information on the contacts between Carl Icahn and members of the FSOC.<sup>33</sup> Mr. Icahn, who served earlier this year as “special adviser to the President on issues relating to regulatory reform,” owns a stake as “one of the largest investors.” While serving as a Presidential adviser, he had intervened in Administration policy and personnel decisions that affected his business interests.<sup>34</sup>

Reports indicate that, despite a long-held desire for AIG to break itself up in order to “avert the increased capital requirements and regulations associated with non-bank SIFI status,” Mr. Icahn suddenly began “easing off his demands for a breakup” of AIG earlier this year.<sup>35</sup> We know that Mr. Icahn had at least one meeting with an FSOC member, SEC Chairman Clayton. Following Chairman Clayton’s nomination, Mr. Icahn met privately with him.<sup>36</sup> According to Mr. Clayton, the meeting was about “the importance of activist investors in driving performance at companies.”<sup>37</sup>

In my letter, I asked a series of basic questions about whether Mr. Icahn had had any contact with or influence on FSOC member who voted on the AIG SIFI designation. Secretary Mnuchin did not respond to our letter until last week, well after the vote to de-designate AIG, and the response only (1) provided broad background information on FSOC conflict of interest requirements, and (2) confirmed that Mr. Clayton had recused himself from the AIG designation vote. The response ignored our questions about contacts that Mr. Icahn or his associates may

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<sup>32</sup> *Id.* at 9.

<sup>33</sup> Letter from Senator Warren to Secretary Mnuchin, *Senator Elizabeth Warren* (Jul. 27, 2017) (available at [https://www.warren.senate.gov/files/documents/2017\\_07\\_27\\_Mnuchin\\_Icahn\\_Letter\\_Final.pdf](https://www.warren.senate.gov/files/documents/2017_07_27_Mnuchin_Icahn_Letter_Final.pdf)).

<sup>34</sup> David Benoit, “Trump Names Carl Icahn as Adviser on Regulatory Overhaul,” *Wall Street Journal* (Dec. 21, 2016) (available at <https://www.wsj.com/articles/trump-to-name-icahn-as-adviser-on-regulatory-overhaul-1482354552>); Sonali Basak, “Icahn Said to Ease off Demand for AIG Breakup Under New CEO,” *Bloomberg* (Jun. 29, 2017) (available at <https://www.bloomberg.com/news/articles/2017-06-29/icahn-said-to-ease-off-demand-for-aig-breakup-after-ceo-switch>).

<sup>35</sup> “Carl Icahn Issues Open Letter to Peter Hancock, Chief Executive Officer of AIG,” *Carl Icahn* (Oct. 28, 2015) (available at <http://carlicahn.com/aig-ceo-letter/>); see “Icahn Said to Ease off Demand,” *supra* note 34.

<sup>36</sup> *Supra* note 33.

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The timing of the FSOC announcement also indicates that insurance industry representatives and others individuals learned of the decision to de-designate AIG before it was announced publicly. Property Casualty Insurer's Association of America (PCI), an insurance industry trade association for nearly 1,000 companies, issued a release praising the FSOC for de-designating AIG minutes after a FSOC readout that made no mention of the decision.<sup>38</sup> It is unclear why or how insurance industry representatives knew of this decision at the time, which was not made public until approximately 30 minutes later, when a second FSOC readout with the announcement was released to the public. Public reports the day prior to the de-designation also indicated that "two people familiar with the discussion" were aware of and leaking information about the de-designation decision well in advance of the actual vote.<sup>39</sup>

The unusual timing by which individuals were aware of the decision before the vote, and by which the insurance industry announced the decision before it was publicly available raises concerns over the impartiality of the FSOC, the process by which the decision was made public, and about whether individuals may have had access to market-moving information before that information went public.

### **Conclusion and Questions**

The FSOC ignored strong evidence that AIG continues to pose a risk to U.S. financial stability, and failed to follow basic and important procedural requirements in making its decision. And information about the decision appears to have been leaked to the insurance industry and others prior to the formal vote and the public notice.

Given these concerns, I ask that you answer the following questions by October X, 2017, to provide greater clarity on the FSOC's decision and the potential ramifications to the U.S. financial system and to American taxpayers.

1. Has Mr. Icahn, or any individual working for or on behalf of Mr. Icahn, had any contact with you or any other FSOC official, or any staff member for any FSOC official, regarding AIG? If so, please list all contacts of which you are aware and describe the nature of any discussion with Mr. Icahn or his representatives.
2. What protections does FSOC have in place to ensure that individuals with an interest in pending FSOC decisions do not inappropriately influence or attempt to influence FSOC officials who will be deciding these matters? Were these policies and procedures followed by all FSOC members in the AIG case?


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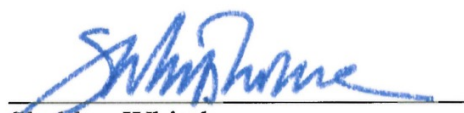
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4. Does FSOC have protections in place to prevent leaks of key decisions in advance of official public notice? If so, why and how were "two people familiar with the discussion" aware of the de-designation in advance of the vote, and why and how did these individuals leak this information to the press? Are you aware of whether the FSOC has investigated this matter, and if the Council has conducted an investigation, what did the investigation reveal?
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Sincerely,



Elizabeth Warren  
United States Senator



Sheldon Whitehouse  
United States Senator



# United States Senate

WASHINGTON, DC 20510

October 23, 2017

S. Roy Woodall, Jr.  
Independent Insurance Member  
Financial Stability Oversight Council  
1500 Pennsylvania Avenue NW  
Washington, D.C. 20220

Dear Mr. Woodall:

I am writing because of my concern over the Financial Stability Oversight Council's (FSOC's) September 29, 2017 decision to rescind its determination that American International Group is a Systemically Important Financial Institution (SIFI) that could pose a threat to the United States financial system. The FSOC's decision to remove AIG from the list of SIFIs reduces supervision and oversight of the insurance giant and puts taxpayers and our economy at risk less than a decade after the company's failure rocked the nation's financial system and forced taxpayers into a \$182 billion bailout.

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federal bailout of AIG in which “Main Street bailed out Wall Street to help keep the entire U.S. economy afloat.”<sup>3</sup>

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On July 8, 2013, under these new rules, the FSOC unanimously voted to designate AIG as a SIFI, determining that “material financial distress at [AIG] could pose a threat to U.S. financial stability.”<sup>6</sup> In doing so, the FSOC subjected AIG to heightened oversight, including increased capital requirements, stress testing, and a requirement for living wills that would help prevent “too big to fail” institutions from forcing taxpayer bailouts. In 2014 and 2015, the FSOC reviewed the determination and “concluded that there had not been sufficient material changes” to rescind it.<sup>7</sup>

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### **AIG Continues to Pose a Threat to U.S. Financial Stability**

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<sup>3</sup> *Id.*

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<sup>5</sup> Gregg Gelzins, “Deregulating AIG Was a Mistake,” *Center for American Progress* (Oct. 11, 2017) (available at <https://www.americanprogress.org/issues/economy/reports/2017/10/11/440570/deregulating-aig-mistake/>).

<sup>6</sup> “Basis of the Financial Stability Oversight Council’s Final Determination Regarding American International Group, Inc.,” *Department of the Treasury*, 1 (Jul. 8, 2013) (available at <https://www.treasury.gov/initiatives/fsoc/designations/Documents/Basis%20of%20Final%20Determination%20Regarding%20American%20International%20Group.%20Inc.pdf>).

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As one FSOC member put it, “[n]othing about the liquidity characteristics of AIG’s liabilities and assets has changed to diminish the concerns originally raised by the FSOC.”<sup>14</sup> And as the FSOC decision to de-designate AIG stated, “[i]n the event of AIG’s material financial distress[,]” loss of access to internal funding could lead “to the loss of liquidity and possibly either insolvency or seizure by a regulator.”<sup>15</sup>

In 2013, the FSOC also determined that “a large number of corporate and financial entities have significant exposures to AIG” – essentially that such a large portion of the financial system relied on the insurance company that AIG’s failure could lead to a crisis in the U.S. financial system.<sup>16</sup> Today, those same large exposures remain. As of their most recent financial statements, AIG holds \$165 billion in total derivatives exposure and has \$32 billion in long-term debt, compared to \$215 billion and \$49 billion in those respective liabilities in 2013.<sup>17</sup> Although the company has decreased in size, it still insures 87 percent of all Fortune 500 companies.<sup>18</sup> The small decreases have not eliminated the risk to the U.S. financial system.

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<sup>9</sup> *Id.* at 13.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Supra* note 5.

<sup>12</sup> *Id.* This is a decrease in liquidity resources even after adjusting for the decrease in the overall size of AIG.

<sup>13</sup> *Id.*

<sup>14</sup> *Supra* note 1 at 5.

<sup>15</sup> “Notice and Explanation of the Basis for the Financial Stability Oversight Council’s Rescission of Its Determination Regarding American International Group, Inc. (AIG),” *Department of the Treasury*, 60 (available at [https://www.treasury.gov/initiatives/fsoc/designations/Documents/American\\_International\\_Group,\\_Inc.\\_\(Rescission\).pdf](https://www.treasury.gov/initiatives/fsoc/designations/Documents/American_International_Group,_Inc._(Rescission).pdf)).

<sup>16</sup> *Supra* note 6 at 6.

<sup>17</sup> *Supra* note 5.

<sup>18</sup> *Id.*

Finally, in 2013, the FSOC concluded that AIG's "complicated organizational structure significantly increases the obstacles to a rapid and orderly resolution."<sup>19</sup> The same fact holds true today. As one FSOC member who voted to de-designate AIG admitted, "AIG remains a complex international insurance company with an embedded financial institutions component."<sup>20</sup> The company continues to operate in all 50 states and more than 80 countries, and the FSOC's recent decision itself even acknowledged that "the lack of a global framework for resolution may represent an obstacle to AIG's rapid and orderly resolution."<sup>21</sup>

FSOC member S. Roy Woodall, Jr., who voted last month to reduce the FSOC's oversight of AIG, issued an accompanying statement confessing that "I do believe [AIG] should continue to be monitored from a macro-prudential perspective."<sup>22</sup> The FSOC's oversight through the SIFI designation provides one of the most effective forms of macro-prudential regulation of nonbank financial companies in the United States, yet the FSOC, Mr. Woodall and his colleagues just voted to end its enhanced supervision of AIG.

AIG presents many of the same risks to U.S. financial stability today as the company did in 2013. The FSOC claimed that de-designation was appropriate in light of the "reduced...amounts of its total debt" and the fact that AIG is now "smaller in scope and size."<sup>23</sup> But to the extent that the company and its debt are smaller, it does not appear to have resulted in significantly reduced systemic risks. And the FSOC decision ignores the fact that earlier this year, the new CEO stated that he intended to reverse the company's contraction, clarifying that to "be clear, I am here to grow A.I.G....I didn't come here to break the company up. I came here to grow it."<sup>24</sup>

### **The FSOC Flouted Key Procedure Rules During the AIG Decision**

I am also concerned that the FSOC appears to have flouted basic procedural rules during the consideration of its decision to de-designate AIG.

First, the FSOC did not follow rules requiring public notice of all meetings at least one week in advance.<sup>25</sup> The public announcement of the "unusual last-minute" September 29, 2017

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<sup>19</sup> *Supra* note 6 at 10.

<sup>20</sup> *Supra* note 1 at 12.

<sup>21</sup> *Supra* note 15 at 62.

<sup>22</sup> *Supra* note 1 at 15.

<sup>23</sup> *Supra* note 15 at 5; Gregg Gelzimis, "AIG is no longer too big to fail and taxpayers deserve to know why," *The Hill* (Oct. 10, 2017) (available at <http://thehill.com/opinion/finance/354610-aig-is-no-longer-too-big-to-fail-and-taxpayers-deserve-to-know-why>).

<sup>24</sup> Chad Bray, "'I Am Here to Grow A.I.G.,' Its New C.E.O., Brian Duperreault, Pledges," *New York Times* (May 15, 2017) (available at [https://www.nytimes.com/2017/05/15/business/dealbook/aig-brian-duperreault-ceo.html?\\_r=0](https://www.nytimes.com/2017/05/15/business/dealbook/aig-brian-duperreault-ceo.html?_r=0)).

<sup>25</sup> "Transparency Policy for the Financial Stability Oversight Council," *Department of the Treasury* (available at <https://www.treasury.gov/initiatives/fsoc/Documents/The%20Council%27s%20Transparency%20Policy.pdf>); See Jesse Hamilton, "U.S. Is Said to Plan Freeing AIG From Systemic-Risk Label," *Bloomberg* (Sept. 28, 2017)



meeting was not made until 4:00 p.m. on September 28<sup>th</sup>, less than 24 hours before the meeting was opened.<sup>26</sup>

Second, the FSOC failed to follow the voting procedures outlined in the Dodd-Frank Act, which only give the FSOC authority to designate or de-designate an institution if “two-thirds of the voting members of the FSOC then serving” vote in favor of doing so.<sup>27</sup> The FSOC consists of 10 voting members, in addition to five non-voting members. This is important because while Chairman Clayton recused himself from the vote, he was still a voting member of the FSOC. The law does not merely require a two-thirds vote, but requires at least seven votes if there are ten voting members of the FSOC in office, as there were on the day that AIG was de-designated. While Chairman Clayton recused himself from this decision, a plain reading of the law indicates that he was still a “voting member” of FSOC who was still “serving.” Because only six of ten voting members voting to de-designate AIG, the vote should have failed and AIG should have remained a SIFI.

Secretary Mnuchin, however, excluded Chairman Clayton from the count of “voting members ... serving,” giving the FSOC six out of nine votes, and put this interpretation to the FSOC for a simple majority vote. The FSOC issued only a one-sentence explanation for this unusual decision, providing no details other than that “[t]he council determined that a member who is recused from participating in a matter is not included in the vote tally.” Such an arbitrary decision with no legal basis “puts the legality of the de-designation vote into question.”<sup>28</sup>

Finally, the FSOC failed to conduct an independent evaluation of “the nature, scope, size, scale...or mix of activities of” AIG as required by Section 113 of the Dodd-Frank law. The FSOC may designate an institution as a SIFI if it meets one of two standards: (1) if “material financial distress” at the company “could pose a threat to the financial stability” of the U.S., and (2) if the “nature, scope, size, scale, concentration, interconnectedness, or mix of activities” of the institution “could pose a threat to the financial stability” of the U.S.<sup>29</sup> In 2013, the FSOC found that AIG met the first test, but “did not evaluate AIG on the second standard, independent of the first.”<sup>30</sup> In reevaluating that designation last month, the FSOC concluded that AIG no longer met the requirements for the first standard, but proceeded to de-designate the company “without making the legal assessment required under Section 113’s second standard.”<sup>31</sup> As Mel Watt, Director of the Federal Housing Finance Agency and member of the FSOC stated, such an

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(available at <https://www.bloomberg.com/news/articles/2017-09-29/aig-s-label-as-systemic-risk-may-be-reconsidered-by-regulators>).

<sup>26</sup> See ‘Freeing AIG,’ *supra* note 25; see also “AIG is no longer too big to fail,” *supra* note 23.

<sup>27</sup> See “AIG is no longer too big to fail,” *supra* note 23.

<sup>28</sup> *Id.*

<sup>29</sup> “The Dodd-Frank Wall Street Reform and Consumer Protection Act,” 12 U.S.C. § 5323 (2010).

<sup>30</sup> *Supra* note 1 at 9.

<sup>31</sup> *Id.* at 11.

independent review is necessary “before a decision can be appropriately made to rescind the designation.”<sup>32</sup>

These procedural mishaps are profoundly troubling, particularly given the additional substantive concerns described above.

### **The Role of Carl Icahn and Other Questions about Industry Influence**

I also remain concerned about whether the FSOC may have been inappropriately influenced by and in conversations with industry officials prior to its decision to de-designate AIG. On July 27, 2017, I wrote a letter to Secretary Mnuchin requesting information on the contacts between Carl Icahn and members of the FSOC.<sup>33</sup> Mr. Icahn, who served earlier this year as “special adviser to the President on issues relating to regulatory reform,” owns a stake as “one of the largest investors.” While serving as a Presidential adviser, he had intervened in Administration policy and personnel decisions that affected his business interests.<sup>34</sup>

Reports indicate that, despite a long-held desire for AIG to break itself up in order to “avert the increased capital requirements and regulations associated with non-bank SIFI status,” Mr. Icahn suddenly began “easing off his demands for a breakup” of AIG earlier this year.<sup>35</sup> We know that Mr. Icahn had at least one meeting with an FSOC member, SEC Chairman Clayton. Following Chairman Clayton’s nomination, Mr. Icahn met privately with him.<sup>36</sup> According to Mr. Clayton, the meeting was about “the importance of activist investors in driving performance at companies.”<sup>37</sup>

In my letter, I asked a series of basic questions about whether Mr. Icahn had had any contact with or influence on FSOC member who voted on the AIG SIFI designation. Secretary Mnuchin did not respond to our letter until last week, well after the vote to de-designate AIG, and the response only (1) provided broad background information on FSOC conflict of interest requirements, and (2) confirmed that Mr. Clayton had recused himself from the AIG designation vote. The response ignored our questions about contacts that Mr. Icahn or his associates may

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<sup>32</sup> *Id.* at 9.

<sup>33</sup> Letter from Senator Warren to Secretary Mnuchin, *Senator Elizabeth Warren* (Jul. 27, 2017) (available at [https://www.warren.senate.gov/files/documents/2017\\_07\\_27\\_Mnuchin\\_Icahn\\_Letter\\_Final.pdf](https://www.warren.senate.gov/files/documents/2017_07_27_Mnuchin_Icahn_Letter_Final.pdf)).

<sup>34</sup> David Benoit, “Trump Names Carl Icahn as Adviser on Regulatory Overhaul,” *Wall Street Journal* (Dec. 21, 2016) (available at <https://www.wsj.com/articles/trump-to-name-icahn-as-adviser-on-regulatory-overhaul-1482354552>); Sonali Basak, “Icahn Said to Ease off Demand for AIG Breakup Under New CEO,” *Bloomberg* (Jun. 29, 2017) (available at <https://www.bloomberg.com/news/articles/2017-06-29/icahn-said-to-ease-off-demand-for-aig-breakup-after-ceo-switch>).

<sup>35</sup> “Carl Icahn Issues Open Letter to Peter Hancock, Chief Executive Officer of AIG,” *Carl Icahn* (Oct. 28, 2015) (available at <http://carlicahn.com/aig-ceo-letter/>); see “Icahn Said to Ease off Demand,” *supra* note 34.

<sup>36</sup> *Supra* note 33.

<sup>37</sup> Renae Merle, “Democrats skeptical about SEC nominee’s ties to Wall Street,” *Washington Post* (Mar. 23, 2017) (available at <https://www.washingtonpost.com/news/wonk/wp/2017/03/23/sec-nominee-to-face-tough-questions-on-wall-street-connections/>).

have had with FSOC members - meaning the existence of or precise extent and nature of any contacts is still unclear.

The timing of the FSOC announcement also indicates that insurance industry representatives and others individuals learned of the decision to de-designate AIG before it was announced publicly. Property Casualty Insurer's Association of America (PCI), an insurance industry trade association for nearly 1,000 companies, issued a release praising the FSOC for de-designating AIG minutes after a FSOC readout that made no mention of the decision.<sup>38</sup> It is unclear why or how insurance industry representatives knew of this decision at the time, which was not made public until approximately 30 minutes later, when a second FSOC readout with the announcement was released to the public. Public reports the day prior to the de-designation also indicated that "two people familiar with the discussion" were aware of and leaking information about the de-designation decision well in advance of the actual vote.<sup>39</sup>

The unusual timing by which individuals were aware of the decision before the vote, and by which the insurance industry announced the decision before it was publicly available raises concerns over the impartiality of the FSOC, the process by which the decision was made public, and about whether individuals may have had access to market-moving information before that information went public.

### **Conclusion and Questions**

The FSOC ignored strong evidence that AIG continues to pose a risk to U.S. financial stability, and failed to follow basic and important procedural requirements in making its decision. And information about the decision appears to have been leaked to the insurance industry and others prior to the formal vote and the public notice.

Given these concerns, I ask that you answer the following questions by October X, 2017, to provide greater clarity on the FSOC's decision and the potential ramifications to the U.S. financial system and to American taxpayers.

1. Has Mr. Icahn, or any individual working for or on behalf of Mr. Icahn, had any contact with you or any other FSOC official, or any staff member for any FSOC official, regarding AIG? If so, please list all contacts of which you are aware and describe the nature of any discussion with Mr. Icahn or his representatives.
2. What protections does FSOC have in place to ensure that individuals with an interest in pending FSOC decisions do not inappropriately influence or attempt to influence FSOC officials who will be deciding these matters? Were these policies and procedures followed by all FSOC members in the AIG case?


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<sup>38</sup> "AIG is no longer too big to fail," *supra* note 23.

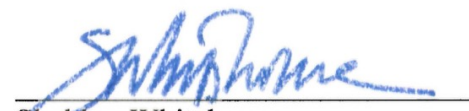
<sup>39</sup> 'Freeing AIG,' *supra* note 25.

3. Did you, any other FSOC official, or the staff of any FSOC official contact the Property Casualty Insurer's Association of America (PCI), the U.S. Chamber of Commerce, or any other member of a trade organization or lobbying group representing the insurance industry, with information about the decision to de-designate AIG as a SIFI before FSOC's initial public announcement in its second readout at around 6:00 p.m. on September 29<sup>th</sup>? How did PCI learn about this decision in advance of the 6:00 PM notice?
4. Does FSOC have protections in place to prevent leaks of key decisions in advance of official public notice? If so, why and how were "two people familiar with the discussion" aware of the de-designation in advance of the vote, and why and how did these individuals leak this information to the press? Are you aware of whether the FSOC has investigated this matter, and if the Council has conducted an investigation, what did the investigation reveal?
5. Why did FSOC bypass its notice and transparency policies that require one week of advanced public notice of any hearing? Does the Council intend to follow these policies in all cases in the future?
6. Is there a legal memo advising Secretary Mnuchin on the interpretation of Dodd-Frank that allowed him pass the de-designation vote with only six of ten members in favor? If so, please provide my office with a copy of that memo and any other documents relating to that decision.
7. Did Chairman Clayton recuse himself only from the vote to de-designate AIG? Did he participate in any way in the discussion of this matter? Did he participate in the discussion of or vote to accept Secretary Mnuchin's interpretation of the voting rules despite recusing himself from the vote on the de-designation of AIG?
8. Why did FSOC decide that it was not necessary to conduct an independent evaluation of whether AIG met the second standard for SIFI designation? Please provide my office with a copy of all documents that relate to the decision not to conduct such an evaluation.

Sincerely,



Elizabeth Warren  
United States Senator



Sheldon Whitehouse  
United States Senator



# United States Senate

WASHINGTON, DC 20510

October 23, 2017

The Honorable Martin Gruenberg  
Chairman  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street NW  
Washington, DC 20429

Dear Chairman Gruenberg:

I am writing because of my concern over the Financial Stability Oversight Council's (FSOC's) September 29, 2017 decision to rescind its determination that American International Group is a Systemically Important Financial Institution (SIFI) that could pose a threat to the United States financial system. The FSOC's decision to remove AIG from the list of SIFIs reduces supervision and oversight of the insurance giant and puts taxpayers and our economy at risk less than a decade after the company's failure rocked the nation's financial system and forced taxpayers into a \$182 billion bailout.

You are one of ten voting members on the FSOC, and I am writing to you to seek answers about how the FSOC came to this decision, which is troubling for three reasons: (1) it appears to have been made with little substantive justification; (2) it appears that, to reach this decision, the FSOC ignored several of its own key procedural rules; and (3) the FSOC has yet to answer key questions about the influence of former Adviser to the President and AIG shareholder Carl Icahn on the FSOC decision - while additional actions by the FSOC raise questions about the extent to which the Council was working with insurance industry representatives in reaching the decision.

## **AIG's 2013 Designation - and 2014 and 2015 Re-Designation - as a SIFI**

At the height of the 2008 financial crisis, AIG was, as one FSOC member who voted to reduce oversight of the insurance company put it, "the proverbial poster child for ill-conceived business plans, internal control systems, and risk-management protocols."<sup>1</sup> AIG was "a basket case[.]" and "if the company did not receive help, AIG would fail."<sup>2</sup> To avoid the "catastrophic consequences" of such a failure, the government was forced into a taxpayer-funded \$182 billion

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<sup>1</sup> "Views of Financial Stability Oversight Council Members Regarding Rescission of Determination Regarding American International Group, Inc. (AIG)," *Department of the Treasury*, 12 (available at [https://www.treasury.gov/initiatives/fsoc/news/Documents/Member\\_Views.pdf](https://www.treasury.gov/initiatives/fsoc/news/Documents/Member_Views.pdf));

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<sup>8</sup> *Id.*

distress, those liabilities could all “run” in a short period of time, and AIG would be forced to rapidly liquidate a high volume of assets, resulting in a threat to U.S. financial stability. That risk is still high today. In fact, one FSOC member that voted to de-designate AIG noted that “AIG continues to hold significant exposure to annuity products.”<sup>9</sup>

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Finally, in 2013, the FSOC concluded that AIG's "complicated organizational structure significantly increases the obstacles to a rapid and orderly resolution."<sup>19</sup> The same fact holds true today. As one FSOC member who voted to de-designate AIG admitted, "AIG remains a complex international insurance company with an embedded financial institutions component."<sup>20</sup> The company continues to operate in all 50 states and more than 80 countries, and the FSOC's recent decision itself even acknowledged that "the lack of a global framework for resolution may represent an obstacle to AIG's rapid and orderly resolution."<sup>21</sup>

FSOC member S. Roy Woodall, Jr., who voted last month to reduce the FSOC's oversight of AIG, issued an accompanying statement confessing that "I do believe [AIG] should continue to be monitored from a macro-prudential perspective."<sup>22</sup> The FSOC's oversight through the SIFI designation provides one of the most effective forms of macro-prudential regulation of nonbank financial companies in the United States, yet the FSOC, Mr. Woodall and his colleagues just voted to end its enhanced supervision of AIG.

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### **The FSOC Flouted Key Procedure Rules During the AIG Decision**

I am also concerned that the FSOC appears to have flouted basic procedural rules during the consideration of its decision to de-designate AIG.

First, the FSOC did not follow rules requiring public notice of all meetings at least one week in advance.<sup>25</sup> The public announcement of the "unusual last-minute" September 29, 2017

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<sup>19</sup> *Supra* note 6 at 10.

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<sup>25</sup> "Transparency Policy for the Financial Stability Oversight Council," *Department of the Treasury* (available at <https://www.treasury.gov/initiatives/fsoc/Documents/The%20Council%27s%20Transparency%20Policy.pdf>); See Jesse Hamilton, "U.S. Is Said to Plan Freeing AIG From Systemic-Risk Label," *Bloomberg* (Sept. 28, 2017)



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Secretary Mnuchin, however, excluded Chairman Clayton from the count of “voting members ... serving,” giving the FSOC six out of nine votes, and put this interpretation to the FSOC for a simple majority vote. The FSOC issued only a one-sentence explanation for this unusual decision, providing no details other than that “[t]he council determined that a member who is recused from participating in a matter is not included in the vote tally.” Such an arbitrary decision with no legal basis “puts the legality of the de-designation vote into question.”<sup>28</sup>

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independent review is necessary “before a decision can be appropriately made to rescind the designation.”<sup>32</sup>

These procedural mishaps are profoundly troubling, particularly given the additional substantive concerns described above.

### **The Role of Carl Icahn and Other Questions about Industry Influence**

I also remain concerned about whether the FSOC may have been inappropriately influenced by and in conversations with industry officials prior to its decision to de-designate AIG. On July 27, 2017, I wrote a letter to Secretary Mnuchin requesting information on the contacts between Carl Icahn and members of the FSOC.<sup>33</sup> Mr. Icahn, who served earlier this year as “special adviser to the President on issues relating to regulatory reform,” owns a stake as “one of the largest investors.” While serving as a Presidential adviser, he had intervened in Administration policy and personnel decisions that affected his business interests.<sup>34</sup>

Reports indicate that, despite a long-held desire for AIG to break itself up in order to “avert the increased capital requirements and regulations associated with non-bank SIFI status,” Mr. Icahn suddenly began “easing off his demands for a breakup” of AIG earlier this year.<sup>35</sup> We know that Mr. Icahn had at least one meeting with an FSOC member, SEC Chairman Clayton. Following Chairman Clayton’s nomination, Mr. Icahn met privately with him.<sup>36</sup> According to Mr. Clayton, the meeting was about “the importance of activist investors in driving performance at companies.”<sup>37</sup>

In my letter, I asked a series of basic questions about whether Mr. Icahn had had any contact with or influence on FSOC member who voted on the AIG SIFI designation. Secretary Mnuchin did not respond to our letter until last week, well after the vote to de-designate AIG, and the response only (1) provided broad background information on FSOC conflict of interest requirements, and (2) confirmed that Mr. Clayton had recused himself from the AIG designation vote. The response ignored our questions about contacts that Mr. Icahn or his associates may

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<sup>32</sup> *Id.* at 9.

<sup>33</sup> Letter from Senator Warren to Secretary Mnuchin, *Senator Elizabeth Warren* (Jul. 27, 2017) (available at [https://www.warren.senate.gov/files/documents/2017\\_07\\_27\\_Mnuchin\\_Icahn\\_Letter\\_Final.pdf](https://www.warren.senate.gov/files/documents/2017_07_27_Mnuchin_Icahn_Letter_Final.pdf)).

<sup>34</sup> David Benoit, “Trump Names Carl Icahn as Adviser on Regulatory Overhaul,” *Wall Street Journal* (Dec. 21, 2016) (available at <https://www.wsj.com/articles/trump-to-name-icahn-as-adviser-on-regulatory-overhaul-1482354552>); Sonali Basak, “Icahn Said to Ease off Demand for AIG Breakup Under New CEO,” *Bloomberg* (Jun. 29, 2017) (available at <https://www.bloomberg.com/news/articles/2017-06-29/icahn-said-to-ease-off-demand-for-aig-breakup-after-ceo-switch>).

<sup>35</sup> “Carl Icahn Issues Open Letter to Peter Hancock, Chief Executive Officer of AIG,” *Carl Icahn* (Oct. 28, 2015) (available at <http://carlicahn.com/aig-ceo-letter/>); see “Icahn Said to Ease off Demand,” *supra* note 34.

<sup>36</sup> *Supra* note 33.

<sup>37</sup> Renae Merle, “Democrats skeptical about SEC nominee’s ties to Wall Street,” *Washington Post* (Mar. 23, 2017) (available at <https://www.washingtonpost.com/news/wonk/wp/2017/03/23/sec-nominee-to-face-tough-questions-on-wall-street-connections/>).

have had with FSOC members - meaning the existence of or precise extent and nature of any contacts is still unclear.

The timing of the FSOC announcement also indicates that insurance industry representatives and others individuals learned of the decision to de-designate AIG before it was announced publicly. Property Casualty Insurer's Association of America (PCI), an insurance industry trade association for nearly 1,000 companies, issued a release praising the FSOC for de-designating AIG minutes after a FSOC readout that made no mention of the decision.<sup>38</sup> It is unclear why or how insurance industry representatives knew of this decision at the time, which was not made public until approximately 30 minutes later, when a second FSOC readout with the announcement was released to the public. Public reports the day prior to the de-designation also indicated that "two people familiar with the discussion" were aware of and leaking information about the de-designation decision well in advance of the actual vote.<sup>39</sup>

The unusual timing by which individuals were aware of the decision before the vote, and by which the insurance industry announced the decision before it was publicly available raises concerns over the impartiality of the FSOC, the process by which the decision was made public, and about whether individuals may have had access to market-moving information before that information went public.

### **Conclusion and Questions**

The FSOC ignored strong evidence that AIG continues to pose a risk to U.S. financial stability, and failed to follow basic and important procedural requirements in making its decision. And information about the decision appears to have been leaked to the insurance industry and others prior to the formal vote and the public notice.

Given these concerns, I ask that you answer the following questions by October X, 2017, to provide greater clarity on the FSOC's decision and the potential ramifications to the U.S. financial system and to American taxpayers.

1. Has Mr. Icahn, or any individual working for or on behalf of Mr. Icahn, had any contact with you or any other FSOC official, or any staff member for any FSOC official, regarding AIG? If so, please list all contacts of which you are aware and describe the nature of any discussion with Mr. Icahn or his representatives.
2. What protections does FSOC have in place to ensure that individuals with an interest in pending FSOC decisions do not inappropriately influence or attempt to influence FSOC officials who will be deciding these matters? Were these policies and procedures followed by all FSOC members in the AIG case?

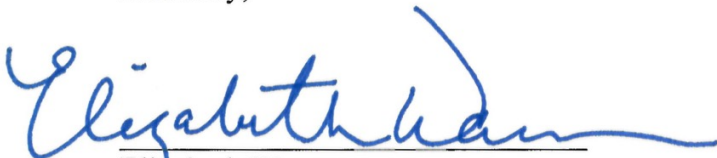
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<sup>38</sup> "AIG is no longer too big to fail," *supra* note 23.

<sup>39</sup> 'Freeing AIG,' *supra* note 25.

3. Did you, any other FSOC official, or the staff of any FSOC official contact the Property Casualty Insurer's Association of America (PCI), the U.S. Chamber of Commerce, or any other member of a trade organization or lobbying group representing the insurance industry, with information about the decision to de-designate AIG as a SIFI before FSOC's initial public announcement in its second readout at around 6:00 p.m. on September 29<sup>th</sup>? How did PCI learn about this decision in advance of the 6:00 PM notice?
4. Does FSOC have protections in place to prevent leaks of key decisions in advance of official public notice? If so, why and how were "two people familiar with the discussion" aware of the de-designation in advance of the vote, and why and how did these individuals leak this information to the press? Are you aware of whether the FSOC has investigated this matter, and if the Council has conducted an investigation, what did the investigation reveal?
5. Why did FSOC bypass its notice and transparency policies that require one week of advanced public notice of any hearing? Does the Council intend to follow these policies in all cases in the future?
6. Is there a legal memo advising Secretary Mnuchin on the interpretation of Dodd-Frank that allowed him pass the de-designation vote with only six of ten members in favor? If so, please provide my office with a copy of that memo and any other documents relating to that decision.
7. Did Chairman Clayton recuse himself only from the vote to de-designate AIG? Did he participate in any way in the discussion of this matter? Did he participate in the discussion of or vote to accept Secretary Mnuchin's interpretation of the voting rules despite recusing himself from the vote on the de-designation of AIG?
8. Why did FSOC decide that it was not necessary to conduct an independent evaluation of whether AIG met the second standard for SIFI designation? Please provide my office with a copy of all documents that relate to the decision not to conduct such an evaluation.

Sincerely,



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Elizabeth Warren  
United States Senator



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Sheldon Whitehouse  
United States Senator



United States Senate  
WASHINGTON, DC 20510

October 23, 2017

The Honorable Keith Noreika  
Acting Head  
Comptroller of the Currency  
400 7<sup>th</sup> Street SW  
Washington, DC 20024

Dear Acting Comptroller Noreika:

I am writing because of my concern over the Financial Stability Oversight Council's (FSOC's) September 29, 2017 decision to rescind its determination that American International Group is a Systemically Important Financial Institution (SIFI) that could pose a threat to the United States financial system. The FSOC's decision to remove AIG from the list of SIFIs reduces supervision and oversight of the insurance giant and puts taxpayers and our economy at risk less than a decade after the company's failure rocked the nation's financial system and forced taxpayers into a \$182 billion bailout.

You are one of ten voting members on the FSOC, and I am writing to you to seek answers about how the FSOC came to this decision, which is troubling for three reasons: (1) it appears to have been made with little substantive justification; (2) it appears that, to reach this decision, the FSOC ignored several of its own key procedural rules; and (3) the FSOC has yet to answer key questions about the influence of former Adviser to the President and AIG shareholder Carl Icahn on the FSOC decision - while additional actions by the FSOC raise questions about the extent to which the Council was working with insurance industry representatives in reaching the decision.

**AIG's 2013 Designation - and 2014 and 2015 Re-Designation - as a SIFI**

At the height of the 2008 financial crisis, AIG was, as one FSOC member who voted to reduce oversight of the insurance company put it, "the proverbial poster child for ill-conceived business plans, internal control systems, and risk-management protocols."<sup>1</sup> AIG was "a basket case[,] and "if the company did not receive help, AIG would fail."<sup>2</sup> To avoid the "catastrophic consequences" of such a failure, the government was forced into a taxpayer-funded \$182 billion

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<sup>1</sup> "Views of Financial Stability Oversight Council Members Regarding Rescission of Determination Regarding American International Group, Inc. (AIG)," *Department of the Treasury*, 12 (available at [https://www.treasury.gov/initiatives/fsoc/news/Documents/Member\\_Views.pdf](https://www.treasury.gov/initiatives/fsoc/news/Documents/Member_Views.pdf));

<sup>2</sup> *Id.*

federal bailout of AIG in which “Main Street bailed out Wall Street to help keep the entire U.S. economy afloat.”<sup>3</sup>

Under Dodd-Frank, the FSOC may designate a nonbank financial company as a SIFI if it determines either that (1) “material financial distress” at the company could pose a threat to U.S. financial stability, or (2) the “nature, scope, size, scale, concentration, interconnectedness, or mix of activities” of the company could pose a threat to U.S. financial stability.<sup>4</sup> In 2013, the FSOC concluded that material financial distress at AIG could pose a threat to U.S. financial stability due primarily to a high level of counterparty exposure, the risk of asset liquidation, and concerns regarding AIG’s resolvability – the “ability to shut AIG down in an orderly manner” without resorting to a federal bailout.<sup>5</sup>

On July 8, 2013, under these new rules, the FSOC unanimously voted to designate AIG as a SIFI, determining that “material financial distress at [AIG] could pose a threat to U.S. financial stability.”<sup>6</sup> In doing so, the FSOC subjected AIG to heightened oversight, including increased capital requirements, stress testing, and a requirement for living wills that would help prevent “too big to fail” institutions from forcing taxpayer bailouts. In 2014 and 2015, the FSOC reviewed the determination and “concluded that there had not been sufficient material changes” to rescind it.<sup>7</sup>

But on September 29, 2017, the FSOC announced that it had rescinded its 2013 determination and that AIG would no longer be classified as a SIFI, removing the enhanced oversight and supervision.

### **AIG Continues to Pose a Threat to U.S. Financial Stability**

In 2013, the FSOC concluded that material financial distress at AIG could pose a threat to U.S. financial stability - a conclusion that the FSOC reached again upon additional review in 2014 and 2015. But these risks still exist - meaning there is no substantive justification for the decision to de-designate AIG as a SIFI.

In 2013, the “core basis” for designating AIG as a SIFI was that “AIG had a large volume of liabilities subject to discretionary withdrawal.”<sup>8</sup> In other words, the company’s liabilities were “runnable” – AIG was at risk of having its liabilities called in by investors, and being forced to liquidate other assets to meet these calls. This meant that if AIG went into financial

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<sup>3</sup> *Id.*

<sup>4</sup> “The Dodd-Frank Wall Street Reform and Consumer Protection Act,” 12 U.S.C. § 5323 (2010).

<sup>5</sup> Gregg Gelzinis, “Deregulating AIG Was a Mistake,” *Center for American Progress* (Oct. 11, 2017) (available at <https://www.americanprogress.org/issues/economy/reports/2017/10/11/440570/deregulating-aig-mistake/>).

<sup>6</sup> “Basis of the Financial Stability Oversight Council’s Final Determination Regarding American International Group, Inc.,” *Department of the Treasury*, 1 (Jul. 8, 2013) (available at <https://www.treasury.gov/initiatives/fsoc/designations/Documents/Basis%20of%20Final%20Determination%20Regarding%20American%20International%20Group,%20Inc.pdf>).

<sup>7</sup> *Supra* note 1 at 5.

<sup>8</sup> *Id.*

distress, those liabilities could all “run” in a short period of time, and AIG would be forced to rapidly liquidate a high volume of assets, resulting in a threat to U.S. financial stability. That risk is still high today. In fact, one FSOC member that voted to de-designate AIG noted that “AIG continues to hold significant exposure to annuity products.”<sup>9</sup>

AIG has decreased risk in certain exposures, but others have increased, “most notably in the life insurance and annuity business.”<sup>10</sup> Their life insurance and retirement business lines, identified by the FSOC in 2013 as areas of particular concern, constitute about one-quarter of the company’s business – “roughly the same portion” as they did in 2013.<sup>11</sup> Despite this liability, AIG has actually decreased their liquidity resources from \$16 billion to \$12 billion.<sup>12</sup> AIG holds \$134 billion in corporate bonds and \$20 billion in state and municipal bonds, down slightly from \$152 billion and \$36 billion in 2013, all of which could be at risk if a liquidity strain forces the company into a fire sale.<sup>13</sup> Such a fire sale would then reduce the value of these bonds across the sector, putting immense stress on the financial system.

As one FSOC member put it, “[n]othing about the liquidity characteristics of AIG’s liabilities and assets has changed to diminish the concerns originally raised by the FSOC.”<sup>14</sup> And as the FSOC decision to de-designate AIG stated, “[i]n the event of AIG’s material financial distress[,]” loss of access to internal funding could lead “to the loss of liquidity and possibly either insolvency or seizure by a regulator.”<sup>15</sup>

In 2013, the FSOC also determined that “a large number of corporate and financial entities have significant exposures to AIG” – essentially that such a large portion of the financial system relied on the insurance company that AIG’s failure could lead to a crisis in the U.S. financial system.<sup>16</sup> Today, those same large exposures remain. As of their most recent financial statements, AIG holds \$165 billion in total derivatives exposure and has \$32 billion in long-term debt, compared to \$215 billion and \$49 billion in those respective liabilities in 2013.<sup>17</sup> Although the company has decreased in size, it still insures 87 percent of all Fortune 500 companies.<sup>18</sup> The small decreases have not eliminated the risk to the U.S. financial system.

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<sup>9</sup> *Id.* at 13.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Supra* note 5.

<sup>12</sup> *Id.* This is a decrease in liquidity resources even after adjusting for the decrease in the overall size of AIG.

<sup>13</sup> *Id.*

<sup>14</sup> *Supra* note 1 at 5.

<sup>15</sup> “Notice and Explanation of the Basis for the Financial Stability Oversight Council’s Rescission of Its Determination Regarding American International Group, Inc. (AIG),” *Department of the Treasury*, 60 (available at [https://www.treasury.gov/initiatives/fsoc/designations/Documents/American\\_International\\_Group,\\_Inc.\\_\(Rescission\).pdf](https://www.treasury.gov/initiatives/fsoc/designations/Documents/American_International_Group,_Inc._(Rescission).pdf)).

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Finally, in 2013, the FSOC concluded that AIG's "complicated organizational structure significantly increases the obstacles to a rapid and orderly resolution."<sup>19</sup> The same fact holds true today. As one FSOC member who voted to de-designate AIG admitted, "AIG remains a complex international insurance company with an embedded financial institutions component."<sup>20</sup> The company continues to operate in all 50 states and more than 80 countries, and the FSOC's recent decision itself even acknowledged that "the lack of a global framework for resolution may represent an obstacle to AIG's rapid and orderly resolution."<sup>21</sup>

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<sup>25</sup> "Transparency Policy for the Financial Stability Oversight Council," *Department of the Treasury* (available at <https://www.treasury.gov/initiatives/fsoc/Documents/The%20Council%27s%20Transparency%20Policy.pdf>); See Jesse Hamilton, "U.S. Is Said to Plan Freeing AIG From Systemic-Risk Label," *Bloomberg* (Sept. 28, 2017)



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I also remain concerned about whether the FSOC may have been inappropriately influenced by and in conversations with industry officials prior to its decision to de-designate AIG. On July 27, 2017, I wrote a letter to Secretary Mnuchin requesting information on the contacts between Carl Icahn and members of the FSOC.<sup>33</sup> Mr. Icahn, who served earlier this year as “special adviser to the President on issues relating to regulatory reform,” owns a stake as “one of the largest investors.” While serving as a Presidential adviser, he had intervened in Administration policy and personnel decisions that affected his business interests.<sup>34</sup>

Reports indicate that, despite a long-held desire for AIG to break itself up in order to “avert the increased capital requirements and regulations associated with non-bank SIFI status,” Mr. Icahn suddenly began “easing off his demands for a breakup” of AIG earlier this year.<sup>35</sup> We know that Mr. Icahn had at least one meeting with an FSOC member, SEC Chairman Clayton. Following Chairman Clayton’s nomination, Mr. Icahn met privately with him.<sup>36</sup> According to Mr. Clayton, the meeting was about “the importance of activist investors in driving performance at companies.”<sup>37</sup>

In my letter, I asked a series of basic questions about whether Mr. Icahn had had any contact with or influence on FSOC member who voted on the AIG SIFI designation. Secretary Mnuchin did not respond to our letter until last week, well after the vote to de-designate AIG, and the response only (1) provided broad background information on FSOC conflict of interest requirements, and (2) confirmed that Mr. Clayton had recused himself from the AIG designation vote. The response ignored our questions about contacts that Mr. Icahn or his associates may

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<sup>32</sup> *Id.* at 9.

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<sup>34</sup> David Benoit, “Trump Names Carl Icahn as Adviser on Regulatory Overhaul,” *Wall Street Journal* (Dec. 21, 2016) (available at <https://www.wsj.com/articles/trump-to-name-icahn-as-adviser-on-regulatory-overhaul-1482354552>); Sonali Basak, “Icahn Said to Ease off Demand for AIG Breakup Under New CEO,” *Bloomberg* (Jun. 29, 2017) (available at <https://www.bloomberg.com/news/articles/2017-06-29/icahn-said-to-ease-off-demand-for-aig-breakup-after-ceo-switch>).

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The unusual timing by which individuals were aware of the decision before the vote, and by which the insurance industry announced the decision before it was publicly available raises concerns over the impartiality of the FSOC, the process by which the decision was made public, and about whether individuals may have had access to market-moving information before that information went public.

### **Conclusion and Questions**

The FSOC ignored strong evidence that AIG continues to pose a risk to U.S. financial stability, and failed to follow basic and important procedural requirements in making its decision. And information about the decision appears to have been leaked to the insurance industry and others prior to the formal vote and the public notice.

Given these concerns, I ask that you answer the following questions by October X, 2017, to provide greater clarity on the FSOC's decision and the potential ramifications to the U.S. financial system and to American taxpayers.

1. Has Mr. Icahn, or any individual working for or on behalf of Mr. Icahn, had any contact with you or any other FSOC official, or any staff member for any FSOC official, regarding AIG? If so, please list all contacts of which you are aware and describe the nature of any discussion with Mr. Icahn or his representatives.
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<sup>38</sup> "AIG is no longer too big to fail," *supra* note 23.


<sup>39</sup> 'Freeing AIG,' *supra* note 25.

3. Did you, any other FSOC official, or the staff of any FSOC official contact the Property Casualty Insurer's Association of America (PCI), the U.S. Chamber of Commerce, or any other member of a trade organization or lobbying group representing the insurance industry, with information about the decision to de-designate AIG as a SIFI before FSOC's initial public announcement in its second readout at around 6:00 p.m. on September 29<sup>th</sup>? How did PCI learn about this decision in advance of the 6:00 PM notice?
4. Does FSOC have protections in place to prevent leaks of key decisions in advance of official public notice? If so, why and how were "two people familiar with the discussion" aware of the de-designation in advance of the vote, and why and how did these individuals leak this information to the press? Are you aware of whether the FSOC has investigated this matter, and if the Council has conducted an investigation, what did the investigation reveal?
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6. Is there a legal memo advising Secretary Mnuchin on the interpretation of Dodd-Frank that allowed him pass the de-designation vote with only six of ten members in favor? If so, please provide my office with a copy of that memo and any other documents relating to that decision.
7. Did Chairman Clayton recuse himself only from the vote to de-designate AIG? Did he participate in any way in the discussion of this matter? Did he participate in the discussion of or vote to accept Secretary Mnuchin's interpretation of the voting rules despite recusing himself from the vote on the de-designation of AIG?
8. Why did FSOC decide that it was not necessary to conduct an independent evaluation of whether AIG met the second standard for SIFI designation? Please provide my office with a copy of all documents that relate to the decision not to conduct such an evaluation.

Sincerely,



Elizabeth Warren  
United States Senator



Sheldon Whitehouse  
United States Senator



United States Senate  
WASHINGTON, DC 20510

October 23, 2017

The Honorable J. Mark McWatters  
Chairman  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314

Dear Chairman McWatters:

I am writing because of my concern over the Financial Stability Oversight Council's (FSOC's) September 29, 2017 decision to rescind its determination that American International Group is a Systemically Important Financial Institution (SIFI) that could pose a threat to the United States financial system. The FSOC's decision to remove AIG from the list of SIFIs reduces supervision and oversight of the insurance giant and puts taxpayers and our economy at risk less than a decade after the company's failure rocked the nation's financial system and forced taxpayers into a \$182 billion bailout.

You are one of ten voting members on the FSOC, and I am writing to you to seek answers about how the FSOC came to this decision, which is troubling for three reasons: (1) it appears to have been made with little substantive justification; (2) it appears that, to reach this decision, the FSOC ignored several of its own key procedural rules; and (3) the FSOC has yet to answer key questions about the influence of former Adviser to the President and AIG shareholder Carl Icahn on the FSOC decision - while additional actions by the FSOC raise questions about the extent to which the Council was working with insurance industry representatives in reaching the decision.

**AIG's 2013 Designation - and 2014 and 2015 Re-Designation - as a SIFI**

At the height of the 2008 financial crisis, AIG was, as one FSOC member who voted to reduce oversight of the insurance company put it, "the proverbial poster child for ill-conceived business plans, internal control systems, and risk-management protocols."<sup>1</sup> AIG was "a basket case[.]" and "if the company did not receive help, AIG would fail."<sup>2</sup> To avoid the "catastrophic consequences" of such a failure, the government was forced into a taxpayer-funded \$182 billion

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<sup>1</sup> "Views of Financial Stability Oversight Council Members Regarding Rescission of Determination Regarding American International Group, Inc. (AIG)," *Department of the Treasury*, 12 (available at [https://www.treasury.gov/initiatives/fsoc/news/Documents/Member\\_Views.pdf](https://www.treasury.gov/initiatives/fsoc/news/Documents/Member_Views.pdf));

<sup>2</sup> *Id.*

federal bailout of AIG in which “Main Street bailed out Wall Street to help keep the entire U.S. economy afloat.”<sup>3</sup>

Under Dodd-Frank, the FSOC may designate a nonbank financial company as a SIFI if it determines either that (1) “material financial distress” at the company could pose a threat to U.S. financial stability, or (2) the “nature, scope, size, scale, concentration, interconnectedness, or mix of activities” of the company could pose a threat to U.S. financial stability.<sup>4</sup> In 2013, the FSOC concluded that material financial distress at AIG could pose a threat to U.S. financial stability due primarily to a high level of counterparty exposure, the risk of asset liquidation, and concerns regarding AIG’s resolvability – the “ability to shut AIG down in an orderly manner” without resorting to a federal bailout.<sup>5</sup>

On July 8, 2013, under these new rules, the FSOC unanimously voted to designate AIG as a SIFI, determining that “material financial distress at [AIG] could pose a threat to U.S. financial stability.”<sup>6</sup> In doing so, the FSOC subjected AIG to heightened oversight, including increased capital requirements, stress testing, and a requirement for living wills that would help prevent “too big to fail” institutions from forcing taxpayer bailouts. In 2014 and 2015, the FSOC reviewed the determination and “concluded that there had not been sufficient material changes” to rescind it.<sup>7</sup>

But on September 29, 2017, the FSOC announced that it had rescinded its 2013 determination and that AIG would no longer be classified as a SIFI, removing the enhanced oversight and supervision.

### **AIG Continues to Pose a Threat to U.S. Financial Stability**

In 2013, the FSOC concluded that material financial distress at AIG could pose a threat to U.S. financial stability - a conclusion that the FSOC reached again upon additional review in 2014 and 2015. But these risks still exist - meaning there is no substantive justification for the decision to de-designate AIG as a SIFI.

In 2013, the “core basis” for designating AIG as a SIFI was that “AIG had a large volume of liabilities subject to discretionary withdrawal.”<sup>8</sup> In other words, the company’s liabilities were “runnable” – AIG was at risk of having its liabilities called in by investors, and being forced to liquidate other assets to meet these calls. This meant that if AIG went into financial

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<sup>3</sup> *Id.*

<sup>4</sup> “The Dodd-Frank Wall Street Reform and Consumer Protection Act,” 12 U.S.C. § 5323 (2010).

<sup>5</sup> Gregg Gelzinis, “Deregulating AIG Was a Mistake,” *Center for American Progress* (Oct. 11, 2017) (available at <https://www.americanprogress.org/issues/economy/reports/2017/10/11/440570/deregulating-aig-mistake/>).

<sup>6</sup> “Basis of the Financial Stability Oversight Council’s Final Determination Regarding American International Group, Inc.,” *Department of the Treasury*, 1 (Jul. 8, 2013) (available at <https://www.treasury.gov/initiatives/fsoc/designations/Documents/Basis%20of%20Final%20Determination%20Regarding%20American%20International%20Group,%20Inc.pdf>).

<sup>7</sup> *Supra* note 1 at 5.

<sup>8</sup> *Id.*

distress, those liabilities could all “run” in a short period of time, and AIG would be forced to rapidly liquidate a high volume of assets, resulting in a threat to U.S. financial stability. That risk is still high today. In fact, one FSOC member that voted to de-designate AIG noted that “AIG continues to hold significant exposure to annuity products.”<sup>9</sup>

AIG has decreased risk in certain exposures, but others have increased, “most notably in the life insurance and annuity business.”<sup>10</sup> Their life insurance and retirement business lines, identified by the FSOC in 2013 as areas of particular concern, constitute about one-quarter of the company’s business – “roughly the same portion” as they did in 2013.<sup>11</sup> Despite this liability, AIG has actually decreased their liquidity resources from \$16 billion to \$12 billion.<sup>12</sup> AIG holds \$134 billion in corporate bonds and \$20 billion in state and municipal bonds, down slightly from \$152 billion and \$36 billion in 2013, all of which could be at risk if a liquidity strain forces the company into a fire sale.<sup>13</sup> Such a fire sale would then reduce the value of these bonds across the sector, putting immense stress on the financial system.

As one FSOC member put it, “[n]othing about the liquidity characteristics of AIG’s liabilities and assets has changed to diminish the concerns originally raised by the FSOC.”<sup>14</sup> And as the FSOC decision to de-designate AIG stated, “[i]n the event of AIG’s material financial distress[,]” loss of access to internal funding could lead “to the loss of liquidity and possibly either insolvency or seizure by a regulator.”<sup>15</sup>

In 2013, the FSOC also determined that “a large number of corporate and financial entities have significant exposures to AIG” – essentially that such a large portion of the financial system relied on the insurance company that AIG’s failure could lead to a crisis in the U.S. financial system.<sup>16</sup> Today, those same large exposures remain. As of their most recent financial statements, AIG holds \$165 billion in total derivatives exposure and has \$32 billion in long-term debt, compared to \$215 billion and \$49 billion in those respective liabilities in 2013.<sup>17</sup> Although the company has decreased in size, it still insures 87 percent of all Fortune 500 companies.<sup>18</sup> The small decreases have not eliminated the risk to the U.S. financial system.

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<sup>9</sup> *Id.* at 13.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Supra* note 5.

<sup>12</sup> *Id.* This is a decrease in liquidity resources even after adjusting for the decrease in the overall size of AIG.

<sup>13</sup> *Id.*

<sup>14</sup> *Supra* note 1 at 5.

<sup>15</sup> “Notice and Explanation of the Basis for the Financial Stability Oversight Council’s Rescission of Its Determination Regarding American International Group, Inc. (AIG),” *Department of the Treasury*, 60 (available at [https://www.treasury.gov/initiatives/fsoc/designations/Documents/American\\_International\\_Group,\\_Inc.\\_\(Rescission\).pdf](https://www.treasury.gov/initiatives/fsoc/designations/Documents/American_International_Group,_Inc._(Rescission).pdf)).

<sup>16</sup> *Supra* note 6 at 6.

<sup>17</sup> *Supra* note 5.

<sup>18</sup> *Id.*

Finally, in 2013, the FSOC concluded that AIG's "complicated organizational structure significantly increases the obstacles to a rapid and orderly resolution."<sup>19</sup> The same fact holds true today. As one FSOC member who voted to de-designate AIG admitted, "AIG remains a complex international insurance company with an embedded financial institutions component."<sup>20</sup> The company continues to operate in all 50 states and more than 80 countries, and the FSOC's recent decision itself even acknowledged that "the lack of a global framework for resolution may represent an obstacle to AIG's rapid and orderly resolution."<sup>21</sup>

FSOC member S. Roy Woodall, Jr., who voted last month to reduce the FSOC's oversight of AIG, issued an accompanying statement confessing that "I do believe [AIG] should continue to be monitored from a macro-prudential perspective."<sup>22</sup> The FSOC's oversight through the SIFI designation provides one of the most effective forms of macro-prudential regulation of nonbank financial companies in the United States, yet the FSOC, Mr. Woodall and his colleagues just voted to end its enhanced supervision of AIG.

AIG presents many of the same risks to U.S. financial stability today as the company did in 2013. The FSOC claimed that de-designation was appropriate in light of the "reduced...amounts of its total debt" and the fact that AIG is now "smaller in scope and size."<sup>23</sup> But to the extent that the company and its debt are smaller, it does not appear to have resulted in significantly reduced systemic risks. And the FSOC decision ignores the fact that earlier this year, the new CEO stated that he intended to reverse the company's contraction, clarifying that to "be clear, I am here to grow A.I.G....I didn't come here to break the company up. I came here to grow it."<sup>24</sup>

### **The FSOC Flouted Key Procedure Rules During the AIG Decision**

I am also concerned that the FSOC appears to have flouted basic procedural rules during the consideration of its decision to de-designate AIG.

First, the FSOC did not follow rules requiring public notice of all meetings at least one week in advance.<sup>25</sup> The public announcement of the "unusual last-minute" September 29, 2017

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<sup>19</sup> *Supra* note 6 at 10.

<sup>20</sup> *Supra* note 1 at 12.

<sup>21</sup> *Supra* note 15 at 62.

<sup>22</sup> *Supra* note 1 at 15.

<sup>23</sup> *Supra* note 15 at 5; Gregg Gelzinis, "AIG is no longer too big to fail and taxpayers deserve to know why," *The Hill* (Oct. 10, 2017) (available at <http://thehill.com/opinion/finance/354610-aig-is-no-longer-too-big-to-fail-and-taxpayers-deserve-to-know-why>).

<sup>24</sup> Chad Bray, "'I Am Here to Grow A.I.G.,' Its New C.E.O., Brian Duperreault, Pledges," *New York Times* (May 15, 2017) (available at [https://www.nytimes.com/2017/05/15/business/dealbook/aig-brian-duperreault-ceo.html?\\_r=0](https://www.nytimes.com/2017/05/15/business/dealbook/aig-brian-duperreault-ceo.html?_r=0)).

<sup>25</sup> "Transparency Policy for the Financial Stability Oversight Council," *Department of the Treasury* (available at <https://www.treasury.gov/initiatives/fsoc/Documents/The%20Council%27s%20Transparency%20Policy.pdf>); See Jesse Hamilton, "U.S. Is Said to Plan Freeing AIG From Systemic-Risk Label," *Bloomberg* (Sept. 28, 2017)



meeting was not made until 4:00 p.m. on September 28<sup>th</sup>, less than 24 hours before the meeting was opened.<sup>26</sup>

Second, the FSOC failed to follow the voting procedures outlined in the Dodd-Frank Act, which only give the FSOC authority to designate or de-designate an institution if “two-thirds of the voting members of the FSOC then serving” vote in favor of doing so.<sup>27</sup> The FSOC consists of 10 voting members, in addition to five non-voting members. This is important because while Chairman Clayton recused himself from the vote, he was still a voting member of the FSOC. The law does not merely require a two-thirds vote, but requires at least seven votes if there are ten voting members of the FSOC in office, as there were on the day that AIG was de-designated. While Chairman Clayton recused himself from this decision, a plain reading of the law indicates that he was still a “voting member” of FSOC who was still “serving.” Because only six of ten voting members voting to de-designate AIG, the vote should have failed and AIG should have remained a SIFI.

Secretary Mnuchin, however, excluded Chairman Clayton from the count of “voting members ... serving,” giving the FSOC six out of nine votes, and put this interpretation to the FSOC for a simple majority vote. The FSOC issued only a one-sentence explanation for this unusual decision, providing no details other than that “[t]he council determined that a member who is recused from participating in a matter is not included in the vote tally.” Such an arbitrary decision with no legal basis “puts the legality of the de-designation vote into question.”<sup>28</sup>

Finally, the FSOC failed to conduct an independent evaluation of “the nature, scope, size, scale...or mix of activities of” AIG as required by Section 113 of the Dodd-Frank law. The FSOC may designate an institution as a SIFI if it meets one of two standards: (1) if “material financial distress” at the company “could pose a threat to the financial stability” of the U.S., and (2) if the “nature, scope, size, scale, concentration, interconnectedness, or mix of activities” of the institution “could pose a threat to the financial stability” of the U.S.<sup>29</sup> In 2013, the FSOC found that AIG met the first test, but “did not evaluate AIG on the second standard, independent of the first.”<sup>30</sup> In reevaluating that designation last month, the FSOC concluded that AIG no longer met the requirements for the first standard, but proceeded to de-designate the company “without making the legal assessment required under Section 113’s second standard.”<sup>31</sup> As Mel Watt, Director of the Federal Housing Finance Agency and member of the FSOC stated, such an

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(available at <https://www.bloomberg.com/news/articles/2017-09-29/aig-s-label-as-systemic-risk-may-be-reconsidered-by-regulators>).

<sup>26</sup> See ‘Freeing AIG,’ *supra* note 25; see also “AIG is no longer too big to fail,” *supra* note 23.

<sup>27</sup> See “AIG is no longer too big to fail,” *supra* note 23.

<sup>28</sup> *Id.*

<sup>29</sup> “The Dodd-Frank Wall Street Reform and Consumer Protection Act,” 12 U.S.C. § 5323 (2010).

<sup>30</sup> *Supra* note 1 at 9.

<sup>31</sup> *Id.* at 11.

independent review is necessary “before a decision can be appropriately made to rescind the designation.”<sup>32</sup>

These procedural mishaps are profoundly troubling, particularly given the additional substantive concerns described above.

### **The Role of Carl Icahn and Other Questions about Industry Influence**

I also remain concerned about whether the FSOC may have been inappropriately influenced by and in conversations with industry officials prior to its decision to de-designate AIG. On July 27, 2017, I wrote a letter to Secretary Mnuchin requesting information on the contacts between Carl Icahn and members of the FSOC.<sup>33</sup> Mr. Icahn, who served earlier this year as “special adviser to the President on issues relating to regulatory reform,” owns a stake as “one of the largest investors.” While serving as a Presidential adviser, he had intervened in Administration policy and personnel decisions that affected his business interests.<sup>34</sup>

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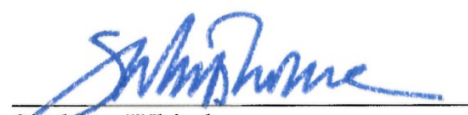
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4. Does FSOC have protections in place to prevent leaks of key decisions in advance of official public notice? If so, why and how were "two people familiar with the discussion" aware of the de-designation in advance of the vote, and why and how did these individuals leak this information to the press? Are you aware of whether the FSOC has investigated this matter, and if the Council has conducted an investigation, what did the investigation reveal?
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7. Did Chairman Clayton recuse himself only from the vote to de-designate AIG? Did he participate in any way in the discussion of this matter? Did he participate in the discussion of or vote to accept Secretary Mnuchin's interpretation of the voting rules despite recusing himself from the vote on the de-designation of AIG?
8. Why did FSOC decide that it was not necessary to conduct an independent evaluation of whether AIG met the second standard for SIFI designation? Please provide my office with a copy of all documents that relate to the decision not to conduct such an evaluation.

Sincerely,



Elizabeth Warren  
United States Senator



Sheldon Whitehouse  
United States Senator



# United States Senate

WASHINGTON, DC 20510

October 23, 2017

The Honorable J. Christopher Giancarlo  
Chairman  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street NW  
Washington, DC 20581

Dear Chairman Giancarlo:

I am writing because of my concern over the Financial Stability Oversight Council's (FSOC's) September 29, 2017 decision to rescind its determination that American International Group is a Systemically Important Financial Institution (SIFI) that could pose a threat to the United States financial system. The FSOC's decision to remove AIG from the list of SIFIs reduces supervision and oversight of the insurance giant and puts taxpayers and our economy at risk less than a decade after the company's failure rocked the nation's financial system and forced taxpayers into a \$182 billion bailout.

You are one of ten voting members on the FSOC, and I am writing to you to seek answers about how the FSOC came to this decision, which is troubling for three reasons: (1) it appears to have been made with little substantive justification; (2) it appears that, to reach this decision, the FSOC ignored several of its own key procedural rules; and (3) the FSOC has yet to answer key questions about the influence of former Adviser to the President and AIG shareholder Carl Icahn on the FSOC decision - while additional actions by the FSOC raise questions about the extent to which the Council was working with insurance industry representatives in reaching the decision.

## **AIG's 2013 Designation - and 2014 and 2015 Re-Designation - as a SIFI**

At the height of the 2008 financial crisis, AIG was, as one FSOC member who voted to reduce oversight of the insurance company put it, "the proverbial poster child for ill-conceived business plans, internal control systems, and risk-management protocols."<sup>1</sup> AIG was "a basket case[.]" and "if the company did not receive help, AIG would fail."<sup>2</sup> To avoid the "catastrophic consequences" of such a failure, the government was forced into a taxpayer-funded \$182 billion

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<sup>1</sup> "Views of Financial Stability Oversight Council Members Regarding Rescission of Determination Regarding American International Group, Inc. (AIG)," *Department of the Treasury*, 12 (available at [https://www.treasury.gov/initiatives/fsoc/news/Documents/Member\\_Views.pdf](https://www.treasury.gov/initiatives/fsoc/news/Documents/Member_Views.pdf));

<sup>2</sup> *Id.*

federal bailout of AIG in which “Main Street bailed out Wall Street to help keep the entire U.S. economy afloat.”<sup>3</sup>

Under Dodd-Frank, the FSOC may designate a nonbank financial company as a SIFI if it determines either that (1) “material financial distress” at the company could pose a threat to U.S. financial stability, or (2) the “nature, scope, size, scale, concentration, interconnectedness, or mix of activities” of the company could pose a threat to U.S. financial stability.<sup>4</sup> In 2013, the FSOC concluded that material financial distress at AIG could pose a threat to U.S. financial stability due primarily to a high level of counterparty exposure, the risk of asset liquidation, and concerns regarding AIG’s resolvability – the “ability to shut AIG down in an orderly manner” without resorting to a federal bailout.<sup>5</sup>

On July 8, 2013, under these new rules, the FSOC unanimously voted to designate AIG as a SIFI, determining that “material financial distress at [AIG] could pose a threat to U.S. financial stability.”<sup>6</sup> In doing so, the FSOC subjected AIG to heightened oversight, including increased capital requirements, stress testing, and a requirement for living wills that would help prevent “too big to fail” institutions from forcing taxpayer bailouts. In 2014 and 2015, the FSOC reviewed the determination and “concluded that there had not been sufficient material changes” to rescind it.<sup>7</sup>

But on September 29, 2017, the FSOC announced that it had rescinded its 2013 determination and that AIG would no longer be classified as a SIFI, removing the enhanced oversight and supervision.

### **AIG Continues to Pose a Threat to U.S. Financial Stability**

In 2013, the FSOC concluded that material financial distress at AIG could pose a threat to U.S. financial stability - a conclusion that the FSOC reached again upon additional review in 2014 and 2015. But these risks still exist - meaning there is no substantive justification for the decision to de-designate AIG as a SIFI.

In 2013, the “core basis” for designating AIG as a SIFI was that “AIG had a large volume of liabilities subject to discretionary withdrawal.”<sup>8</sup> In other words, the company’s liabilities were “runnable” – AIG was at risk of having its liabilities called in by investors, and being forced to liquidate other assets to meet these calls. This meant that if AIG went into financial

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<sup>3</sup> *Id.*

<sup>4</sup> “The Dodd-Frank Wall Street Reform and Consumer Protection Act,” 12 U.S.C. § 5323 (2010).

<sup>5</sup> Gregg Gelzimis, “Deregulating AIG Was a Mistake,” *Center for American Progress* (Oct. 11, 2017) (available at <https://www.americanprogress.org/issues/economy/reports/2017/10/11/440570/deregulating-aig-mistake/>).

<sup>6</sup> “Basis of the Financial Stability Oversight Council’s Final Determination Regarding American International Group, Inc.,” *Department of the Treasury*, 1 (Jul. 8, 2013) (available at <https://www.treasury.gov/initiatives/fsoc/designations/Documents/Basis%20of%20Final%20Determination%20Regarding%20American%20International%20Group,%20Inc.pdf>).

<sup>7</sup> *Supra* note 1 at 5.

<sup>8</sup> *Id.*

distress, those liabilities could all “run” in a short period of time, and AIG would be forced to rapidly liquidate a high volume of assets, resulting in a threat to U.S. financial stability. That risk is still high today. In fact, one FSOC member that voted to de-designate AIG noted that “AIG continues to hold significant exposure to annuity products.”<sup>9</sup>

AIG has decreased risk in certain exposures, but others have increased, “most notably in the life insurance and annuity business.”<sup>10</sup> Their life insurance and retirement business lines, identified by the FSOC in 2013 as areas of particular concern, constitute about one-quarter of the company’s business – “roughly the same portion” as they did in 2013.<sup>11</sup> Despite this liability, AIG has actually decreased their liquidity resources from \$16 billion to \$12 billion.<sup>12</sup> AIG holds \$134 billion in corporate bonds and \$20 billion in state and municipal bonds, down slightly from \$152 billion and \$36 billion in 2013, all of which could be at risk if a liquidity strain forces the company into a fire sale.<sup>13</sup> Such a fire sale would then reduce the value of these bonds across the sector, putting immense stress on the financial system.

As one FSOC member put it, “[n]othing about the liquidity characteristics of AIG’s liabilities and assets has changed to diminish the concerns originally raised by the FSOC.”<sup>14</sup> And as the FSOC decision to de-designate AIG stated, “[i]n the event of AIG’s material financial distress[,]” loss of access to internal funding could lead “to the loss of liquidity and possibly either insolvency or seizure by a regulator.”<sup>15</sup>

In 2013, the FSOC also determined that “a large number of corporate and financial entities have significant exposures to AIG” – essentially that such a large portion of the financial system relied on the insurance company that AIG’s failure could lead to a crisis in the U.S. financial system.<sup>16</sup> Today, those same large exposures remain. As of their most recent financial statements, AIG holds \$165 billion in total derivatives exposure and has \$32 billion in long-term debt, compared to \$215 billion and \$49 billion in those respective liabilities in 2013.<sup>17</sup> Although the company has decreased in size, it still insures 87 percent of all Fortune 500 companies.<sup>18</sup> The small decreases have not eliminated the risk to the U.S. financial system.

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<sup>9</sup> *Id.* at 13.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Supra* note 5.

<sup>12</sup> *Id.* This is a decrease in liquidity resources even after adjusting for the decrease in the overall size of AIG.

<sup>13</sup> *Id.*

<sup>14</sup> *Supra* note 1 at 5.

<sup>15</sup> “Notice and Explanation of the Basis for the Financial Stability Oversight Council’s Rescission of Its Determination Regarding American International Group, Inc. (AIG),” *Department of the Treasury*, 60 (available at [https://www.treasury.gov/initiatives/fsoc/designations/Documents/American\\_International\\_Group\\_Inc\\_\(Rescission\).pdf](https://www.treasury.gov/initiatives/fsoc/designations/Documents/American_International_Group_Inc_(Rescission).pdf)).

<sup>16</sup> *Supra* note 6 at 6.

<sup>17</sup> *Supra* note 5.

<sup>18</sup> *Id.*

Finally, in 2013, the FSOC concluded that AIG's "complicated organizational structure significantly increases the obstacles to a rapid and orderly resolution."<sup>19</sup> The same fact holds true today. As one FSOC member who voted to de-designate AIG admitted, "AIG remains a complex international insurance company with an embedded financial institutions component."<sup>20</sup> The company continues to operate in all 50 states and more than 80 countries, and the FSOC's recent decision itself even acknowledged that "the lack of a global framework for resolution may represent an obstacle to AIG's rapid and orderly resolution."<sup>21</sup>

FSOC member S. Roy Woodall, Jr., who voted last month to reduce the FSOC's oversight of AIG, issued an accompanying statement confessing that "I do believe [AIG] should continue to be monitored from a macro-prudential perspective."<sup>22</sup> The FSOC's oversight through the SIFI designation provides one of the most effective forms of macro-prudential regulation of nonbank financial companies in the United States, yet the FSOC, Mr. Woodall and his colleagues just voted to end its enhanced supervision of AIG.

AIG presents many of the same risks to U.S. financial stability today as the company did in 2013. The FSOC claimed that de-designation was appropriate in light of the "reduced...amounts of its total debt" and the fact that AIG is now "smaller in scope and size."<sup>23</sup> But to the extent that the company and its debt are smaller, it does not appear to have resulted in significantly reduced systemic risks. And the FSOC decision ignores the fact that earlier this year, the new CEO stated that he intended to reverse the company's contraction, clarifying that to "be clear, I am here to grow A.I.G....I didn't come here to break the company up. I came here to grow it."<sup>24</sup>

### **The FSOC Flouted Key Procedure Rules During the AIG Decision**

I am also concerned that the FSOC appears to have flouted basic procedural rules during the consideration of its decision to de-designate AIG.

First, the FSOC did not follow rules requiring public notice of all meetings at least one week in advance.<sup>25</sup> The public announcement of the "unusual last-minute" September 29, 2017

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<sup>19</sup> *Supra* note 6 at 10.

<sup>20</sup> *Supra* note 1 at 12.

<sup>21</sup> *Supra* note 15 at 62.

<sup>22</sup> *Supra* note 1 at 15.

<sup>23</sup> *Supra* note 15 at 5; Gregg Gelzins, "AIG is no longer too big to fail and taxpayers deserve to know why," *The Hill* (Oct. 10, 2017) (available at <http://thehill.com/opinion/finance/354610-aig-is-no-longer-too-big-to-fail-and-taxpayers-deserve-to-know-why>).

<sup>24</sup> Chad Bray, "'I Am Here to Grow A.I.G.,' Its New C.E.O., Brian Duperreault, Pledges," *New York Times* (May 15, 2017) (available at [https://www.nytimes.com/2017/05/15/business/dealbook/aig-brian-duperreault-ceo.html?\\_r=0](https://www.nytimes.com/2017/05/15/business/dealbook/aig-brian-duperreault-ceo.html?_r=0)).

<sup>25</sup> "Transparency Policy for the Financial Stability Oversight Council," *Department of the Treasury* (available at <https://www.treasury.gov/initiatives/fsoc/Documents/The%20Council%27s%20Transparency%20Policy.pdf>); See Jesse Hamilton, "U.S. Is Said to Plan Freeing AIG From Systemic-Risk Label," *Bloomberg* (Sept. 28, 2017)



meeting was not made until 4:00 p.m. on September 28<sup>th</sup>, less than 24 hours before the meeting was opened.<sup>26</sup>

Second, the FSOC failed to follow the voting procedures outlined in the Dodd-Frank Act, which only give the FSOC authority to designate or de-designate an institution if “two-thirds of the voting members of the FSOC then serving” vote in favor of doing so.<sup>27</sup> The FSOC consists of 10 voting members, in addition to five non-voting members. This is important because while Chairman Clayton recused himself from the vote, he was still a voting member of the FSOC. The law does not merely require a two-thirds vote, but requires at least seven votes if there are ten voting members of the FSOC in office, as there were on the day that AIG was de-designated. While Chairman Clayton recused himself from this decision, a plain reading of the law indicates that he was still a “voting member” of FSOC who was still “serving.” Because only six of ten voting members voting to de-designate AIG, the vote should have failed and AIG should have remained a SIFI.

Secretary Mnuchin, however, excluded Chairman Clayton from the count of “voting members ... serving,” giving the FSOC six out of nine votes, and put this interpretation to the FSOC for a simple majority vote. The FSOC issued only a one-sentence explanation for this unusual decision, providing no details other than that “[t]he council determined that a member who is recused from participating in a matter is not included in the vote tally.” Such an arbitrary decision with no legal basis “puts the legality of the de-designation vote into question.”<sup>28</sup>

Finally, the FSOC failed to conduct an independent evaluation of “the nature, scope, size, scale...or mix of activities of” AIG as required by Section 113 of the Dodd-Frank law. The FSOC may designate an institution as a SIFI if it meets one of two standards: (1) if “material financial distress” at the company “could pose a threat to the financial stability” of the U.S., and (2) if the “nature, scope, size, scale, concentration, interconnectedness, or mix of activities” of the institution “could pose a threat to the financial stability” of the U.S.<sup>29</sup> In 2013, the FSOC found that AIG met the first test, but “did not evaluate AIG on the second standard, independent of the first.”<sup>30</sup> In reevaluating that designation last month, the FSOC concluded that AIG no longer met the requirements for the first standard, but proceeded to de-designate the company “without making the legal assessment required under Section 113’s second standard.”<sup>31</sup> As Mel Watt, Director of the Federal Housing Finance Agency and member of the FSOC stated, such an

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(available at <https://www.bloomberg.com/news/articles/2017-09-29/aig-s-label-as-systemic-risk-may-be-reconsidered-by-regulators>).

<sup>26</sup> See “Freeing AIG,” *supra* note 25; see also “AIG is no longer too big to fail,” *supra* note 23.

<sup>27</sup> See “AIG is no longer too big to fail,” *supra* note 23.

<sup>28</sup> *Id.*

<sup>29</sup> “The Dodd-Frank Wall Street Reform and Consumer Protection Act,” 12 U.S.C. § 5323 (2010).

<sup>30</sup> *Supra* note 1 at 9.

<sup>31</sup> *Id.* at 11.

independent review is necessary “before a decision can be appropriately made to rescind the designation.”<sup>32</sup>

These procedural mishaps are profoundly troubling, particularly given the additional substantive concerns described above.

### **The Role of Carl Icahn and Other Questions about Industry Influence**

I also remain concerned about whether the FSOC may have been inappropriately influenced by and in conversations with industry officials prior to its decision to de-designate AIG. On July 27, 2017, I wrote a letter to Secretary Mnuchin requesting information on the contacts between Carl Icahn and members of the FSOC.<sup>33</sup> Mr. Icahn, who served earlier this year as “special adviser to the President on issues relating to regulatory reform,” owns a stake as “one of the largest investors.” While serving as a Presidential adviser, he had intervened in Administration policy and personnel decisions that affected his business interests.<sup>34</sup>

Reports indicate that, despite a long-held desire for AIG to break itself up in order to “avert the increased capital requirements and regulations associated with non-bank SIFI status,” Mr. Icahn suddenly began “easing off his demands for a breakup” of AIG earlier this year.<sup>35</sup> We know that Mr. Icahn had at least one meeting with an FSOC member, SEC Chairman Clayton. Following Chairman Clayton’s nomination, Mr. Icahn met privately with him.<sup>36</sup> According to Mr. Clayton, the meeting was about “the importance of activist investors in driving performance at companies.”<sup>37</sup>

In my letter, I asked a series of basic questions about whether Mr. Icahn had had any contact with or influence on FSOC member who voted on the AIG SIFI designation. Secretary Mnuchin did not respond to our letter until last week, well after the vote to de-designate AIG, and the response only (1) provided broad background information on FSOC conflict of interest requirements, and (2) confirmed that Mr. Clayton had recused himself from the AIG designation vote. The response ignored our questions about contacts that Mr. Icahn or his associates may

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<sup>32</sup> *Id.* at 9.

<sup>33</sup> Letter from Senator Warren to Secretary Mnuchin, *Senator Elizabeth Warren* (Jul. 27, 2017) (available at [https://www.warren.senate.gov/files/documents/2017\\_07\\_27\\_Mnuchin\\_Icahn\\_Letter\\_Final.pdf](https://www.warren.senate.gov/files/documents/2017_07_27_Mnuchin_Icahn_Letter_Final.pdf)).

<sup>34</sup> David Benoit, “Trump Names Carl Icahn as Adviser on Regulatory Overhaul,” *Wall Street Journal* (Dec. 21, 2016) (available at <https://www.wsj.com/articles/trump-to-name-icahn-as-adviser-on-regulatory-overhaul-1482354552>); Sonali Basak, “Icahn Said to Ease off Demand for AIG Breakup Under New CEO,” *Bloomberg* (Jun. 29, 2017) (available at <https://www.bloomberg.com/news/articles/2017-06-29/icahn-said-to-ease-off-demand-for-aig-breakup-after-ceo-switch>).

<sup>35</sup> “Carl Icahn Issues Open Letter to Peter Hancock, Chief Executive Officer of AIG,” *Carl Icahn* (Oct. 28, 2015) (available at <http://carlicahn.com/aig-ceo-letter/>); see “Icahn Said to Ease off Demand,” *supra* note 34.

<sup>36</sup> *Supra* note 33.

<sup>37</sup> Renae Merle, “Democrats skeptical about SEC nominee’s ties to Wall Street,” *Washington Post* (Mar. 23, 2017) (available at <https://www.washingtonpost.com/news/wonk/wp/2017/03/23/sec-nominee-to-face-tough-questions-on-wall-street-connections/>).

have had with FSOC members - meaning the existence of or precise extent and nature of any contacts is still unclear.

The timing of the FSOC announcement also indicates that insurance industry representatives and others individuals learned of the decision to de-designate AIG before it was announced publicly. Property Casualty Insurer's Association of America (PCI), an insurance industry trade association for nearly 1,000 companies, issued a release praising the FSOC for de-designating AIG minutes after a FSOC readout that made no mention of the decision.<sup>38</sup> It is unclear why or how insurance industry representatives knew of this decision at the time, which was not made public until approximately 30 minutes later, when a second FSOC readout with the announcement was released to the public. Public reports the day prior to the de-designation also indicated that "two people familiar with the discussion" were aware of and leaking information about the de-designation decision well in advance of the actual vote.<sup>39</sup>

The unusual timing by which individuals were aware of the decision before the vote, and by which the insurance industry announced the decision before it was publicly available raises concerns over the impartiality of the FSOC, the process by which the decision was made public, and about whether individuals may have had access to market-moving information before that information went public.

### **Conclusion and Questions**

The FSOC ignored strong evidence that AIG continues to pose a risk to U.S. financial stability, and failed to follow basic and important procedural requirements in making its decision. And information about the decision appears to have been leaked to the insurance industry and others prior to the formal vote and the public notice.

Given these concerns, I ask that you answer the following questions by October X, 2017, to provide greater clarity on the FSOC's decision and the potential ramifications to the U.S. financial system and to American taxpayers.

1. Has Mr. Icahn, or any individual working for or on behalf of Mr. Icahn, had any contact with you or any other FSOC official, or any staff member for any FSOC official, regarding AIG? If so, please list all contacts of which you are aware and describe the nature of any discussion with Mr. Icahn or his representatives.
2. What protections does FSOC have in place to ensure that individuals with an interest in pending FSOC decisions do not inappropriately influence or attempt to influence FSOC officials who will be deciding these matters? Were these policies and procedures followed by all FSOC members in the AIG case?


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<sup>38</sup> "AIG is no longer too big to fail," *supra* note 23.

<sup>39</sup> 'Freeing AIG,' *supra* note 25.

3. Did you, any other FSOC official, or the staff of any FSOC official contact the Property Casualty Insurer's Association of America (PCI), the U.S. Chamber of Commerce, or any other member of a trade organization or lobbying group representing the insurance industry, with information about the decision to de-designate AIG as a SIFI before FSOC's initial public announcement in its second readout at around 6:00 p.m. on September 29<sup>th</sup>? How did PCI learn about this decision in advance of the 6:00 PM notice?
4. Does FSOC have protections in place to prevent leaks of key decisions in advance of official public notice? If so, why and how were "two people familiar with the discussion" aware of the de-designation in advance of the vote, and why and how did these individuals leak this information to the press? Are you aware of whether the FSOC has investigated this matter, and if the Council has conducted an investigation, what did the investigation reveal?
5. Why did FSOC bypass its notice and transparency policies that require one week of advanced public notice of any hearing? Does the Council intend to follow these policies in all cases in the future?
6. Is there a legal memo advising Secretary Mnuchin on the interpretation of Dodd-Frank that allowed him pass the de-designation vote with only six of ten members in favor? If so, please provide my office with a copy of that memo and any other documents relating to that decision.
7. Did Chairman Clayton recuse himself only from the vote to de-designate AIG? Did he participate in any way in the discussion of this matter? Did he participate in the discussion of or vote to accept Secretary Mnuchin's interpretation of the voting rules despite recusing himself from the vote on the de-designation of AIG?
8. Why did FSOC decide that it was not necessary to conduct an independent evaluation of whether AIG met the second standard for SIFI designation? Please provide my office with a copy of all documents that relate to the decision not to conduct such an evaluation.

Sincerely,



Elizabeth Warren  
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