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# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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April 7, 2014

The Honorable Jacob J. Lew  
Secretary  
Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

Dear Mr. Secretary:

The Committee on Oversight and Government Reform is continuing its oversight of the Financial Stability Oversight Council (FSOC). In a letter to the five independent member-agencies of FSOC on July 10, 2013, the Committee requested documents and communications related to the agencies' participation in FSOC.<sup>1</sup> This investigation was prompted by concern that the Council may be operating in a manner that vitiates the independence and core competence of its constituent regulatory bodies.<sup>2</sup> Documents produced to the Committee in the course of our oversight bore out these concerns. Specifically, it appears that FSOC is deploying the Office of Financial Research (OFR) – a division of the Treasury Department and a non-voting member of the Council – in an effort to override the professional judgment of the career, non-partisan staff at the Securities and Exchange Commission. The Committee is concerned that such efforts are intended to justify a predetermined outcome: additional regulation of the financial sector.

### **Background**

On April 11, 2012, the FSOC announced it had formally tasked OFR with analyzing whether certain asset management firms should be designated as systemically important financial institutions.<sup>3</sup> The Council explicitly intended this analysis to serve as the basis for future policy decisions, including the possibility of subjecting asset management companies to the supervision and prudential standards of the Board of the Governors of the Federal Reserve System.<sup>4</sup> As

<sup>1</sup> See, e.g., Letter from Darrell Issa, Chairman, H. Comm. on Oversight and Gov't Reform, and Jim Jordan, Chairman, Subcomm. on Economic Growth, Job Creation and Regulatory Affairs of the H. Comm. on Oversight and Gov't Reform, to Mary Jo White, Chairman, U.S. Securities & Exchange Comm'n (July 10, 2013) (identical letters were sent to the heads of the Commodity Futures Trading Comm'n, the Bd. of Governors of the Fed. Reserve Sys., the Fed. Deposit Ins. Corp., and the Nat'l Credit Union Admin.).

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

<sup>3</sup> Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 77 Fed. Reg. 21,637, 21,644.

<sup>4</sup> *Id.*

FSOC intended to use the study to inform future regulation, it was critical that the study's data and findings were subjected to an open and full peer review process.

The Department of the Treasury published the OFR study, titled *Asset Management and Financial Stability*, in September 2013.<sup>5</sup> Shortly thereafter, the SEC – the primary regulator of asset management companies – released it on the agency's website and solicited public comment.<sup>6</sup> Documents reviewed by the Committee indicate that the SEC had first reviewed the draft study in February 2013. Over the next seven months, the non-partisan, professional staff at the SEC reviewed numerous drafts of the study and provided OFR with extensive and detailed criticism. The SEC experts were especially concerned that OFR had overstated the potential risks posed by asset management firms, and had relied on inadequate and incomplete data.<sup>7</sup>

### **Drafting Process of the Asset Management Study**

Documents reviewed by the Committee confirm that OFR failed to meaningfully consider the expert analysis provided by the career, professional staff at the SEC. In a memorandum from February 27, 2013, the SEC staff identified a series of major pitfalls in the study.<sup>8</sup> According to expert analysis by SEC staff, significant concerns with the study included the following:

Utility for SIFI Process: The study should have a more specific description on how the OFR believes the analysis in the study can inform the decision-making process for identifying individual asset management firms as systemically significant. ...

Viewed from the Banking Lens: The study identifies significant ways in which asset management differs from banking (for example, asset management is primarily an agency business). Nevertheless, some industry participants and observers are likely to object to the study on the grounds that it examines the industry through a banking industry lens. ...

Greater Focus on Data Analysis: ...[W]e believe that there are other data sources and data analysis approaches that could be tapped to flesh out some of the analysis in the study. ...

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<sup>5</sup> OFFICE OF FINANCIAL RESEARCH, U.S. DEP'T OF THE TREASURY, ASSET MANAGEMENT AND FINANCIAL STABILITY (2013), *available at* [http://www.treasury.gov/initiatives/ofr/research/Documents/OFR\\_AMFS\\_FINAL.pdf](http://www.treasury.gov/initiatives/ofr/research/Documents/OFR_AMFS_FINAL.pdf). [hereinafter OFR Study].

<sup>6</sup> Press Release, U.S. Securities and Exchange Comm'n, Public Feedback on OFR Study on Asset Management Issues (Sept. 30, 2013), *available at* <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539852635#.UzCqSqKa9TZ>.

<sup>7</sup> Andrew Ackerman and Ryan Tracy, *SEC Fights Turf War Over Asset Managers*, WALL. ST. J., Jan. 28, 2014.

<sup>8</sup> See SEC-AssetMgmt000435-43 [hereinafter SEC Memorandum of February 27<sup>th</sup>].

Greater Discussion of Non-Financial Crisis Related Examples: In the discussion of risks associated with asset manager activities, the examples focus heavily on the 2008 financial crisis. Unfortunately, this approach may encourage those who wish to do so to use the study as another ideological football in the ongoing debate over the causes of the financial crisis. For this reason, and because the study would be stronger if it did not lean so much on a single event, consider including examples of risk events and lessons learned from other periods of financial stress....<sup>9</sup>

Even more concerning, it appears that the SEC experts identified instances where the OFR study lacked even a basic knowledge of the asset management industry and necessary regulatory considerations. Jennifer McHugh, a Senior Advisor in the Division of Investment Management and formerly a Senior Advisor to Chairman Mary Shapiro, felt compelled to offer OFR rudimentary “technical assistance on the descriptions of the regulatory regime.”<sup>10</sup> As noted in the memorandum:

Regulatory Framework Discussion: The description of registered investment companies’ structural and regulatory framework contains multiple and fundamental inaccuracies. If it would be helpful to you, we can re-write that section. But it will take some time.<sup>11</sup>

Sara Cortes, a Senior Special Counsel in the SEC’s Division of Investment Management and formerly a Counsel to Chairman Elisse Walter, supplemented these criticisms in an email to OFR leadership on March 5, 2013.<sup>12</sup> Ms. Cortes highlighted concerns about the study’s data quality, modeling, and results. **Amazingly, while OFR paid lip service to the SEC staff’s suggestions, OFR failed to meaningfully address the important issues flagged in the SEC memorandum.** Numerous comment letters submitted to the SEC months after the release of the OFR study raised similar concerns as experts at the SEC had in their memo.<sup>13</sup>

In the weeks prior to the release of the study, the OFR continued to ignore key feedback from SEC experts. For example, the professional staff in the SEC’s Division of Investment Management provided comments to the draft OFR study in August 2013. Noting that the OFR study had failed to accurately describe even the basic organizational structure of an asset management firm, the SEC staff in the Division of Investment Management explained that the

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<sup>9</sup> SEC Memorandum of February 27<sup>th</sup>, *supra* note 8.

<sup>10</sup> SEC-AssetMgmt000434.

<sup>11</sup> SEC Memorandum of February 27<sup>th</sup>, *supra* note 8.

<sup>12</sup> SEC-AssetMgmt000433.

<sup>13</sup> *See, e.g.*, David Hirschmann Letter (noting that OFR did not identify why asset management firms might be systemically important) <http://www.sec.gov/comments/am-1/am1-3.pdf>; Thomas Vartanian Letter (noting that OFR study suffered a range of defects in viewing the asset management industry through the banking industry lens) <http://www.sec.gov/comments/am-1/am1-4.pdf>; Vanguard Letter (noting that OFR did not recognize the limits of the data sources used for the study) <http://www.sec.gov/comments/am-1/am1-30.pdf>; Committee on Capital Markets Regulation Letter (noting that OFR overemphasized possible connections between asset management and financial stability risks) <http://www.sec.gov/comments/am-1/am1-9.pdf>.

OFR study made claims of interconnections between fund and firm-level activities that were simply inaccurate:

Note that [asset management] funds generally have almost no employees of their own . . . . So [it is] odd to say ‘interconnected.’ Generally [a] fund is thought of as just a pool of assets and all services and employees [are] pure[ly] external.<sup>14</sup>

Additionally, the SEC staff pointed out citations that did not support the claims being made in the OFR study, as well as instances where the study made claims that needed more support. For example, despite the SEC staff’s suggestions to provide a citation,<sup>15</sup> the final draft of the study claims that cash collateral affected by the financial crisis was “typically invested” in money markets,<sup>16</sup> without evidence to support this statement.

Finally, the OFR seemed to ignore recommendations by the SEC to provide more discussion and precision in the claims being made in the study. For example, the OFR study vaguely referenced asset managers engaging in “excessive borrowing or liquidity transformation that could pose a threat to financial stability,”<sup>17</sup> to which the SEC professional staff replied:

[W]e are not sure what you [are] referring to. If you have something specific in mind, we suggest you identify specifically.<sup>18</sup>

Unfortunately, vague references made in the OFR study were a common concern of the SEC staff – which had expert knowledge in the asset management field. Specifically, the SEC experts identified a lack of precision and areas of confusion in the OFR’s discussion of the repo markets,<sup>19</sup> closed-end funds,<sup>20</sup> credit derivatives,<sup>21</sup> risk management and financial stability risk.<sup>22</sup> In sum, there were many parts of the OFR study that experts at the SEC flagged as needing a fuller and more precise discussion that simply did not occur.

### **FSOC and the Interagency Collaborative Process**

In a panel discussion at the Brookings Institution on December 16, 2013, OFR Director Richard Berner insisted that OFR staff had worked closely with their colleagues at the Commission, and the “[SEC staff’s] fingerprints are on the report.”<sup>23</sup> It appears Mr. Berner’s comment was unintentionally accurate: the SEC staff left little more than fingerprints, while

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<sup>14</sup> SEC-AssetMgmt001837.

<sup>15</sup> SEC-AssetMgmt001846.

<sup>16</sup> The OFR Study, at 16.

<sup>17</sup> *Id.* at 26.

<sup>18</sup> SEC-AssetMgmt001857.

<sup>19</sup> SEC-AssetMgmt001856-57.

<sup>20</sup> SEC-AssetMgmt001846-47.

<sup>21</sup> *Id.*

<sup>22</sup> SEC-AssetMgmt001849.

<sup>23</sup> Richard Berner, Director, Office of Fin. Research, Dep’t of the Treasury, Remarks in a Panel Discussion at the Brookings Institution on Systemic Risk and the Asset Management Industry 35 (Dec. 16, 2013).

their attempts to substantively improve the final product were summarily rejected. Documents produced to the Committee show that OFR ultimately ignored or dismissed core criticisms from the career, non-partisan regulatory experts at the SEC, strongly suggesting that, as observers have alleged,<sup>24</sup> OFR produced the report as simply a pretext for further action to designate asset managers as systemically important, and not as an unbiased and objective review of the industry. This information also suggests that the OFR study should not be relied upon for any further action by FSOC or its members. We are copying FSOC's members so they are aware of the serious flaws in the OFR study as identified by the SEC's professional experts.

In addition, to enable the Committee to better understand the drafting process behind the asset management study, and properly evaluate the quality of FSOC's interagency collaboration, please provide the following information:

1. All documents and communications between employees of the Department of the Treasury referring or relating to the possibility of subjecting asset management companies to enhanced supervision or prudential standards from August 2010 to the present.
2. All documents and communications between any employee of the Department of the Treasury and any employee of the Board of Governors of the Federal Reserve System referring or relating to the possibility of subjecting asset management companies to enhanced supervision or prudential standards from August 2010 to the present.
3. All documents and communications between any employee of the Department of the Treasury and any employee of the Executive Office of the President referring or relating to the possibility of subjecting asset management companies to enhanced supervision or prudential standards from August 2010 to the present.
4. All documents and communications between any employee of the Department of the Treasury and any outside stakeholder or commenter, referring or relating to the possibility of subjecting asset management companies to enhanced supervision or prudential standards from August 2010 to the present.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

Please provide all responsive material as soon as possible, but no later than 5:00 p.m. on April 21, 2014. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in

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<sup>24</sup> See, e.g., Letter from Senator Mike Crapo, Ranking Member, S. Comm. on Banking, Housing & Urban Affairs, to the Honorable Jacob Lew, Chairman, Financial Stability Oversight Council (Jan. 27, 2014) (noting the concern that the OFR study is "a move towards designation of asset management firms as SIFI without an accurate understanding of the role they play in [the] financial system.").

The Honorable Jacob J. Lew  
April 7, 2014  
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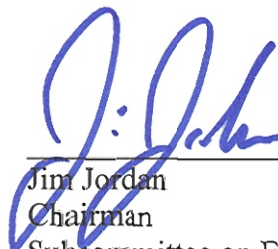
Room 2471 of the Rayburn House Office Building. The Committee prefers to receive all documents in electronic format.

If you have any questions about this request, please contact Brian Daner or Matt Mulder of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa  
Chairman



Jim Jordan  
Chairman  
Subcommittee on Economic Growth,  
Job Creation, and Regulatory Affairs

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Matthew A. Cartwright, Ranking Minority Member  
Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs

The Honorable Mary Jo White, Chairman  
U.S. Securities and Exchange Commission

The Honorable Luis A. Aguilar, Commissioner  
U.S. Securities and Exchange Commission

The Honorable Daniel M. Gallagher, Commissioner  
U.S. Securities and Exchange Commission

The Honorable Kara M. Stein, Commissioner  
U.S. Securities and Exchange Commission

The Honorable Michael S. Piwowar, Commissioner  
U.S. Securities and Exchange Commission

The Honorable Mark P. Wetjen, Acting Chairman  
U.S. Commodity Futures Trading Commission

The Honorable Scott D. O'Malia, Commissioner  
U.S. Commodity Futures Trading Commission

The Honorable Janet L. Yellen, Chair  
Board of Governors of the Federal Reserve System

The Honorable Daniel K. Tarullo, Member  
Board of Governors of the Federal Reserve System

The Honorable Jeremy C. Stein, Member  
Board of Governors of the Federal Reserve System

The Honorable Jerome H. Powell, Member  
Board of Governors of the Federal Reserve System

The Honorable Thomas J. Curry  
Comptroller of the Currency

The Honorable Richard Cordray, Director  
Consumer Financial Protection Bureau

The Honorable Melvin L. Watt, Director  
Federal Housing Finance Agency

The Honorable Martin J. Gruenberg, Chairman  
Federal Deposit Insurance Corporation

The Honorable Thomas M. Hoenig, Vice Chairman  
Federal Deposit Insurance Corporation

The Honorable Jeremiah O. Norton, Director  
Federal Deposit Insurance Corporation

The Honorable Debbie Matz, Chairman  
National Credit Union Administration

The Honorable Michael E. Fryzel, Board Member  
National Credit Union Administration

The Honorable Rick Metsger, Board Member  
National Credit Union Administration

The Honorable S. Roy Woodall, Jr., Independent Member with Insurance Expertise  
Financial Stability Oversight Council

The Honorable Richard Berner, Director  
Office of Financial Research

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
2157 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6143

Majority (202) 225-5074  
Minority (202) 225-5051

**Responding to Committee Document Requests**

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,  
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,  
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,



CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

#### **Schedule Definitions**

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.