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The Rescue of American International Group Module F: The AIG Credit Facility Trust¹

Alec Buchholtz² and Aidan Lawson³

Yale Program on Financial Stability Case Study
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Abstract

In September 2008, American International Group, Inc. (AIG) experienced a liquidity crisis. To avoid the insurance giant's bankruptcy, the Federal Reserve Bank of New York (FRBNY) extended an \$85 billion emergency secured credit facility to AIG. In connection with the credit facility, AIG issued 100,000 shares of preferred stock, with voting rights equal to and convertible into 79.9% of the outstanding shares of AIG common stock, to an independent trust (the Trust) set up by the FRBNY. Three trustees held the stock for the sole benefit of the US Treasury, exercised the rights, powers, authorities, discretions, and duties of the preferred stock, and acted as the beneficial owner of AIG. On January 14, 2011, the Trust converted the preferred stock into AIG common stock, and, after transferring the common stock to the Treasury's General Fund, the Trust effectively dissolved. Over the next two years, Treasury sold the common stock in a series of six public offerings returning a profit to the government. The government's equity investment and the Trust were controversial, raising debate about nationalization, transparency, and independence of the Trustees.

Keywords: AIG, credit facility, equity, liquidity, preferred stock, trust, voting rights

¹ This case study is one of seven 2021 Yale Program on Financial Stability (YPFS) case modules considering the various elements of the government's rescue of American International Group:

- "The Rescue of American International Group, Module A: The Revolving Credit Facility" by Alec Buchholtz, and Aidan Lawson. 2021.
- "The Rescue of American International Group, Module B: The Securities Borrowing Facility" by Lily S. Engbith, Alec Buchholtz, and Devyn Jeffereis. 2021.
- "The Rescue of American International Group, Module C: AIG Investment Program" by Alec Buchholtz and Aidan Lawson. 2021.
- "The Rescue of American International Group, Module D: Maiden Lane II" by Lily S. Engbith and Devyn Jeffereis. 2021.
- "The Rescue of American International Group, Module E: Maiden Lane III" by Lily S. Engbith and Devyn Jeffereis. 2021.
- "The Rescue of American International Group, Module F: The AIG Credit Facility Trust" by Alec Buchholtz and Aidan Lawson. 2021.
- "The Rescue of American International Group, Module Z: Overview" by Rosalind Z Wiggins, Aidan Lawson, Steven Kelly, Lily S. Engbith, and Andrew Metrick. 2021.

Cases are available from the Journal of Financial Crises at <https://elischolar.library.yale.edu/journal-of-financial-crises/>.

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American International Group, Inc.:

The AIG Credit Facility Trust

At a Glance

On September 22, 2008, American International Group, Inc. (AIG) signed a Credit Agreement with the Federal Reserve Bank of New York (FRBNY) to access an \$85 billion emergency credit line, the Revolving Credit Facility (RCF), secured by AIG's assets, including equity interests in its insurance and other subsidiaries. AIG was also to sell to the government 100,000 shares of AIG Series C perpetual, convertible, participating preferred stock, which had dividend and voting rights equal to, and was convertible into, 79.9% of AIG's outstanding common shares. The preferred shares were to be held and managed for "the sole benefit of the Treasury" by an independent trust, overseen by three trustees (the Trustees) appointed by the FRBNY in consultation with the US Treasury Department. The Trustees were authorized to exercise all "rights, powers, authorities, discretions, and duties" of the preferred stock.

On March 4, 2009, AIG sold the shares (the Trust Stock) to the Trust for \$500,000. The Trust Stock could be converted only after termination of the RCF, which could terminate only after

Summary of Key Terms	
Purpose:	To "establish an independent trust for the sole benefit of the Treasury," to act as the beneficial owner of AIG, and to create a divestiture plan for the sale or disposition of the preferred stock
Announcement Date	September 22, 2008
Establishment Date	January 16, 2009
Dissolution Date	January 14, 2011
Beneficiary	US Treasury General Fund
No. of Trustees	3
Trustees Compensation	\$100,000 + expenses
Funder of Trust	AIG
No. of Shares Managed	100,000
Class of Shares Managed	Series C perpetual, convertible, participating preferred stock
Share Issuance Date	March 4, 2009
Share Conversion Date	January 14, 2011
Shares Issued on Conversion	562,868,096 common stock shares
Consideration	\$500,000, plus FRBNY lending commitment
Liquidation Preference	\$500,000 in aggregate

repayment of all amounts due under the Credit Agreement.

Upon the execution of AIG's Recapitalization Plan on January 14, 2011, AIG repaid the remaining balance under the RCF to the FRBNY, terminating the Credit Agreement. This permitted the Trust to convert the Trust Stock into 563 million shares of common stock and transfer such stock to the Treasury Department, subsequently dissolving the Trust. The common stock received from the conversion of the Trust Stock, plus other AIG common shares that it held, were gradually sold off by the Treasury Department through late 2012.

Summary Evaluation

The FRBNY designed the Trust to be independent, because FRBNY officials concluded that the FRBNY did not have the legal authority to own and control a large private company. Still, some members of Congress and others criticized the Trust's design as opaque and

questioned its role. Over the Trust's lifespan, the Trustees nominated and elected 11 of AIG's 13-member board of directors. The Trustees met regularly during 2010 to discuss a divestiture plan for the Trust Stock and worked alongside a Government Repayment Committee composed of AIG outside directors.

American International Group: United States Context	
GDP (SAAR, Nominal GDP in LCU converted to USD)	\$14,681.5 billion in 2007 \$14,559.5 billion in 2008
GDP per capita (SAAR, Nominal GDP in LCU converted to USD)	\$47,976 in 2007 \$48,383 in 2008
Sovereign credit rating (Five- year senior debt)	As of Q4, 2007: Fitch: AAA Moody's: Aaa S&P: AAA As of Q4, 2008: Fitch: AAA Moody's: Aaa S&P: AAA
Size of banking system	\$9,231.7 billion in total assets in 2007 \$9,938.3 billion in total assets in 2008
Size of banking system as a percentage of GDP	62.9% in 2007 68.3% in 2008
Size of banking system as a percentage of financial system	Banking system assets equal to 29.0% of financial system in 2007 Banking system assets equal to 30.5% of financial system in 2008
Five-bank concentration of banking system	43.9% of total banking assets in 2007 44.9% of total banking assets in 2008
Foreign involvement in banking system	22% of total banking assets in 2007 18% of total banking assets in 2008
Government ownership of banking system	0% of banks owned by the state in 2008
Existence of deposit insurance	100% insurance on deposits up to \$100,000 for 2007 100% insurance on deposits up to \$250,000 for 2008
<i>Source: Bloomberg; World Bank Global Financial Development Database; World Bank, Bank Regulation and Supervision Survey; Federal Deposit Insurance Corporation</i>	

I. Overview

Background

In the midst of the financial crisis in 2008, American International Group (AIG), one of the largest insurance companies in the world, faced a liquidity crisis and multibillion-dollar losses on its mortgage-linked products and investments.⁴ The Federal Reserve Board voted to invoke Section 13(3) of the Federal Reserve Act to enable the Federal Reserve Bank of New York (FRBNY) to mitigate AIG's liquidity woes by announcing the Revolving Credit Facility (RCF) on September 16, 2008. The RCF was an \$85 billion, two-year loan commitment secured by AIG's assets, including interests in its domestic and foreign insurance subsidiaries. The Fed said that the government would take a 79.9% equity interest in AIG (Federal Reserve Board of Governors 2008; FRBNY 2008b, Sec. 2.04[a], 40).

The following week, the Fed and AIG signed the Credit Agreement establishing the RCF; this included further details about the structure and governance of the government's equity stake. First, the government was to receive 100,000 shares of convertible participating preferred stock (the Trust Stock), convertible into a number of common shares equal to 79.9% of the shares then outstanding or reserved for issuance⁵ (FRBNY 2008b, Sec. 5.11, Exhibit D). (See also Buchholtz and Lawson 2021a.) After deciding on preferred stock as the method of its equity stake, the government subsequently determined that it should create an independent trust (the Trust) to manage its investment in AIG (YPFS 2018; Wiggins et al. 2021). The Trust Stock carried voting and dividend rights proportionate to its convertible share of common stock (originally 79.9%),⁶ effectively giving the Trust control over the company (FRBNY 2008b, Sec. 5.11, Exhibit D).

The Trust was established “for the purpose of acquiring, holding, and disposing of the Trust Stock,” the issuance of which was “intended to provide compensation for the assumption of the risks arising from the Credit Agreement and to reduce those risks” (FRBNY 2009a, 1). According to the FRBNY's September 29, 2008 press release, the Trust Stock also “ha[d] the potential to provide a substantial financial return to the American people,” so long as the RCF

⁴ These were credit default swap contracts sold by its Financial Products division that were exposed to the U.S. housing market and investments purchased with proceeds from its Securities Lending practice. (Congressional Oversight Panel 2010, pp. 7, 24, fn 21.)

⁵ The series of the Trust Stock was not originally designated. However, after Treasury purchased a separate class of AIG preferred stock using Troubled Assets Relief Program (TARP) funds in November 2008, the preferred stock was then deemed Series C perpetual, convertible, participating preferred stock and ranked junior to the newly purchased Series D TARP preferred stock (FRBNY 2008a).

⁶ While the Trust Stock was originally designed to be convertible into 79.9% of AIG's common stock, in November 2008, the terms of the Trust Stock were amended to decrease the convertibility to approximately 77.9% of AIG's common stock (FRBNY 2008a, Sec. 6; AIG 2008a). This change was made to adjust for a November 2008 investment by Treasury whereby it purchased \$40 billion (4 million shares) of Series D preferred stock and also received a 10-year warrant to purchase 2% of AIG's outstanding common stock (AIG 2008a). The Trust Stock was adjusted to keep the government's potential ownership under 80%, the level at which it would have to consolidate AIG onto the government's balance sheet.

provided AIG with adequate support to sustain itself (FRBNY 2008c). (See Buchholtz and Lawson 2021a for more information on terms of the Credit Agreement.)

Program Description

Consistent with the Credit Agreement and pursuant to a Trust Agreement dated January 16, 2009, the FRBNY established the Trust to receive, hold, and manage the Trust Stock (FRBNY 2009a, Preamble). The Trust Agreement stated that the trust was “designated as the AIG Credit Facility Trust for the sole benefit of the Treasury, which, for the avoidance of doubt, means that any property distributable to the Treasury as a beneficiary hereunder shall be paid to the Treasury for deposit into the General Fund as miscellaneous receipts” (FRBNY 2009a, Sec. 1.01, 2). The Trust was revocable only by the Federal Reserve Board of Governors (FRBNY 2009a, Sec. 1.03, 2–3).

The Trustees were appointed by the FRBNY, in consultation with Treasury, on the basis of their having “integrity, impeccable reputations in the marketplace, and a unique combination of experience successfully leading major corporations and working in the public sector” (FRBNY 2010a). Trustees could resign on 60 days’ notice and the FRBNY, in consultation with the Treasury, could appoint successor Trustees (FRBNY 2009a, 11). A Trustee could also be removed by the other Trustees, in consultation with the FRBNY, if they unanimously determined that “replacement of such Trustee [was] in the best interests of the Trust” (FRBNY 2009a, 11).

The Trust Agreement contained a number of provisions designed to maintain its independence. These included provisions (i) giving the Trustees “absolute discretion and control over the Trust Stock including how to exercise the voting rights, (ii) limiting the Trustees ability to elect FRBNY affiliates to the AIG board, and (iii) stating that the Trustees were not relieved from exercising their independent judgement despite receiving information from the FRNY. (Starr v. FRBNY 2012, 9-10).⁷

The process of vetting potential trustees began in October 2008, although the Trust was not formally established until January 2009 (HOGRC 2009, 52-53; FRBNY 2009a, 1). The initial three Trustees are identified in Figure 1.

⁷ The court also held that Delaware fiduciary duty law was preempted by federal law as upholding it would have interfered with FRBNY performing its duties. (Engelmayer 2012). The decision was upheld by the Court of Appeals for the Second Circuit (See Walker 2014).

Figure 1: Original Trustees of the AIG Credit Facility Trust

Trustee Name	Previous Positions
Jill M. Considine	Chairman of the Depository Trust & Clearing Corporation
Chester B. Feldberg	Chairman of Barclays Americas
Douglas L. Foshee	Chair of the Board of Directors of the Federal Reserve Bank of Dallas, Houston Branch, and Central Houston, Inc.

Sources: FRBNY 2009a; FRBNY 2010b.

Each trustee was paid an annual compensation of \$100,000, with costs and expenses reimbursed (FRBNY 2009a, Sec. 3.04(a), 13). To fund the Trust's operations, AIG deposited \$100,000 into a deposit account and was obligated to continue to fund the costs of the Trust (FRBNY 2009a, Sec. 3.04(b), 3.03(e), 13-14).

Pursuant to the terms of the Trust Agreement, the purpose of the Trust was to vote the held stock, develop and execute a plan to sell or dispose of the Trust's stock, and work with AIG senior management and its board of directors to ensure that corporate governance procedures were met satisfactorily and in the best interest of Treasury and the taxpayers during the time of the government's assistance to AIG (FRBNY 2009a, 3-10). To this end, the Trustees met regularly with Government Repayment Committee (GRC), a committee formed in April 2010 by AIG's board of directors, composed only of outside directors and charged with monitoring and repayment of the government assistance (AIG 2010c).

The Trust Agreement required the Trustees to "develop a written plan (the Divestiture Plan) for the sale or other disposition of the Trust Stock" (FRBNY 2009a, 8). To create and execute the Divestiture Plan, the Trust Agreement directed the Trustees to consider (FRBNY 2009a, Sec. 2.05, 8):

1. The effect of any sale or disposition of [Series C preferred stock] on any repayments owed to the FRBNY or Treasury;
2. The impact of any conversion of AIG preferred stock to AIG common stock on anti-dilution features that affect the Trust (specific to equity units purchased by Bank of New York in May 2008);
3. The financial condition of AIG;
4. The impact of any sale or disposition of [Series C preferred stock] on general financial market conditions;
5. Obtaining full and adequate consideration for the [Series C preferred stock];
6. The best interests of Treasury.

To help administer the Trust, the Trustees were authorized to hire (and lease office space for) professional advisers and agents as well as administrative, secretarial, and clerical staff (FRBNY 2009a, 5).

AIG issued the Trust Stock to the Trust on March 4, 2009, as described in more detail in the “Outcomes” section of this case. The Trust Stock had a perpetual term length and was subject to anti-dilution provisions (FRBNY 2008b, Exhibit D). Because of an investment by Treasury in November 2008, which included Treasury’s receiving a warrant to purchase up to 2% of AIG’s outstanding common stock, the convertibility of the Trust Stock on issuance had been adjusted downward to equal 77.9% of AIG’s common stock (GAO 2009, 37 - 38). According to the Trust Agreement, the Trustees had the right to vote the Trust Stock and had the ability to “exercise all rights, titles, powers, and privileges of a stockholder of the company,” which included converting the Trust Stock to AIG common stock (FRBNY 2009a, 6).

Since AIG had 5 billion authorized shares of common stock at the time the Trust Stock was issued and 3 billion shares were already issued, the Trust would have been only able to acquire 2 billion, or 40%, of AIG common stock. (AIG 2009b, B-2). Thus, an increase of the amount of authorized but unissued shares of common stock was necessary for the Trust to receive the full 77.9% of common stock required by the Credit Agreement (FRBNY 2009a, 1). Further, the Trustees were directed in the Trust Agreement to vote for certain proposals that would have facilitated making sufficient shares available to support conversion⁸ (FRBNY 2009a, 6).

Outcomes

The Trust acquired the Trust Shares on March 4, 2009 (AIG 2009a). Upon obtaining the Trust Stock, the Trust received the ability to exercise the voting rights and powers attached to the shares, which included receiving any declared dividend payments and converting the preferred stock to common stock (AIG 2009a, Sec. 2[a]). The conversion could only occur after the RCF was repaid and the adequate amount of authorized AIG common stock became available, which was the case after the 2009 Annual Meeting (AIG 2009c).

Following the purchase, the Trust began to develop the Divestiture Plan for the Trust Stock, but as far as we have been able to determine, the plan was likely abandoned or not executed once the Treasury took over the stock.

⁸ These provisions were to:

- Increase the number of authorized shares of AIG common stock from 5 billion to 19 billion (decreasing the value from \$2.50 to \$0.000001 per share) and increase the number of authorized shares of AIG preferred stock from 6 million to 13 billion (decreasing the value from \$5.00 to \$0.00004 per share);
- Amend AIG’s Certificate of Incorporation to change the conversion ratio to equal the quotient from dividing the number of underlying shares before the amendment by the number of underlying shares after the amendment and make the liquidating preference of Series C preferred stock to be \$500,000 divided by the number of underlying shares (FRBNY 2009a, Section 2.04).

After the termination of the Credit Agreement, the Trust converted the Trust Stock to AIG common stock and transferred such shares to the Treasury General Fund (FRBNY 2011). Treasury gradually sold the stock publicly, aggregating it with the other AIG shares that it held (FRBNY 2011). After accounting for all AIG common stock sold, Treasury recorded net proceeds of roughly \$53 billion from the offerings, resulting in a \$4.1 billion gain (Treasury 2012). More specifically, the 563 million shares of AIG common stock resulting from the conversion of the Trust Stock accounted for gross cash proceeds of nearly \$17.6 billion (Treasury et al. 2010; Webel 2017, 4).

All three trustees were present at a May 13, 2009 House Oversight and Government Reform Committee (HOGRC) hearing, where they testified regarding the public rescue of AIG and the details of the Trust (HOGRC 2009). The HOGRC examined the Trust's relationship with AIG, the FRBNY, and Treasury, as well as the trustees' role in managing the Trust Stock and how they were exercising the powers of said stock.

At the AIG Annual Meeting of Shareholders held on June 25, 2009, the Trust voted on 10 of 11 proposals presented to shareholders,⁹ including a proposal authorizing a 20-to-1 reverse stock split of AIG common shares (AIG 2010a). This proposal reduced the number of outstanding AIG shares from approximately 3 billion to 150 million (Starr v. United States and AIG 2012, 8). Since there were 4.85 billion shares of AIG common stock authorized but unissued, the effect of the proposal was to make possible the conversion of the Trust Stock (Starr v. United States and AIG 2012, 8).

During 2009 and 2010, in consultation with the FRBNY, the Trust nominated and elected several new members to AIG's board of directors. Following AIG's 2010 Annual Meeting, 11 of AIG's then 13-member board were persons nominated by the Trust (Starr v. United States and AIG, 8). However, in the interest of avoiding conflicts of interests and maintaining the independence of the Trust the Trust agreement provided that no current or person who had been an employee of the FRBNY within the last year could be nominated as a director.

The Trust collaborated with the Government Repayment Committee (GRC), which met weekly, and participated in the negotiations between AIG and the government to help the two parties find an adequate exit strategy from the relationship between them (AIG 2010c). These discussions eventually resulted in the Recapitalization Plan entered into on September 30, 2010¹⁰ (AIG 2010c).

⁹ The proposal that the Trust did not vote on pursuant to a prearranged agreement not to vote due to a court challenge, would have made available enough authorized, but unissued common AIG stock to enable the government to convert the Trust Stock into 77.9% of AIG common stock (Trust Agreement, 1). Ultimately, the shares needed for conversion were achieved through a reverse stock split.

¹⁰ For discussion of the Recapitalization Plan, which provided for a restructuring of the government's assistance to AIG, including, *inter alia*, the repayment of the RCF and conversion of the Trust Stock to common stock, see Buchholtz and Lawson 2021a.

As part of the Recapitalization Plan, AIG on January 14, 2011, fully repaid the FRBNY the outstanding balance under the RCF, effectively terminating the Credit Agreement (Webel 2017, 15). On this same day, the Trust converted the Trust Stock into nearly 563 million shares of AIG common stock and transferred the newly issued common stock to the US Treasury General Fund, thereby dissolving the Trust¹¹ (FRBNY 2011; Starr v. United States and AIG, 16).

Over the next two years, through December 2012, Treasury disposed of the AIG common stock through a series of six public offerings (Treasury 2012). Treasury reported net proceeds from the stock offerings of more than \$51.6 billion, a \$4.1 billion positive return for taxpayers (Treasury 2012). (See also Buchholtz and Lawson 2021b for more information on the disposition of AIG common stock by Treasury.)

II. Key Design Decisions

1. The AIG Trust was created as part of a multi-faceted intervention by the government.

The AIG Trust was created to hold Trust Stock, which was issued to the government in connection with the FRBNY's entering into the \$85 billion RCF with AIG in September 2008 to address its severe liquidity needs (Federal Reserve Board of Governors 2008). The RCF was the first of a series of government interventions for AIG over a number of years (Webel 2017; Wiggins et al. 2021). Interventions were funded by the FRBNY and Treasury; included loans, asset purchases, and capital investments; and became the government's largest intervention for any one entity to date, totaling \$182.3 billion (Treasury 2013, 14).

2. The Federal Reserve Bank of New York established the Trust pursuant to Section 13(3) and Section 4(4) of the Federal Reserve Act.

The RCF was established on September 16, 2008. After some deliberation, the FRBNY settled on the creation of a Trust to hold a 79.9% (later amended to 77.9%) equity interest in AIG received in connection with the Credit Facility (Starr v. United States and AIG 2015, 20–26; FRBNY 2009a, 1). Section 13(3) specified that, “in unusual or exigent circumstances,” the Federal Reserve could provide emergency liquidity to an institution that was unable to adequately acquire it from private markets. Section 4(4)'s incidental powers provisions permits the Fed to undertake actions incidental to exercising its other powers. (Starr v. United States and AIG 2017, 14-22).

¹¹ Upon receipt of the shares resulting from conversion of the Trust Stock, and following the Recapitalization, Treasury held more than 1.6 billion shares of AIG common stock equal to approximately 92.1% ownership in AIG and consolidated on the government's balance sheet. (Treasury 2011). For details on the other preferred stock Treasury purchased through various TARP investments in AIG, please refer to Buchholtz and Lawson 2021c.

3. The Trust was monitored by the Federal Reserve Bank of New York, though the Trust remained independent and existed “for the sole benefit of the United States Treasury.”

According to the Credit Agreement for the RCF, a preferred stock investment was to be issued to a Trust established for the benefit of the United States Treasury (FRBNY 2008b, Exhibit D). The later executed Trust Agreement clarified that the Trust was established for the “sole” benefit of the Treasury, and explained that, “for the avoidance of doubt, [sole benefit] means that any property distributable to the Treasury as a beneficiary hereunder shall be paid to the Treasury for deposit into the General Fund as miscellaneous receipts” (FRBNY 2009a). The Trust’s three trustees were to be appointed by the FRBNY in consultation with Treasury (FRBNY 2009a, 2).

The Trust Stock itself was held in a “securities account” at a commercial bank selected by FRBNY (FRBNY 2009a, 3). However, the Trustees had sole access. FRBNY had no ownership interest in any of the Trust Stock or other assets (FRBNY 2009a, 4). The Trustees also had access to a deposit account with a balance of \$100,000 to be used for any compensation and expenses needed to facilitate the operations of the Trust (FRBNY 2009a, 14). Should the balance fall below \$25,000, AIG was required to inject enough funds to increase the balance to \$100,000 (FRBNY 2009a, 14). In addition to these accounts, the Trustees could hire “full-time and part-time administrative, secretarial, and clerical staff,” as well as lease or sublease office space needed to perform their duties (FRBNY 2009a, 5). Any litigation efforts against the Trust would be fought and paid for by FRBNY, though it would be reimbursed for these efforts by the Trust, if needed (FRBNY 2009a, 10).

Last, Section 4.01 of the Trust Agreement mandated that the Trustees meet with FRBNY on at least a quarterly basis to “discuss the administration of the Trust and other topics of interest to the parties” (FRBNY 2009a, 17). The same section also required the Trust to provide FRBNY with the following reports (FRBNY 2009a, 17–18):

1. “Monthly custodial reports;
2. Quarterly summary of significant actions (votes, consents, etc.);
3. Quarterly reports summarizing the efforts and activities to effect the sale or other disposition of the Trust Stock or other Trust Assets;
4. Minutes of any meetings of the Trustees; and
5. The Divestiture Plan, as amended from time to time by the Trustees.”

A number of provisions of the Trust Agreement were designed to ensure the Trust’s independence, including provisions (i) giving the Trustees “absolute discretion and control over the Trust Stock including how to exercise the voting rights, (ii) limiting the Trustees ability to elect FRBNY affiliates to the AIG board, and (iii) stating that the Trustees were not relieved from exercising their independent judgement despite receiving information from the FRNY. (Starr v. FRBNY 2012, 9-10)

4. The Trust was communicated as an independent vehicle for the interests of the Treasury and the taxpayers.

The Federal Reserve's first press release regarding the RCF, dated September 16, 2008, explicitly mentions that in connection therewith, "The U.S. government will receive a 79.9 percent equity interest in AIG" (Federal Reserve Board of Governors 2008). However, the Fed and Treasury had not yet worked out the details of the structure or governance of the equity interest (FRBNY 2008b). The Fed and AIG signed the Credit Agreement and Pledge Agreements on September 22, 2008, and AIG released those agreements publicly in a Form 8-K filed with the SEC on September 26, 2008, which specified the trust as a part of the agreement.¹²

It was only on January 16, 2009, that the FRBNY issued a press release on the creation of the Trust (FRBNY 2009b). In addition to naming the Trustees, the press release specified that, "the Trust has been structured so that the New York Fed cannot exercise any discretion or control over the voting and consent rights associated with the equity interest in AIG" (FRBNY 2009b). Approximately a week later, the FRBNY posted the executed Trustee Agreement providing further information about the Trust's structure and guidelines (FRBNY 2010d).

In an effort to better explain the purposes of the Trust and the roles and responsibilities of the Trustees, the three Trustees testified before the House Committee on Oversight and Government Reform on May 13, 2009. The purpose of the hearing, as expressed by Chairman Edolphus Towns of New York, was to investigate "the shroud of secrecy that has blanketed the entire sequence of [the AIG collapse and the government's actions]" and to provide answers about the use of funds, AIG's long-term goals, and protection of the taxpayers' interest (HOGRC 2009). This hearing followed significant backlash that AIG received for paying out millions of dollars in bonuses to some of the same executives that were instrumental in AIG's difficulties. The most recent set of payments, revealed the week before the hearing, totaled about \$454 million (HOGRC 2009).

The Trustees spoke at length about their ability to influence the upper-level management of AIG by "ensuring that AIG has the best, most qualified, independent board of directors that it can have." They were able to nominate members to the board and, as of date of the hearing, they had nominated five new candidates to the board and anticipated that they would all be approved (HOGRC 2009). Following the 2010 shareholders' meeting, the Trustees would have nominated and voted for 11 of AIG's then 13-member board.

¹² The 8-K is a summation. References to the Trust in total are these (AIG 2008b):

"The Credit Facility contains customary affirmative and negative covenants, including a requirement to maintain a minimum amount of liquidity and a requirement to use reasonable efforts to cause the composition of the Board of Directors of AIG to be satisfactory to the trust described below within 10 days after the establishment of the trust.

Under the agreement, AIG will issue a new series of perpetual, non-redeemable Convertible Participating Serial Preferred Stock (the "Preferred Stock") to a trust that will hold the Preferred Stock for the benefit of the United States Treasury."

In other testimony and interviews, the Trustees, repeatedly discussed how seriously they took their fiduciary duties to the Trust. See for example Feldberg 2019.

5. The FRBNY established the Trust because it did not have legal authority to own shares in AIG directly and to protect the taxpayers' investment.

As additional consideration for the RCF, AIG issued the Trust Stock to the Trust. (FRBNY 2009a, 2). In September 2008, neither the Treasury nor FRBNY had the authority to own a controlling equity interest in the company, and thus the Trust was a viable solution to this limitation. The establishment of the Trust was “for the purpose of acquiring, holding, and disposing of the Trust Stock,” the issuance of which was “intended to provide compensation for the assumption of the risks arising from the Credit Agreement and to reduce those risks” (Trust Agreement - Preamble). If the government assistance to AIG was successful and AIG was able to restructure itself, its stock price would likely increase. Rather than have all that value, funded by the government’s lifeline, go only to private stockholders, the Trust Stock would ensure that the taxpayers also received some of that benefit, which they ultimately did to the amount of \$17.6 billion dollars of profit (Geithner 2014, 196–197; Webel 2017). Although criticized by some AIG stockholders and others, “the terms of the Federal Reserve credit [including the requirement for the Trust Stock] were modeled on terms prepared for a private sector lender that ultimately decided not to take the risk of lending to AIG after Lehman failed” (Alvarez and Dudley 2018, 19).

Establishment of the Trust was deemed necessary by Fed counsel because although Section 13(3) of the Federal Reserve Act gave the Federal Reserve the authority to lend to a private company, it did not, nor did any other authority, allow the FRBNY to own a controlling equity interest and act as a shareholder in a company (Starr v. United States and AIG 2015, 59–60). The Fed also considered “gifting” the Trust Stock to Treasury, and having it own the shares, but the Treasury only felt it could receive the shares this way if the Fed used a trust; Treasury also lacked the authority to hold voting stock in AIG¹³ (YPFS 2018).

These conclusions were testified to in a later lawsuit brought by AIG shareholders challenging the Fed’s ownership as summarized by the court in its 2015 decision (Starr v. United States and AIG 2015, 60):

“The legal staffs of FRBNY and the Federal Reserve acknowledged that they could not obtain or hold equity, or acquire voting control, of a commercial entity. FRBNY’s general counsel, Mr. [Thomas] Baxter, noted during an interview on May 11, 2010:

¹³ According to Scott Alvarez, Federal Reserve Board General Counsel at the time, Treasury was restricted by the fact that no funds had been appropriated for the purchase of AIG shares (YPFS 2018). The Anti-Deficiency Act states that “an officer or employee of the United States Government or of the District of Columbia government may not... (B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law” (Government Publishing Office 2007b). Additionally, after its passage in October 2008, the Emergency Economic Stabilization Act of 2008 (EESA), provided a basis for the Treasury to hold the shares (YPFS 2018).

Neither the Fed nor the [T]reasury had authority to hold the shares. When we saw equity on term sheet—problem of legal ownership and the conflict. Maybe strike that and not take equity. But then thought of taxpayer. Create a trust, put shares in trust. For benefit of American people. We had to decide that right away.

. . . Mr. Baxter notified the Board of Governors' counsel, Mr. Alvarez, on October 23, 2008, "we agree that there is no power" for the Federal Reserve "to hold AIG shares."¹⁴

Moreover, as Board of Governors General Counsel Scott Alvarez later testified, there would also have existed a conflict of interest if the FRBNY was both the lender and owner of AIG, because "the owner and the lender don't always have the same interest" (*Starr v. United States and AIG* 2015, 60).

Alvarez noted in an interview with the Yale Program on Financial Stability, however, that the Fed authority to hold shares was not perfectly clear: "there is a good argument that we could [hold the shares], we just didn't want to get to that bridge because there were a variety of policy implications and other reasons" (YPFS 2018).¹⁵

Additionally, a draft memo written by the Fed's Legal Division on September 17, 2008 notes that the issue of whether a Reserve Bank could "acquire, hold, vote the equity securities it obtains . . . does not need to be addressed at this time" (Legal Division 2008).

6. The Trust was managed by three independent Trustees appointed by the FRBNY in consultation with Treasury.

On January 16, 2009, the FRBNY, in consultation with Treasury, appointed three individuals to manage the Trust. The Trustees were not involved in the decision to develop the Trust; but were all seasoned professionals. Trustee Feldberg had worked at the FRBNY for 36 years; Trustee Considine was a former member of the FRBNY's board; and Trustee Foshee was the sitting chair of the board of directors of the Federal Reserve Bank of Dallas while a Trustee (*Starr v. United States and AIG* 2015, 30).

In a joint statement before a House Committee, the Trustees noted that the use of a trust was "viewed by Federal Reserve and the Treasury Department as a way to place the government's interest in AIG in the hands of experienced individuals who could act without risk of conflicts of interest that would be present if such controlling interest was held by the FRBNY or the Department of the Treasury" (HOGRC 2009, 77)

¹⁴ However, Baxter also testified that he did not remember claiming such and that a statement that the Fed could not own shares "is not consistent with my views" (Zajac 2014).

¹⁵ See page 18 for discussion of a concurring opinion by Justice Wallach of the Federal Circuit Court of Appeals considering this issue (*Starr v. United States and AIG* 2017).

FRBNY General Counsel Baxter also has stated that nominating three Trustees to run the Trust rather than one acted as an “additional safeguard” for the oversight of AIG, one of the world’s largest insurance companies (US Court of Federal Claims 2014, 937).

7. The Trustees managed the Trust independently, subject to certain limitations.

The purpose of the Trust was to serve as the shareholder of the Trust Stock “for the sole benefit of the Treasury” and to provide returns for “the American people”; any Trust assets transferred to Treasury would be transferred directly to Treasury’s General Fund (FRBNY 2009a, 2). The Trustees were to exercise the rights of the Trust Stock, receive dividends, and participate in shareholder meetings and votes in place of the FRBNY, but not for the benefit of the Treasury and taxpayer (FRBNY 2009a, 6–8).

Moreover, to avoid “conflicts and legal impediments that could arise from either the US government or the FRBNY exerting control over the world’s largest insurer,” the Trust provided that the three Trustees would independently manage the Trust and oversee the Trust Stock (FRBNY 2010a). The Trust Agreement states that since the Trust aims “to avoid any possible conflict with its supervisory and monetary policy functions, the FRBNY does not intend to exercise any discretion or control over the voting and consent rights associated with the Trust Stock” (FRBNY 2009a, 2).

Prior to the creation of the Trust, the Trustees sent a memorandum to FRBNY General Counsel Baxter pointing out that there was a potential conflict between the goals described in Section 2.04(d) of the Trust Agreement (*Starr v. United States and AIG* 2015, 31). The Trustees were expected to maximize AIG’s ability to repay advances under the Credit Agreement, but they were also expected to avoid disrupting financial market conditions in the “best interests of the stockholders of the Company.” The government later clarified that the two goals were “non-binding” on the Trustees’ discretionary power to vote the Trust Stock (*Starr v. United States and AIG* 2015, 31).

Trustee Feldberg testified that “the three-Trustee model . . . expects us to act through a consensus, and to the maximum extent possible to act in unanimity” (HOGRC 2009). Mr. Feldberg stated that the Trust provided “a mechanism so that if we cannot agree, two of the three trustees could go forward” (HOGRC 2009).

The Trustees were to use their own discretion in managing the shares and exercising the powers and rights of the preferred stock held by the Trust (FRBNY 2009a, 2). As shareholders, they voted to elect directors. Trustees did not attend AIG Board meetings but they did have regular discussions with senior management, board members, and Federal Reserve and Treasury officials (HOGCR 2009).¹⁶

¹⁶ In contrast to the Trustees’ lack of attendance at AIG board meetings, former AIG CEO Ed Liddy testified before Congress that representatives of the Federal Reserve attended nearly every meeting (HOGRC 2009).

Additionally, there were still some limitations on the Trustees' independence. According to the Trust Agreement, before selling or disposing of the Trust Stock, the Trust required approval from the FRBNY, which would consult with Treasury (FRBNY 2009a, 8– 9).

The Trust was mandated to provide the FRBNY various records, such as: “monthly custodial reports; quarterly summar[ies] of significant actions (votes, consents, etc.); quarterly reports summarizing the efforts and activities to effect the sale or other disposition of the Trust Stock or other Trust Assets; minutes of any meetings of the Trustees; and the Divestiture Plan, as amended from time to time” (FRBNY 2009a, 17–18).

8. The Trust was tasked with creating a Divestiture Plan for the Trust Stock.

To recoup the investment by the FRBNY and the Treasury, the Trust was tasked to create a written Divestiture Plan to sell or otherwise dispose of the Series C preferred stock (FRBNY 2009a, 8). The Trust Agreement spelled out that the divestiture of the Trust Stock was to be done in a value-maximizing manner. Furthermore, the sale or disposition of Trust Stock could be completed only after the FRBNY was fully repaid for funds drawn under the RCF, and after Treasury no longer owned any TARP-related preferred stock of AIG¹⁷ (FRBNY 2009a, 18). Even with a Divestiture Plan, the Trustees could only sell or dispose of any stock after the FRBNY, in consultation with Treasury, granted approval to the Trust. (FRBNY 2009a, 8). As far as we have been able to discern, the Divestiture Plan was never completed or executed upon since Treasury took over the sale of the Trust Shares.

9. The Trust Agreement provided an exit plan.

The Trust Agreement provided that the Trust would terminate upon the earlier of “(i) the sale or other disposition of all of the Trust Stock [including any common stock received on conversion, which could only occur after repayment and termination of the RCF] such that no Trust Stock continues to be held in trust hereunder; or (ii) the Company shall have been liquidated and shall cease to exist or a plan of reorganization or liquidation shall have been confirmed and consummated providing for no distribution in respect of the Trust Stock” (FRBNY 2009a, 21). Thus, from its inception, the Trust Agreement anticipated two different outcomes: one where the rescue was successful and the Trustees followed their mandate to transfer the Trust Stock to the Treasury, and a second that likely would have been the result of failure of the intervention.

On January 14, 2011, a Master Transaction Agreement, effectuating the Recapitalization Plan, was entered into by AIG (and certain related entities), the FRBNY, the Treasury, and the Trust (FRBNY 2010c). The agreement and plan provided for the repayment of all amounts owed to the FRBNY pursuant to the RCF and for the RCF's termination. Following the termination of the RCF, the Trustees converted the Trust Stock and transferred the resulting common stock to the Treasury General Fund (FRBNY 2011). As discussed, this had

¹⁷ The preferred stock references mentioned here refer to the more senior Series D preferred stock (later Series E preferred stock) and Series F preferred stock that Treasury acquired through the AIG Investment Program; see Buchholtz and Lawson 2021b for further discussion.

the effect of dissolving the Trust and terminating the Trust Agreement (FRBNY 2009a, 21). The Trust Agreement also provided that any additional funds held in the Trust's deposit account as well as any other assets (or the proceeds thereof), were also to be transferred to the Treasury (FRBNY 2009a, 21).

III. Evaluation

The AIG Credit Facility Trust was arguably successful in protecting the interests of American taxpayers and the US government. The Trust held the Trust Stock for almost two years, utilizing the "rights, powers, authorities, discretions, and duties" attached to the shares, specifically the voting powers, until January 2011 (FRBNY 2009a, 5; Webel 2017, 15). The Trust helped to elect new AIG Board members, resulting in a largely board that replaced the board that had overseen the firm's troubles (Starr v. United States and AIG 2012, 48).

During a May 2009 HOGRC hearing on the structure and role of the Trust, Congress expressed a number of concerns about the government's intervention and relationship with AIG. Among these were a request for more transparency, clarification on whether the goal of serving a public purpose was being met, and concern whether the US taxpayer investment in AIG was adequately protected (HOGRC 2009).

The Trustee structure was also criticized by some legislators caused some representatives to question the Trustees' independence. They pointed to the reports that the Trust was required to provide to the FRBNY and were also very critical of the access that the FRBNY had to AIG Board meetings, which the Trustees did not attend (HOGRC 2009).

The Trustees said that they were not accountable to the FRBNY but consulted with FRBNY officials on significant issues (HOGRC 2009).¹⁸ (Moreover, the FRBNY had a team of about 15 officials stationed at AIG full-time to monitor developments and keep FRBNY management and the Trustees informed.) The Trustees also repeatedly emphasized that they were acting on behalf of the US taxpayer. Trustee Douglas Foshee even went as far as to say that, "[We], as trustees, [are] more than happy to put our reputational risk in front of this committee and act on behalf of the US taxpayers" (HOGCR 2009).

¹⁸ For example, this exchange: "Mr. Kucinich. So would it be fair to assume that the Federal Reserve Bank of New York has a significant role in monitoring the work of the trustees?"

Mr. Feldberg. Yeah. I would say that they have a significant interest in the work of the trustees.

Mr. Kucinich. Are you trustees on behalf of the Federal Reserve Bank or are you trustees on behalf of the US Treasury?

Mr. Foshee. We're trustees on behalf of the trust that holds the 79 percent equity on behalf of the US Treasury.

Mr. Kucinich. And then can you explain to this committee then why do you respond to the Fed, why is this trust agreement structured so that your accountability is to the Fed?

Ms. Considine. I don't think that's the reading that I would give to it, because No. 1, in terms of visibility of our responsibility, our responsibility is to act as the shareholder, and that is to vote the shares . . . As part of the agreement, yes, we are to provide minutes and of course expenses back to the Fed. But we were selected to be totally independent trustees, and I believe that's the way we function" (HOGRC 2009).

During the hearing, Professor J.W. Verret, an assistant professor of law at George Mason Law School, also testified to discuss the flaws of the Trust and the Trust Agreement and why the government should be careful in using the Trust as a model for other trusts in the future (HOGRC 2009). Specifically, Verret singled out provisions that provided protections against liability for each of the Trustees; he considered the indemnity and immunity provisions too generous. (HOGRC 2009, 2).

A May 2010 Congressional Oversight Panel (COP) hearing concluded that the government used a trust structure to manage the Trust Stock not only to avoid conflicts of interest, but also “so as to not violate the Government Corporation Control Act . . . which prohibits the government from owning a corporation without specific Congressional authorization” (COP 2009, 71). The COP concluded that the Trust played two roles that benefited Treasury and the shareholding taxpayers: the role as shareholders “who want to maximize the return on their investments” and the role as taxpayers “who want the financial system stabilized” (COP 2009). COP member J. Mark McWatters posited that the utilization of a trust structure to manage the Trust Stock “may prolong the disposition process and appear to make government-sponsored bailouts somehow more palatable to the taxpayers” (COP 2010, 296).

Although the Trust had the capability of ensuring that AIG had a responsible, independent, and effective board of directors, the question remained whether changing AIG’s board and nominating new members had any tangible effect on the company. Nicola Sharpe, Professor of Law at the University of Illinois, College of Law, has argued that it hasn’t (Sharpe 2011, 107):

“...While having trusted representatives such as the AIG trustees elect skilled and respected board members may pacify the public and appear to protect the large federal investment in the 500 or so corporations it has bailed out, it does not solve the problem of inadequate board monitoring as a contributing factor in corporate ruin and, in fact, creates additional regulatory challenges.”

Some suggested that there may have been cause for regulatory concern over the lack of supervision of the Trustees in this respect, given that they were mandated to act independently (Davidoff 2009). There were arguments that there was nothing stopping them, as independent trustees, from acting improperly (though they had not done anything at this point to warrant such concerns), electing unqualified board members or members that they have pre-existing relationships with “so long as their decisions are not contrary to the interests of the government” (Davidoff 2009). The sole limitations for this role were to elect “only persons who are not, and have not been within one year of their nomination, officers, directors, or senior employees of the FRBNY or the Treasury Department,” which it fulfilled (FRBNY 2009a). Otherwise, the Trustees were required only to act in or not against Treasury’s interests and to use their best judgment when making decisions concerning the Trust Stock. However, the indemnity clauses and protections in the Trust Agreement and the Master Transaction Agreement protected the Trustees from further audit, liabilities, or damages at the termination of the Agreements on January 14, 2011 (FRBNY 2009a, 13).

Despite the work that went into its design, the equity kicker and the Trust were challenged in court by one of AIG's largest shareholder, Starr International. The Claims Court ruled for the plaintiff finding an illegal extraction but awarding no damages. In his opinion Justice Wheeler looked through the Trust to find that the FRBNY controlled the trust, which he held not to be independent.¹⁹ This decision was overturned by the Federal Circuit Court of Appeals which found that Starr did not have standing to bring the lawsuit because its claims belonged to the company and the U.S. Supreme Court declined to grant cert in March of 2018 (SCOTUS 2018).

The lower court decision was vacated so it does not have precedential value, however, in its vacated decision, the Claims Court expressed the opinion that the creation of the Trust to hold the shares was not sufficient to avoid the finding of an illegal exaction because the trust was not truly independent. Factors cited in support of this finding included that it had been established by the Fed, that the "independent" trustees were appointed by the Fed and had close affiliations to the Fed, and that during the Trust's existence there were close communications between the Fed and the Trust. (Wheeler 2015, 62-63). These conclusions were rendered moot when the case was overturned and vacated by the Court of Appeals. Additionally, Justice Wallach of the appellate court, writing in a concurring opinion, would have found that government's actions were authorized (and therefore could not be the basis of an illegal exaction claim) because Section 13(3), read together with Section 4(4)'s incidental powers provision, does not prohibit the taking of equity as the term of a loan. (Starr v. United States and AIG 2017, 14-22).

It is also worth noting that in a related case brought by Starr against the FRBNY (Starr v. FRBNY 2012,) the district court, in considering the FRBNY's motion to dismiss, found the opposite of the Federal Claims Court. Writing for the majority, Justice Engelmayer, determined that the FRBNY had not breached its fiduciary duty to AIG under Delaware corporate law because no such fiduciary duty existed since the FRBNY (1) did not control AIG as a majority shareholder, nor (2) did it exercise actual control over the company. In reaching its decision the court pointed to several provisions of the Trust Agreement supporting this conclusion including provisions (i) giving the Trustees "absolute discretion and control over the Trust Stock including how to exercise the voting rights, (ii) limiting the Trustees ability to elect FRBNY affiliates to the AIG board, and (iii) stating that the Trustees were not relieved from exercising their independent judgement despite receiving information from the FRNY. (Starr v. FRBNY 2012, 9-10).²⁰

¹⁹ "The trustees were the 'protectors of the Federal equity stake in AIG'. . . The manner in which FRBNY controlled AIG with its handpicked CEO, carefully selected board members, and its hundreds of on-premises advisers belies any conclusion that the operations of the trust were independent." (Starr v. United States and AIG 2012, 63).

²⁰ The court also held that Delaware fiduciary duty law was preempted by federal law as upholding it would have interfered with FRBNY performing its duties. (Starr v. FRBNY 2012,). The decision was upheld by the Court of Appeals for the Second Circuit (See Walker 2014).

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V. Key Program Documents

Summary of Program

Actions Related to AIG (Accessed 02/2018) – Summary page on FRBNY website regarding AIG interventions. <https://ypfs.som.yale.edu/library/actions-related-aig>

AIG Credit Facility Trust Agreement (01/16/2009) – Agreement that established the AIG Credit Facility Trust as announced in the Credit Agreement and the responsibilities and powers of the Trustees. https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/FRBNY_AIG_Credit_Facility_Trust_Agreement_20090116.pdf

June Oversight Report: The AIG Rescue, Its Impact on Markets, and the Government's Exit Strategy (06/10/2010) – *Congressional Oversight Panel report on AIG's rescue, highlighting hearing testimonies, government actions, and impacts of government intervention.*

<https://ypfs.som.yale.edu/node/4354>

Implementation Documents

Agreement to Amend Warrants (01/14/2011) – *Agreement among AIG, the AIA SPV, the ALICO SPV, the Federal Reserve Bank of New York, Treasury, and AIG Credit Facility Trust to issue warrants to purchase common stock from November 25, 2008 (Securities Purchase Agreement) and April 17, 2009 (Securities Exchange Agreement).*

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/AIG_Agreement_to_Amend_Warrants_20110114.pdf

AIG Credit Facility Trust Agreement (01/16/2009) – *Agreement that established the AIG Credit Facility Trust as announced in the Credit Agreement, as well as the responsibilities and powers of the Trustees.*

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/FRBNY_AIG_Credit_Facility_Trust_Agreement_20090116.pdf

AIG Form 8-K (SEC, 09/30/2010) – *AIG material definitive agreement submitted to the SEC describing the Recapitalization Plan for repayment to the FRBNY for loans under the Credit Facility.* https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/AIG_Form_8-K_20100930.pdf

AIG Schedule 14C (SEC, 12/07/2010) – *AIG statement filed to the SEC describing the terms to the upcoming Recapitalization Plan, as well as information on the Government Repayment Committee and the Agreement in Principle.*

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/AIG_Schedule_14C_20101207.pdf

Certificate of Elimination (01/14/2011) – *Certificate that eliminates all of US Treasury's Series C preferred stock after converting it to common stock, as listed in the Master Transaction Agreement.*

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/AIG_Certificate_of_Elimination_Series_C_PREFERRED_Stock_20110114_0.pdf

Credit Agreement (09/22/2008) – *Document that authorized the extension of an \$85 billion revolving credit facility from the Federal Reserve Bank of New York to AIG and listed the terms of the facility.*

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/FRBNY_Credit_Agreement_20080922.pdf

Credit Agreement, Amendment No. 2 (11/09/2008) – *Amendment that alters the terms of the preferred stock related to the Credit Agreement, reducing the voting rights of the 100,000 shares of Series C Preferred Stock from 79.9% to 77.9% following the issuance of a Series D warrant allowing for the purchase of 2% of common stock.*

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/FRBNY_Amendment_No._2_to_Credit_Agreement_20081109.pdf

Master Transaction Agreement (12/08/2010) – *Agreement among AIG, the ALICO SPV, the AIA SPV, Federal Reserve Bank, Treasury, and AIG Credit Facility Trust over the closing of the Recapitalization Plan announced on September 30, 2010. The agreement highlights the*

completion of repayment transactions of the Credit Facility, the conversion of US Treasury preferred stock to common shares, the repurchase of preferred shares in SPVs by AIG, the termination of the AIG Credit Facility Trust, and delivery of any other certificates, agreements, or documents by all parties.

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/US_Treasury_Master_Transaction_Agreement_20101208.pdf

[Recapitalization Plan Summary of Terms \(09/30/2010\)](https://ypfs.som.yale.edu/node/3289) – Document explaining the terms of the full recapitalization of AIG and the effective termination of the Credit Facility through the net proceeds received from AIA IPO on the Hong Kong Stock Exchange and the sale of ALICO to MetLife, Inc., as well as the repurchase of preferred shares in the AIA and ALICO SPVs by AIG from the Federal Reserve. <https://ypfs.som.yale.edu/node/3289>

[Registration Rights Agreement \(01/14/2011\)](https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/AIG_Registration_Rights_Agreement_20110114_2.pdf) – Agreement between AIG and US Treasury for the issuance by AIG of 1.655 billion shares of common stock to Treasury as part of Recapitalization, through the common stock held by the Trust from the Credit Agreement and the common stock converted from all other preferred stock Treasury received through government aid packages to AIG.

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/AIG_Registration_Rights_Agreement_20110114_2.pdf

[Securities Purchase Agreement: Series D Preferred Stock \(11/25/2008\)](https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/FRBNY_Securities_Purchase_Agreement_Series_D_PREFERRED_STOCK_20081125.pdf) – Purchase agreement entered into by AIG and US Treasury to sell 4 million shares of Series D fixed-rate, cumulative, perpetual preferred stock and a warrant to purchase 53.8 million shares of common stock to Treasury for \$40 billion under TARP's Systematically Significant Failing Institutions (SSFI) program.

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/FRBNY_Securities_Purchase_Agreement_Series_D_PREFERRED_STOCK_20081125.pdf

[Series C Certificate of Designations \(03/01/2009\)](https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/AIG_Certificate_of_Designations_Series_C_PREFERRED_STOCK_20090301_0.pdf) – Document announcing the intent to issue 100,000 shares of Series C perpetual, convertible, participating preferred stock on March 4, 2009, in accordance with the Credit Agreement.

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/AIG_Certificate_of_Designations_Series_C_PREFERRED_STOCK_20090301_0.pdf

[Series C Perpetual, Convertible, Participating Preferred Stock Purchase Agreement \(03/01/2009\)](https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/AIG_Series_C_PREFERRED_STOCK_PURCHASE_AGREEMENT_20090301_0.pdf) – Purchase agreement entered into by the Federal Reserve Bank of New York and AIG for the 100,000 shares of Series C stock issued through the Certificate of Designations filed on March 1, 2009. The issuance and purchase occurred on March 4, 2009.

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/AIG_Series_C_PREFERRED_STOCK_PURCHASE_AGREEMENT_20090301_0.pdf

Legal/Regulatory Guidance

[Government Publishing Office. United States Code, Title 12, Banks and Banking. \(2007\)](https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/USCODE-2007-title12.pdf) – Statutory title governing emergency lending by the Federal Reserve.

<https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/USCODE-2007-title12.pdf>

Press Releases/Announcements

[AIG Credit Facility Trust FAQ \(02/21/2010\)](https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/AIG_Credit_Facility_Trust_FAQ_02_21_2010.pdf) – FAQ released by the Federal Reserve that answers common questions about the formation, purpose, and responsibilities of the AIG Credit Facility Trust.

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/FRBNY_Credit_Facility_Trust_FAQ_20100221.pdf

Federal Reserve Board and Treasury Department announce restructuring of financial support to AIG (11/10/2008) – Press release announcing a \$40 billion investment through TARP in AIG and changes to the Credit Facility including reduction of the RCF to \$60 billion, reduction of the interest rate, reduction of the commitment fee, and extension of the facility to five years.

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/FRB_FRB_and_Treasury_Department_announce_restructuring_of_financial_support_to_AIG_20081110.pdf

New York Fed Ends AIG Assistance with Full Repayment (01/14/2011) – Federal Reserve Bank of New York announcement of termination of the financial assistance to AIG, after AIG has fulfilled its repayment of the loans according to the Recapitalization Plan presented in September 2010. The termination of the assistance also means the dissolution of the AIG Trust and transfer of its equity interest in AIG to Treasury.

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/FRBNY_FRBNY_Ends_AIG_Assistance_with_Full_Repayment_20110114_0.pdf

Notice of Annual Meeting of Shareholders to be held June 30, 2009 (06/05/2009) – AIG Board of Directors proxy statement notifying shareholders to of the details and proposals of the upcoming annual shareholder meeting.

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/AIG_Proxy_Statement_Notice_of_Annual_Meeting_of_Shareholders_20090605.pdf

Statement by the Federal Reserve Bank of New York Regarding AIG Transaction (09/29/2008) – Statement on federal aid to AIG explaining the purpose of the loan, and intent to stabilize AIG while maximizing value for taxpayers.

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/FRBNY_Statement_by_the_FRBNY_Regarding_AIG_Transaction_20080929.pdf

Statement Regarding Establishment of the AIG Credit Facility Trust (01/16/2009) – FRBNY announcement of the AIG Credit Facility Trust has been established for the sole benefit of the United States Treasury and will hold the 77.9% equity interest in AIG related to the AIG Credit Facility.

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/FRBNY_Statement_Regarding_Establishment_of_AIG_Credit_Facility_Trust_20090116.pdf

Treasury Announces the Completion of AIG's Recapitalization (01/14/2011) – Treasury announcement that AIG's Recapitalization Plan is complete, the Credit Agreement has been terminated, and the AIG Credit Facility Trust has been dissolved. Also, Treasury now owns 92% of the company after the conversion of Treasury's and the Trust's preferred stock to AIG common stock.

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/US_Treasury_Treasury_Announces_Completion_of_AIG_Recapitalization_Transaction_20110114_0.pdf

Treasury to Invest in AIG Restructuring Under the Emergency Economic Stabilization Act (11/10/2008) – Press release announcing the purchase of \$40 billion in Series D senior preferred stock through TARP to help pay down existing loans of the Credit Facility.

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/US_Treasury_Treasury_to_Invest_in_AIG_Restructuring_Under_EESA_20081110_2.pdf

Treasury Sells Final Shares of AIG Common Stock, Positive Return on Overall AIG Commitment Reaches \$22.7 Billion (12/11/2012) – Treasury announcement that it has

conducted its final IPO of AIG common stock, realizing an overall positive return of \$5 billion on the equity interest in AIG.

[https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/US_Treasury_Treasury_Sells_Final_Shares_of_AIG_Common_Stock_Positive_Return_Reaches_\\$22.7_Billion_20121211_0.pdf](https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/US_Treasury_Treasury_Sells_Final_Shares_of_AIG_Common_Stock_Positive_Return_Reaches_$22.7_Billion_20121211_0.pdf)

US Government Provides Support for Continued Restructuring of AIG (03/02/2009) – AIG press release announcing restructuring plan to reduce debt owed to the government and the intent to establish two special purpose vehicles (SPVs) for AIA and ALICO and the issuance of preferred stock within each for the Federal Reserve, which will invest \$26 billion in the SPVs. The amount of the Credit Facility is also drawn down to \$35 billion.

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/AIG_Press_Release_U.S._Government_Provides_Support_For_Continued_Restructuring_Of_AIG_20090302_1.pdf

US Treasury and Federal Reserve Announce Participation in AIG Restructuring Plan (03/02/2009) – Joint press release announcing a restructuring plan for AIG which includes investing in two special purpose vehicles for AIG subsidiaries AIA and ALICO, the removal of the interest rate floor on the Credit Facility, and the issuance of Series C Preferred Stock from the Credit Agreement.

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/FRB_US_Treasury_and_FRB_Announce_Participation_in_AIG_Restructuring_Plan_20090302.pdf

Media Stories

Short-Term Solutions to Long-Term Problems (New York Times – 03/26/2009) – Steven M. Davidoff, known for his legal work on takeovers and corporate law, describing some of the problems with the government's approach in programs and interventions during the financial crisis, specifically with AIG and Citigroup.

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/NYT_Short-Term_Solutions_to_Long-Term_Problems_20090326.pdf

Three Trustees of A.I.G. Are Quiet, Perhaps to a Fault (New York Times – 04/19/2009) – News article discussing the goals of the AIG Credit Facility Trust and their role in acting as the beneficiary of Treasury's shares in AIG.

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/NYT_3_Trustees_of_AIG_Are_Quiet_Perhaps_to_a_Fault_20090419.pdf

Key Academic Papers

Rethinking Board Function in the Wake of the 2008 Financial Crisis (Sharpe, 06/2011) – Essay discussing corporate governance issues in the wake of government involvement at the board level of rescued firms.

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/Sharpe_Journal_of_Business_and_Technology_Rethinking_Board_Function_in_the_Wake_of_the_2008_Financial_Crisis_201106.pdf

Reports/Assessments

AIG 10-Q (SEC, 06/30/2009) – AIG Q2 2009 financial filing to the SEC stressing that it posted its first profit since Q3 2007, six straight quarters of losses.

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/AIG_Form_10-Q_20090630.pdf

House Oversight and Government Reform Committee: AIG Collapse, Rescue, Trustees (05/13/2009) – *Transcript of a hearing of the House Oversight and Government Reform Committee, where the three trustees of the AIG Credit Facility Trust and J.W. Verret, a Professor of Law at George Mason University School of Law, testified to the Committee about the role, responsibilities, and intent of the Trust associated with government financial assistance to AIG.*

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/US_House_Committee_on_Oversight_and_Government_Reform_AIG_Where_is_the_Taxpayers_Money_Going_20090513.pdf

June Oversight Report: The AIG Rescue, Its Impact on Markets, and the Government's Exit Strategy (06/10/2010) – *Congressional Oversight Panel report on AIG's rescue, highlighting hearing testimonies, government actions, and impacts of government intervention.*

<https://ypfs.som.yale.edu/node/4354>

Starr International Co. v. United States and American International Group, Inc. (United States Court of Federal Claims, 06/15/2015) – *Opinion and order from the Court of Federal Claims stating that the government did conduct an illegal exaction of AIG, but zero damages are awarded as there were no economic consequences to shareholders as a result of actions. Without the government's assistance in the first place, the value for shareholders would have been worthless.*

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/US_Court_of_Federal_Claims_Opinion_of_Justice_Wheeler_20150615_1.pdf

Starr International Co. v. United States and American International Group, Inc. (United States Court of Appeals for the Federal Circuit, 08/25/2015) – *Starr International Co. files its opening brief to the United States Court of Appeals for the Federal Circuit, appealing the decision of the US Court of Federal Claims in June 2015.*

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/US_Court_of_Appeals_for_the_Federal_Circuit_SICO_Plaintiffs_Appeal_20150825.pdf

Starr International Co. v. United States and American International Group, Inc. (United States Court of Appeals for the Federal Circuit, 05/09/2017) – *Opinion filed by Chief Judge Reyna and Circuit Judge Wallach on the lawsuit filed by Starr International Co. against the US government on its acquisition of equity interests in AIG and the actions related to a reverse-stock split at the 2009 annual shareholder meeting.*

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/US_Court_of_Appeals_for_the_Federal_Circuit_Opinion_by_Reyna_and_Wallach_20170509.pdf

Statement of the Trustees of the AIG Credit Facility before the House Oversight Committee on Collapse and Federal Rescue of AIG (05/13/2009) – *Statement from the three trustees of the AIG Credit Facility Trust to the House Oversight and Government Reform Committee, prior to their attendance to the hearing on May 13, 2009, reciting their responsibilities and supporting the idea that the financial assistance to AIG is protected by the use of a trust.*

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/AIG_Credit_Facility_Trust_Statement_of_the_Trustees_before_House_Committee_on_Oversight_and_Government_Reform_20090513.pdf

The Use of TARP Funds in Support and Reorganization of the Domestic Automotive Industry (Congressional Oversight Panel, 09/09/2009) – *Report from the Congressional Oversight Panel's describing the TARP support provided to General Motors and Chrysler, where the Panel reflects on some of the decisions made with AIG and how to make similar programs or designs as the government continued to support the automotive industry.*

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/Congressional_Oversight_Panel_September_2009_Report_20090909.pdf

J.W. Verret Testimony before the House Oversight Committee Concerning the AIG Trust (05/13/2009) – *Testimony to the House Oversight and Government Reform Committee presenting three flaws in the AIG Trust Agreement.*

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/Verret_Testimony_before_House_Committee_on_Oversight_and_Government_Reform_20090513.pdf

Written Testimony of Herbert M. Allison Jr., Assistant Secretary for Financial Stability, Domestic Policy Subcommittee of the Oversight and Government Reform Committee (12/17/2009) – *Written testimony to the House Subcommittee of the Oversight and Government Reform Committee describing the objectives the government wishes to achieve in exercising its shareholder's rights in AIG.*

https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/Allison_Jr_Testimony_before_House_Committee_on_Oversight_and_Government_Reform_20091217.pdf

Appendix A: Timeline

- September 16, 2008: The Federal Reserve Board of Governors, with the support of the US Treasury, authorizes the Federal Reserve Bank of New York (FRBNY) to make an \$85 billion emergency credit line available to American International Group, Inc. (AIG) to prevent AIG's failure by providing sufficient liquidity and "make appropriate dispositions of certain assets over time."
- September 22, 2008: AIG and the FRBNY sign the Credit Agreement and Guarantee and Pledge Agreement that implements the Revolving Credit Facility (RCF), with a maturity date of September 22, 2010. The Agreement also provides that AIG will sell 100,000 shares of Series C Preferred Stock, convertible into 79.9% of AIG's common stock (the Trust Stock), to an independent trust to be created for the sole benefit of the US Treasury.
- November 10, 2008: AIG and Treasury agree in principle, under the Troubled Assets Relief Program (TARP), for Treasury to purchase \$40 billion in newly issued Series D Preferred Stock and a warrant to purchase 2% of AIG's common stock outstanding.
- November 25, 2008: The second amendment to the Credit Agreement is implemented, and the Series D Warrant is sold to Treasury, effectively reducing the Trust Stock equity stake to 77.9%. The amendment also notes that AIG common stockholders will vote as a separate class on first proposal to issue new common shares.
- January 16, 2009: The FRBNY announces the establishment of the independent AIG Credit Facility Trust (the Trust), headed by three appointed trustees, which will hold the Trust Stock.
- March 1, 2009: AIG files a Certificate of Designations agreeing to issue the Trust Stock to the Trust.
- March 4, 2009: AIG and the Trust agree to a Securities Purchase Agreement, pursuant to which AIG will sell the Trust Stock to the Trust in exchange for a \$500,000 consideration.
- June 30, 2009: The AIG Annual Meeting of Shareholders takes place, where common stockholders vote down the increase in the number of authorized AIG common shares. However, a vote approving a 1:20 reverse stock split passes, providing the shares needed to

allow the Trust, and Treasury, to convert their preferred stock into AIG common stock.

- September 30, 2010: Treasury, the FRBNY, and the Trust announce an agreement on a comprehensive Recapitalization Plan (the Plan) for AIG designed to recoup all loans by the US government, including all loans under the RCF, and to end the ownership relationship between the government and AIG.
- December 8, 2010: AIG, the two special purpose vehicles (SPVs)—ALICO Holdings and AIA Aurora LLC—the FRBNY, Treasury, and the Trust enter into a Master Transaction Agreement based on the terms set in the Plan. The Plan involves AIG's repaying any remaining debt under the RCF, the conversion of the Trust's and Treasury's preferred stock into AIG common stock, and the transfer of the common stock received by the Trust on conversion to Treasury, resulting in the dissolution of the Trust.
- January 14, 2011: The FRBNY announces that AIG has completed the repayment of all loans provided by the RCF and that the Credit Agreement is subsequently terminated. Treasury exchanges its \$49.1 billion of Series E and Series F TARP-related preferred stock into AIG common stock. The Trust also converts the Trust Stock into AIG common stock and transfers the stock over to Treasury's General Fund, thereby dissolving the Trust. Treasury's overall ownership in AIG rises to roughly 92.1%.
- December 10, 2012: Treasury sells the last of its ownership stake in AIG in its sixth and final offering of AIG common stock, netting more than \$51 billion in gross cash proceeds. Proceeds amounting to \$17.6 billion came from the AIG common stock received by the Trust upon conversion of the Trust Stock.

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