



April 13, 2017

Ms. Sarah Ellerman  
Director, Services and Investment  
Office of the U.S. Trade Representative  
600 17th Street, NW  
Washington, DC 20508

**Re: U.S. Insurance Industry Support for the U.S.-EU Covered Agreement**

Dear Ms. Ellerman:

We strongly urge the Administration to sign the U.S.-EU Covered Agreement in its current form, as the ninety-day consultation period has now concluded. We believe the Agreement is good for U.S.-based companies doing business in the EU and is consistent with the Administration's regulatory policy to "...enable American companies to be competitive with foreign firms in domestic and foreign markets, advance American interests in international financial negotiations and meetings, [and] make regulation efficient, effective and appropriately tailored."

The Covered Agreement will provide immediate benefits to the U.S. (re)insurance sector:

- 1) The Agreement enables U.S.-based reinsurers to resume doing business in markets from which they were excluded after the January 1, 2016 implementation of the EU's new insurer solvency regime known as Solvency II, and it protects U.S.-based insurers from the imposition of costly Solvency II compliance requirements on their U.S. holding companies.
- 2) The Agreement affirms the U.S. system of insurance supervision. This acceptance of the U.S. insurance supervisory framework benefits all U.S.-based insurance groups and provides valuable precedent and support for the U.S. regulatory system that can be leveraged in future international negotiations and in current and future international insurance regulatory dialogues.
- 3) The Agreement limits worldwide prudential insurance group supervision of U.S. based groups to the group's home state supervisor, and relieves U.S. firms doing business in the EU from certain requirements, including the need to establish separate branch operations in EU member states. The limitation on the application of Solvency II is estimated to potentially save U.S.-based companies billions of dollars in additional compliance costs, providing for enhanced competitiveness and more efficient use of capital and resources for U.S. companies.

Some have asserted that the Agreement needs clarification, but merely making that assertion does not render the Agreement ambiguous. Indeed, we respectfully disagree based upon the plain meaning of the text. The Agreement's clear language is further reinforced by the National

Association of Insurance Commissioners (NAIC) model laws and regulations on which portions of the Agreement were based, the U.S. Treasury Department's January 18, 2017 Fact Sheet, and the European Commission's April 4, 2017 Explanatory Memorandum to the European Council.

- Group Capital. A group capital requirement in the U.S. is not mandated by the Covered Agreement, let alone a group capital requirement that reflects Europe's Solvency II. Under Article 4(h) of the Agreement, in order for a U.S. or European insurance group to enjoy the benefits of the Agreement, it would need to be subject to a group capital *calculation* by its home supervisor – not a group capital *requirement*. This is an important distinction, because the language used specifically contemplates the initiative underway at the NAIC to develop such a calculation, which the NAIC has affirmed will not become a standard or requirement. In addition, Article 4(h) does not (and legally could not) alter existing state sovereign authority.

Equally important, nothing in this provision (or the entire Agreement) suggests that the group capital standards of Solvency II are to be imported into the U.S. and applied by the states. Indeed, the Agreement's language underscores the exact opposite: a mutual acceptance by the EU and the U.S. of, and respect for, each other's governing insurance financial regulatory architecture.

- Global Group Supervision. As reflected in the text, the U.S. Treasury Department's Fact Sheet, and the European Commission's Explanatory Memorandum, the Covered Agreement limits "global" group supervision to the home country supervisor: U.S. insurers with EU operating companies will be subject to worldwide prudential insurance group oversight only by their lead U.S. state regulator and are not subject to "upstream" supervision by EU member states.
- Treatment of Reinsurance. Regarding reinsurance collateral and concerns about retroactive application to existing reinsurance obligations, Article 3 of the Agreement was drafted intentionally to reflect the text of Section 8(A)(5) of the NAIC's model credit for reinsurance regulation, which does not allow retroactive changes to existing contractual obligations based upon statutory reductions in collateral requirements. The Covered Agreement and the NAIC model require changes to existing contracts to reflect changing statutory collateral rules only if amendments to the contracts were material. The Fact Sheet underscores Treasury's view: "It is understood that changes to regulatory requirements for posting collateral would not apply to amended agreements unless such amendment constitutes a material change to the underlying terms of the agreement."

The proposed "simple solution" by those challenging the Agreement amounts to a call to renegotiate the Agreement and erase the direct and indirect benefits to U.S. (re)insurers operating here and abroad, returning the EU-US relationship to the pre-agreement status quo of regulatory uncertainty. In the context of important international insurance regulatory discussions that are underway, a decision that leads to premature abandonment of the Agreement would reinforce the

view that the U.S. insurance regulatory system is dysfunctional and unreliable, making it more difficult for U.S. regulators and negotiators to defend the U.S. system going forward and advocate for a level competitive playing field for U.S. industry.

We encourage the Administration to acknowledge the clear and immediate benefits of the Agreement and strive to fix any flaws in the process going forward. The Covered Agreement is clearly a significant "win" for U.S.-based insurers and reinsurers, state regulators and the U.S. regulatory system because it removes regulatory uncertainty, establishes the terms upon which companies can do business in the E.U., and does so without importing Solvency II in the U.S., something an equivalence determination under Solvency II could not achieve without the acceptance of the many burdens that accompany such a determination.

Sincerely,

**American Council of Life Insurers**

**American Insurance Association**

**Council of Insurance Agents and Brokers**

**Reinsurance Association of America**

The American Council of Life Insurers represents approximately 94% of the life insurance industry's assets or \$6.1 trillion at year-end 2015. ACLI members representing 2% of those assets have objected to ACLI's position supporting the Covered Agreement.

The American Insurance Association (AIA) is the leading property-casualty insurance trade association based in Washington, D.C. representing approximately 300 insurers that write more than \$125 billion in premiums each year. AIA member companies offer all types of property-casualty insurance, including personal and commercial auto insurance, commercial property and liability coverage, specialty, workers' compensation, homeowners' insurance, medical malpractice coverage, and product liability insurance.

The Council of Insurance Agents and Brokers has 205 members selling 80 percent of domestic commercial property-casualty premiums.

In 2015, the Reinsurance Association of America's underwriting members and affiliates had surplus of \$194 billion and wrote \$125 billion in gross written premium. Only one RAA underwriting member (Cincinnati Financial) has stated any objections to the Covered Agreement.