

March 15, 2017

The Honorable Steven Mnuchin  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Ave., NW  
Washington, D.C. 20220

Dear Secretary Mnuchin:

On behalf of the National Association of Insurance Commissioners (NAIC)<sup>1</sup>, we write regarding the Bilateral Agreement Between the European Union and the United States of America on Prudential Measures Regarding Insurance and Reinsurance, what is commonly referred to as the “covered agreement” (hereinafter “the Agreement”), submitted to Congress on January 13, 2017. Since that time, it has become clear that there is significant confusion among current and former government officials, insurance regulators and the industry regarding the nature of the obligations to be undertaken, the purported benefits that were gained, and the concessions that were made. As state insurance regulators would be responsible for implementing most aspects of the Agreement, we respectfully request that you engage the European Union to seek written confirmation regarding the interpretation and application of many of the Agreement’s terms. Such clarification is necessary not only to fully evaluate whether the Agreement is in the best interest of the United States insurance sector, but also to ensure any implementation is consistent with the intent of those that negotiated it. We would be pleased to lend our technical assistance to your Department to help ensure a productive dialogue with the EU.

On February 16, 2017, the House Financial Services Committee’s Subcommittee on Housing and Insurance, chaired by Congressman Sean Duffy, held an oversight hearing regarding the Agreement. At that hearing, former director of the Treasury’s Federal Insurance Office, Michael McRaith, one of the lead negotiators of the agreement, testified that the agreement “puts America’s interest first” and “U.S. consumers, industry, and the U.S. national economy will benefit.” Importantly, he asserted that key aspects of the agreement either recognized existing state authorities or otherwise merely obligated the states to take actions they were already undertaking. In Mr. McRaith’s view, “the Agreement affirms that the U.S. supervises its insurance sector as the U.S. deems appropriate.” Specifically, he claimed that the Agreement only required the states to eliminate collateral requirements in a manner that was supportive of state regulator efforts to implement changes to their Credit for Reinsurance laws and regulations that would reduce reinsurance collateral, finish our ongoing work on a group capital calculation, and, for purposes of group supervision, treat EU-based insurance companies operating in the

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<sup>1</sup> Founded in 1871, the NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

U.S. as they are treated today. In exchange for those concessions, he claimed the Agreement recognizes the current U.S. insurance group supervision practices, prohibited Europe from extraterritorial application of its requirements on a U.S.-based holding company or legal entity, and required certain EU jurisdictions to immediately lift their requirements that U.S. reinsurers maintain a local presence as a condition of doing business. With respect to the foregoing claims, these outcomes are not clear from a plain reading of the text of the Agreement, and although Mr. McRaith's opinion is informative, it does not necessarily reflect the views or interpretation of any of the current parties to the Agreement.

Our analysis suggests that the Agreement operates differently than Mr. McRaith claimed. First, the Agreement completely eliminates collateral requirements. Though, over the course of the past few years, states have reduced collateral requirements, they have not been eliminated. Our approach is risk-based and reinsurer collateral requirements range from 0% to 100% based on an assessment of the financial strength of the reinsurer and quality of its supervision. While there are conditions in the Agreement that reinsurers would have to meet to avoid being subject to collateral requirements, several of those conditions differ materially from current state credit for reinsurance laws. In light of these differences, states may have to take alternative measures to ensure that ceding U.S. insurers, and, by extension, U.S. policyholders are protected from any risks posed by reinsurance counterparties. Second, section 4(h) of the Agreement, which requires a group capital assessment, is ambiguous and it is not clear that the NAIC's ongoing work to develop a group capital calculation will satisfy the provisions or the EU's interpretation of it. The Agreement suggests the states should impose a capital requirement, with specific corrective capital measures, at the group level of a U.S. insurer, rather than at the legal entity level. Current work of the NAIC does not presently include a requirement for additional capital at either the group or legal entity level, so this could clearly add costs for U.S. insurers unless Mr. McRaith's assertion that our current work is sufficient to meet the terms of the Agreement as understood not just by Treasury, but by the EU. Third, the Agreement imposes group supervisory framework that differs from existing group supervisory authorities. The Agreement appears to place conditions upon the use of longstanding regulatory authorities to protect U.S. consumers. Finally, we remain concerned the Joint Committee established by the Agreement will invite perpetual renegotiation of the Agreement's terms that could significantly impact the insurance sector. Also, there is no assurance that state insurance regulators will be among the committee's members, even though we are responsible for key components of Agreement's implementation and would likely be responsible for implementing any decisions reached by the Joint Committee. We appreciate Mr. McRaith's personal view that state insurance regulators should be a part of that committee, but we urge Treasury to confirm that point and also limit the Committee's focus to discussing significant deviations to the terms of the Agreement.

To be clear, state insurance regulators are committed to expeditious resolution of the disparate treatment of U.S. insurers operating in the EU and we are committed to working with your Department to address such concerns. However, the significant differences of opinion regarding the terms and operation of this Agreement necessitate, at a minimum, formal clarification and confirmation of its terms through the exchange of formal side letters with the EU. Absent such assurances, we urge you to formally reopen negotiations as we are deeply concerned about the prospect of the states making significant changes to its insurance laws, regulations and procedures that inure to the benefit of the EU and its insurance sector without our sector receiving certainty surrounding their business activities in the EU.

We would greatly appreciate the opportunity to meet with you and your staff to further discuss ways we can work together to seek the appropriate confirmation of the EU's interpretation of the Agreement, and to discuss a path forward that addresses the treatment of U.S. insurers operating within the EU while also ensuring that appropriate protections remain in place for U.S. insurers and consumers. For the purposes of scheduling such a meeting or if you or your staff have any follow-up questions, please don't

hesitate to contact Ethan Sonnichsen, NAIC's Managing Director, Government Relations at (202) 471-3980 or [esonnichsen@naic.org](mailto:esonnichsen@naic.org). Thank you for attention to this important matter.

Sincerely,



Ted Nickel  
NAIC President  
Commissioner  
Wisconsin Office of the  
Commissioner of Insurance



Julie Mix McPeak  
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Michael F. Consedine  
Chief Executive Officer

cc: Gary Cohn, Director, United States National Economic Council