

# The US-EU Covered Agreement: EU-US Mutual Recognition?

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## WHAT IS IT?

- Written bilateral or multilateral agreement that “relates to the recognition of prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.”
- Authorized by Dodd-Frank Act
- Preempts state laws that conflict with its terms, except state insurance measures that govern:
  - insurers’ rates, premiums, underwriting or sales practices;
  - any state insurance coverage requirements;
  - application of antitrust laws of any state to the business of insurance;  
or
  - any state insurance measure governing insurer capital or solvency, except where state measure results in less favorable treatment of non-U.S. insurer than U.S. insurer.

# **COVERED AGREEMENT BETWEEN US AND EU**

- In accordance with Dodd-Frank, Covered Agreement negotiated by U.S. Department of Treasury [through Federal Insurance Office (FIO)] and United States Trade Representative (USTR)
  - Negotiated for US by Mike McRaith of FIO with USTR staff assistance
    - Negotiations began in early 2016
- Covered Agreement finalized and sent to Congress on 1/13/2017
  - Congress has 90 days to review
    - No authority to revise or approve

## WHY WAS IT NEGOTIATED?

- With implementation of Solvency II, US re(insurers) are:
  - forced to open EU offices or be shut out of market;
  - subject to onerous EU Solvency II requirements up to holding company level
- EU reinsurers under laws of US states are required to post collateral to secure their reinsurance obligations to US cedents
  - EU reinsurers seeking uniformity and zero collateral

## **WHAT IS INCLUDED?**

- **Reinsurance**
- **Group Supervision**
- **Exchange of Insurance Information  
Between Regulators**

# REINSURANCE

## Reinsurance collateral and local presence requirements eliminated in both EU and US

- Collateral posting requirements for reinsurers operating in “host country” eliminated where certain criteria met
- Companies not required to have local presence in host countries

# NAIC Certified Re Model v. Covered Agreement Provisions

NAIC MODEL	COVERED AGREEMENT
Financial Strength Ratings	No Ratings Required; Solvency Ratio Instead
Notice of Regulatory Non-Compliance	Limited Notice Requirements
Audited Financials for 3 Years	Audited Financials for 2 Years
Regulator Evaluates for Prompt Pay	Terms Define Prompt Pay
Cedent Insolvency - Post Collateral	Cedent Insolvency - May Ask Court
Regulatory Authority to Revoke	Process for Regulatory Revocation
Qualified Jurisdictions	Favorable Treatment to EU
Catastrophe Deferral Period	No Reference
Concentration of Risk Consideration	No Reference

# NAIC Certified Re Model v. Covered Agreement Provisions (cont'd)

NAIC MODEL	COVERED AGREEMENT
Consent to Jurisdiction/Service of Process	Similar
Annual Filing of Overdue Reinsurance Recoverables	Biannually
Prompt Payment of Claims - Factor	Qualifier for Eligibility for Reduced Collateral
Solvent Scheme Participation - Factor	Prohibits Participation in Solvent Scheme Involving US Insurer



## **GROUP SUPERVISION**

**Applies only to US and EU groups that operate in both jurisdictions**

- EU companies operating in US will be supervised only by EU requirements
- US groups operating in EU will not have to meet EU worldwide group capital, reporting or governance requirements
  - Requires supervision of US groups at worldwide level

## FORMAL PROCESS IN EU

- Covered Agreement text being translated for vote by European Commission
  - Sent to European Council and Member States
- European Council authorizes European Commission to sign text
- EU Parliament will then vote to enter into force
  - Will write report on Agreement, either approving or rejecting it
    - Cannot amend Agreement
- Process can take 1 – 2 years

# **EFFECTS ON US STATES**

## **States have five years to conform laws to Covered Agreement**

- During five years, US to encourage states to reduce collateral requirements for EU-based reinsurers by 20% per year from current levels
  - 42 months after Covered Agreement signed, US will prioritize (by focusing on gross reinsurance premium volume) non-complying states FIO determines give less favorable treatment to EU insurers than to US domiciled/licensed/admitted insurers
  - US must complete any necessary preemption process within 60 months from date Covered Agreement signed
- Within five years, states to finalize development of group capital assessment for companies that do business in both jurisdictions

## **CAN IT BE RESCINDED / TERMINATED?**

- By Congressional legislative action to block it from taking effect
- By US refusing to sign it
- If signed, through termination provision

# CAN IT BE RESCINDED / TERMINATED? (CONT.)

## ➤ Termination Provision

### Article 11 – Termination and Mandatory Consultation

1. Following mandatory consultation, **either Party may terminate this Agreement at any time by giving written notification to the other Party**, subject to the procedures of this Article. **Unless otherwise agreed by the Parties in writing, such termination shall be effective in 180 days**, or 90 days with respect to termination described in Article 10, subparagraph 2(c), after the date of such notification. In particular, the Parties may terminate this Agreement where either Party has failed to fulfil its obligations under this Agreement or has taken measures inconsistent with the objectives of this Agreement.

(Emphasis supplied.)

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## ***CAN IT BE RESCINDED / TERMINATED? (CONT.)***

4. Mandatory consultation through the Joint Committee shall be required if requested by either Party to the Chair of the Joint Committee, and shall commence not later 30 days, or 7 days if requested as described in Article 10, subparagraph 2(c), after such request unless the Parties agree otherwise. The Party requesting mandatory consultation shall provide written notice of the bases for the mandatory consultation. The mandatory consultation may be hosted at a site determined by the Parties, and if the Parties cannot agree on a location, then the Party requesting mandatory consultation shall propose three neutral sites outside of the territory of either Party, and the other Party shall select one of the proposed three neutral sites.
5. Mandatory consultation will be required prior to the termination of this Agreement, including with respect to the provisions of Article 10.
6. **If a Party refuses to participate in a mandatory consultation as provided in this Article, then the Party seeking to terminate may proceed to terminate the Agreement as provided in paragraph 1 of this Article.**

(Emphasis supplied.)

# **ISSUES RAISED ABOUT AGREEMENT**

## **➤ Process Questions**

- Transparency
- Role of State Regulators
- Dislike of FIO
- No vote for Congress

## **➤ Preemption**

- McCarran-Ferguson

# ***ISSUES RAISED ABOUT AGREEMENT (cont.)***

- **Collateral elimination**
  - Retroactive or prospective only?
  - Elimination rather than elimination/ reduction sliding scale?
- **Group capital assessment**
  - To what part of Group does it apply?
  - What happens if EU doesn't like assessment?
- **Role for State Regulators in Joint Committee**



# Thank you

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