

**Statement of the United States  
on the Covered Agreement with the European Union**

**September 22, 2017**

The United States provides the following information concerning the Bilateral Agreement between the United States of America and European Union on Prudential Measures Regarding Insurance and Reinsurance (the “Agreement”) to provide additional clarity for U.S. insurance regulators and industry participants with respect to implementation of the Agreement.

The Agreement affirms the U.S. system of insurance regulation, including the role of state insurance regulators as the primary supervisors of the business of insurance. The Agreement will deliver lasting benefits to the United States. It provides regulatory certainty for U.S. insurers and reinsurers operating in the EU, and is expected to reduce costs for insurers and personal and commercial policyholders in the United States, while preserving important consumer protection provisions. The United States commits to regular and substantive engagement with stakeholders throughout its implementation of this Agreement. The United States will make every effort to ensure that the EU implements its obligations, while carrying out the United States’ own obligations.

**Reinsurance (Article 3)  
Building on the State Approach**

For the United States, the collateral elimination requirements of the Agreement do not call for full implementation until the conclusion of a five-year transition period and only apply with respect to reinsurers that meet the specified financial strength and market conduct requirements. In accordance with Article 9, the United States encourages each U.S. state to promptly adopt relevant credit for reinsurance laws and regulations consistent with Article 3, and to phase-out the amount of collateral required by each U.S. state to allow full credit for reinsurance cessions to EU reinsurers.

The collateral elimination requirements of the Agreement do not apply to reinsurance agreements that were entered into before the Agreement’s application, or to losses that were incurred or to reserves that were posted before the Agreement’s application. Nothing in the Agreement alters the capacity of parties to any reinsurance agreement to renegotiate such reinsurance agreement or to agree on requirements for collateral on a contractual basis in excess of those required by law.

Under the Agreement, the provisions of Article 3 apply to EU reinsurers that meet specified financial strength and market conduct requirements. Among other things, Article 3 clarifies that the Agreement does not prevent a state insurance regulator from imposing non-collateral requirements that do not have substantially the same regulatory impact as collateral requirements as conditions for ceding companies to enter into reinsurance agreements with EU reinsurers or to allow credit for such reinsurance, if the state insurance regulator applies the same requirements in the case of reinsurance agreements with U.S. reinsurers domiciled in that state.

## **Group Supervision (Article 4) Preserving the U.S. Entity-Based Regulatory System**

The Agreement limits the worldwide application of EU prudential group insurance measures on U.S. insurers operating in the EU. The Agreement provides that U.S. insurers and reinsurers can operate in the EU without the U.S. parent being subject to the group level governance, solvency and capital, and reporting requirements of Solvency II, and reinforces that the EU system of prudential insurance supervision is not the system in the United States. The Agreement does not require development of a group capital standard or group capital requirement in the United States. Article 4(h) contemplates that the states will develop a group-wide capital assessment. Through the National Association of Insurance Commissioners (NAIC), the states are in the process of developing a group capital calculation which is intended to serve as an analytical tool for evaluating a firm's capital position at the group level. The United States expects that the NAIC's group capital calculation will satisfy the "group capital assessment" condition of Article 4(h), provided that the work is completed and implemented within five years of the date on which the Agreement is signed. The Agreement does not require a group capital assessment with respect to U.S. insurance groups that do not have operations in the EU.

The United States recognizes that existing state law already allows for application of capital measures at the insurance entity level as a means of imposing preventive, corrective, or otherwise responsive measures, and understands that the state regulators' ability to impose such measures is consistent with the terms of Article 4 of the Agreement. In addition, nothing in Article 4 requires states to impose such capital measures on the basis of a capital assessment, as opposed to imposing other preventive, corrective, or otherwise responsive measures.

The reporting provisions of the Agreement will protect U.S. insurance groups that have affiliates in the EU from expansive EU reporting requirements relating to worldwide operations at the group level, while enhancing regulatory cooperation. U.S. insurance supervisors are able to obtain information about the EU parent of insurers that are active in the United States, if necessary, to protect against serious harm to U.S. policyholders, or a serious threat to financial stability, or a serious impact on the ability of an insurer to pay its claims in the United States. In addition, under Article 4(c), U.S. insurance supervisors will receive from EU insurance supervisors an Own Risk Solvency Assessment (ORSA) summary report for the worldwide group ORSA, or equivalent documentation, for EU insurance companies operating in their territory. Under Article 4(f), U.S. state prudential insurance group supervision reporting requirements continue to apply at the level of the EU parent insurer if such requirements directly relate to the risk of a serious impact on the ability of insurers in the group to pay claims in the United States. The United States expects that close supervisory cooperation between and among U.S. and EU insurance supervisory authorities will continue, which may include supervisory colleges and the exchange of information under Article 5 of the Agreement. The United States does not see a basis to expect that state regulators, in adhering to Article 4 reporting provisions, will encounter conflicts with state law based on the NAIC's "Insurance Holding Company System Model Regulatory Act."

## **Exchange of Information (Article 5) Facilitating Supervisory Cooperation**

The Agreement acknowledges the increased globalization of insurance and reinsurance markets and the associated need for cooperation between U.S. and EU insurance supervisors regarding the exchange of confidential information. Accordingly, the United States encourages U.S. insurance supervisory authorities to cooperate in exchanging information with EU insurance supervisory authorities consistent with the practices set forth in the Model Memorandum of Understanding Provisions on Exchange of Information between Supervisory Authorities, annexed to the Agreement, in order to enhance cooperation and information sharing, while respecting a high standard of confidentiality protection.

## **The Joint Committee (Article 7) Administration and Transparent Implementation**

The Agreement can be amended only by agreement of the Parties, in writing, in accordance with Article 12 (Amendment). As described in Article 7, the Joint Committee will serve as a forum for consultation and to exchange information on the administration and proper implementation of the Agreement. The Joint Committee will not have the ability to regulate the business of insurance and reinsurance in the United States or in the EU. The United States believes that proper implementation of the Agreement requires appropriate transparency and engagement with stakeholders, as well as advocacy for U.S. interests. Because U.S. state regulators will be largely responsible for implementing the Agreement, the United States is committed to the direct involvement of state insurance regulators, including their staff, in the work of the Joint Committee. To this end, the United States will consult with state insurance regulators, and will establish a robust consultative process to ensure that discussions in the Joint Committee will be well-informed of the views and interests of state insurance regulators.

## **Conclusion**

The Agreement supports the principles specified in the Presidential Executive Order on Core Principles for Regulating the United States Financial System (Feb. 3, 2017) by enabling U.S. companies to be competitive with foreign firms in domestic and foreign markets; advancing U.S. interests in international financial regulatory negotiations and meetings; and making regulation efficient, effective, and appropriately tailored. The United States looks forward to promoting the interests of U.S. stakeholders, U.S. insurance regulators, and the U.S. economy as the Agreement is implemented. The United States also shares with the EU the goal of protecting insurance and reinsurance consumers while respecting one another's system for supervision and regulation. The Agreement is the final and controlling legal text negotiated between the Parties and contains important legal conditions and other terms not summarized above. This document should be reviewed in conjunction with the Agreement and the Federal Insurance Office Act.