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One Hundred Fourteenth Congress
U.S. House of Representatives
Committee on Foreign Affairs
2170 Rayburn House Office Building
Washington, DC 20515
www.foreignaffairs.house.gov

September 29, 2015

The Honorable Jacob J. Lew
Secretary of the Treasury
United States Department of the Treasury
1500 Pennsylvania Ave NW
Washington, DC 20220

The Honorable Michael B. Froman
United States Trade Representative
Office of the U.S. Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Secretary Lew and Ambassador Froman:

It has been over five years since passage of the Dodd-Frank Act, but the United States has yet to formally begin negotiations of a covered agreement with any foreign government regarding prudential measures related to the business of insurance or reinsurance. While positive conversations with the European Union (EU) have continued as part of the “EU-U.S. Insurance Dialogue Project,” a formal covered agreement is needed to secure a level-playing field for insurers and reinsurers in the U.S. and Europe. The time is now for the Department of Treasury and the Office of the U.S. Trade Representative (USTR) to use the statutory authority to begin formal negotiations of a covered agreement with the EU on a number of prudential issues, including reinsurance collateral requirements.

Before the passage of the Dodd-Frank Act, successive Administrations identified the lack of strong U.S. leadership on international insurance issues as an impediment to American firms competing in the global market. In 2008, Treasury Secretary Paulson’s report, *The Blueprint for a Modernized Financial Regulatory Structure*, cited the limits of the current insurance regulatory system in that it “creates increasing tensions in such a global marketplace, both in the ability of U.S.-based firms to compete abroad and in allowing greater participation of foreign firms in U.S. markets” and called for the creation of an authority “to address international regulatory issues, such as reinsurance collateral.” In 2009, Treasury Secretary Geithner’s report, *Financial Regulatory Reform, A New Foundation: Rebuilding Financial Supervision and Regulation*, noted “in the international context, the lack of a federal entity with responsibility and expertise for

insurance has hampered our nation's effectiveness in engaging internationally with other nations on issues related to insurance." Based on that conclusion, the report called for the creation of federal entity that would "be empowered to work with other nations, have the authority to enter into international agreements, and increase international cooperation on insurance regulation."

These findings by previous U.S. Treasury Secretaries encouraged Congressional efforts. In both the 110th and 111th Congresses, Rep. Paul Kanjorski (D-PA) introduced the Insurance Information Act, which ultimately resulted in the creation of the Federal Insurance Office (FIO) as enacted in Title V of the Dodd-Frank Act. In December 2009, during markup of his legislation – then renamed the Federal Insurance Office Act – Rep. Kanjorski stated: "The Federal Insurance Office will provide a unified voice on insurance matters for the United States in global deliberations. The Federal Insurance Office and the United States Trade Representative will share the authority to negotiate and enter into agreements with foreign entities." Specifically, Rep. Kanjorski said that the FIO and USTR would be given the authority to enter into a "covered agreement" to allow for the preemption of state laws to "harmonize reinsurance standards across national borders." The final Conference Report accompanying the Dodd-Frank Act further highlighted this position: "The Federal Insurance Office Act of 2010 expressly provides the Secretary of the Treasury, jointly with the USTR, the authority to negotiate and enter into international insurance agreements. To assure uniform, national application of prudential measures such as reinsurance collateral requirements, the Federal Insurance Office Act provides the Director with the authority to identify and narrowly preempt state insurance measures inconsistent with a defined category of international insurance agreements." The groundwork was laid for future action.

Perhaps most importantly, in December 2013, the FIO publicly endorsed seeking a covered agreement in the area of reinsurance collateral, stating, "To afford nationally uniform treatment of reinsurers, FIO recommends that Treasury and the United States Trade Representative pursue a covered agreement for reinsurance collateral requirements based on the National Association of Insurance Commissioners [NAIC] Credit for Reinsurance Model Law and Regulation." As a basis for its recommendation, the FIO forecast the "likelihood" of the "non-uniform application" of model reinsurance law and the "complicating effect of state-by-state inconsistency on economic matters of national interest." This prediction was prescient: Today, only 32 U.S. jurisdictions have passed provisions whereby reinsurers who meet rigorous financial standards can become certified for reduced collateral requirements. Amongst the one-third of States who have yet to reform their laws are the large markets of Texas and Illinois. According to the leading reinsurance trade association, these gaping holes are inhibiting reinsurers with regional books of business from taking advantage of the new laws at all. The uneven application of regulation is exactly what the covered agreement powers were intended by Congress to remedy.

Therefore, it is laudable that the Federal Insurance Office has already helped start the international conversation on these issues. In 2014, as part of the EU-U.S. Insurance Project, U.S. federal and state regulators agreed with EU regulators that they should take steps towards entering into a covered agreement on reinsurance collateral. Furthermore, the parties identified group supervision and the exchange of confidential information as other areas for which a covered agreement should be explored. In April 2015, the European Council directed the European Commission to begin negotiations with the U.S. to "enable us... to recognize each

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other's prudential rules and help supervisors exchange information," while citing reinsurance as an area where an agreement "will greatly facilitate trade." The stage is set to formalize this process, and it is time for USTR and Treasury to join together to complete this important task.

The U.S. has much to gain by moving forward with a covered agreement with the EU. Formal negotiations would give the U.S. leverage in discussions about equivalency under the European Solvency II regime that is scheduled for implementation on January 1, 2016. To date, the U.S. has been given provisional equivalence in the area of solvency assessment, but no similar designation has followed in the areas of reinsurance and group supervision. Without such action, U.S. companies with business in the EU could be forced to, among other things, hold more capital in their EU subsidiaries, putting them at a direct competitive disadvantage. Put simply, given the time pressures, only negotiation of a covered agreement can ensure an acceptable outcome for the U.S. on the Solvency II "equivalence" issue. Without it, the continued open access of U.S.-based reinsurers to markets in EU member states will no longer be assured, and U.S. insurers doing business in the EU will be exposed to the risk of additional regulatory actions by individual EU countries. A successful covered agreement, on the other hand, lays the groundwork for successive negotiations with additional key insurance jurisdictions such as Switzerland, Bermuda and Japan. Additionally, the U.S. and the EU achieving harmony in this area sets an example that strengthens our shared goal of reducing or forestalling barriers to globally active direct insurers and reinsurers which China, Brazil and other rising economies seek to impose. It is a win-win that strengthens the United States' hand in international insurance supervision.

While Congressional approval is not needed for a covered agreement to commence or be concluded, the Financial Services Committee and the Ways and Means Committee in the House of Representatives and the Banking, Housing, and Urban Affairs Committee and the Finance Committee in the Senate must be consulted before negotiations commence. Yesterday, I was pleased to read in the FIO annual report that the USTR and FIO plan to notify Congress "in the coming weeks" that an agreement is in the works. I urge you to begin this process immediately.

With regards,



EDWARD R. ROYCE
Chairman

cc: Mr. Michael McRaith, Director, Federal Insurance Office