

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

MEMORANDUM

To: Members of the Committee on Financial Services

From: FSC Majority Staff

Date: February 22, 2016

Subject: February 25, 2016, Housing and Insurance Subcommittee Hearing on “The Impact of International Regulatory Standards on the Competitiveness of U.S. Insurers- Part II”

The Subcommittee on Housing and Insurance will hold a hearing entitled “The Impact of International Regulatory Standards on the Competitiveness of U.S. Insurers-Part II” on Thursday, February 25, 2016, at 2:00 p.m. in Room 2128, Rayburn House Office Building. This hearing will examine the various international regulatory standards being considered by the G-20, the Financial Stability Board, the International Association of Insurance Supervisors, and other international supervisory authorities. Witnesses will discuss how best to: coordinate global and domestic insurance policy; promote a competitive marketplace that allows U.S. insurers to effectively compete with international counterparts; preserve the authority of the states to regulate insurance; and enhance cooperation between state and federal entities on both international and domestic insurance regulatory regimes. In addition, this hearing will review draft legislation to enhance Congress’s oversight of insurance-related international deliberations to which the United States is a party.

This will be a one-panel hearing with the following witnesses:

- Mr. Gary Thompson, President and CEO, Columbia Insurance Group, on behalf of the National Association of Mutual Insurance Companies
- Mr. David Zaring, The Wharton School, University of Pennsylvania
- Mr. Joseph Torti III, Vice President for Regulatory Affairs, Fairfax (US) Inc., on behalf of Property Casualty Insurers Association of America
- Ms. Carolyn Cobb, Vice President and Chief Counsel, American Council of Life Insurers

Background

For nearly 150 years, U.S. insurance companies of every kind—including property-casualty, life, reinsurance, health, and auto—have been regulated primarily by the states. Congress and the states have occasionally reviewed the effectiveness of the state-based regulation of insurance and coordinated efforts to achieve greater regulatory uniformity. In 1945, Congress passed the McCarran-Ferguson Act (15 U.S.C. §§ 1011 *et seq.*), which

confirmed the states' regulatory authority over insurance except where a federal law expressly provides otherwise.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111–203) enlarged the federal government's role in the insurance industry by creating a federal office specifically tasked with insurance matters. The Dodd-Frank Act established a Federal Insurance Office (FIO) at the U.S. Department of the Treasury (Treasury) and charged the director of the FIO with representing the interests of U.S. insurers during the negotiation of international agreements and advising the Office of the U.S. Trade Representative (USTR) during trade negotiations.

The Dodd-Frank Act brought insurers, insurance holding companies, and insurance subsidiaries within the purview of the newly created Financial Stability Oversight Council (FSOC), a 15-member inter-agency group charged with identifying risks to the financial stability of the United States. The Dodd-Frank Act requires that three of the FSOC's members represent the perspective of the insurance industry.¹ The Dodd-Frank Act also grants the Federal Reserve Board of Governors regulatory authority over non-bank institutions designated by the FSOC as systemically important and transferred to the Fed supervisory responsibility for savings and loan holding companies, a group that includes numerous U.S.-domiciled insurers. It is this authority that provides for the imposition of a capital standard on domestic insurance companies, currently being discussed at the Federal Reserve Board. Even though the Dodd-Frank Act expanded the federal government's oversight of the insurance industry, it also preserved the states' general authority to regulate insurance and to resolve failed insurance firms.

Federal Insurance Office

Mr. Michael McRaith, who is the former Illinois insurance commissioner, has served as the FIO Director since June 2011. The Dodd-Frank Act charges the FIO director with a number of duties, including (1) consulting with state insurance regulators and coordinating federal involvement in, and policymaking relating to, international insurance matters; (2) representing the U.S. in insurance agreement negotiations taking place at the International Association of Insurance Supervisors (IAIS), whose mission is to establish "standards, principles, and guidance papers" and provide training for insurance regulators; (3) assisting the Secretary of the Treasury and advising the USTR in negotiating trade agreements; and (4) determining whether state insurance laws that treat non-U.S. insurers less favorably than U.S. insurers are preempted by international agreements.

International Regulatory Changes

In a November 20, 2015 letter to Congress, Treasury and the USTR announced their intention to initiate negotiations to enter into a covered agreement with the European

¹ Of the three insurance-related slots on the FSOC, two are non-voting: the FIO Director and a state insurance commissioner. The third slot, which confers voting privileges, is occupied by "an independent member appointed by the President, by and with the advice and consent of the Senate, having insurance expertise." Roy Woodall, a former state insurance commissioner, was confirmed by the Senate to fill this position on September 26, 2011.

Union. A subsequent notice was issued in the Federal Register to this effect on January 19, 2016.

Under Title V of the Dodd-Frank Act, Treasury and the USTR are authorized to jointly negotiate a “covered agreement” with one or more foreign governments, authorities, or regulatory entities. A covered agreement is a “written bilateral or multilateral agreement regarding prudential measures with respect to the business of insurance or reinsurance.”

Treasury and the USTR stated in its letter to Congress that, “the United States and the EU are the two largest insurance markets in the world and both markets present important opportunities for organic and acquisition-based growth for insurers and reinsurers. A covered agreement with the EU would level the regulatory playing field for U.S.-based insurers and reinsurers operating there, and further confirm that the existing U.S. insurance regulatory system serves the goals of insurance sector oversight, policyholder protection, and national and global financial stability.”

Legislative Discussion Draft

The draft legislation enhances Congress’s oversight of international deliberations relating to insurance standards. More specifically, the legislation establishes a series of requirements to be met before the FIO or the Federal Reserve may agree to, accept, establish, enter into or consent to the adoption of a final international insurance standard. First, the FIO and the Fed must publish any proposed final standard and allow for public comment. In so doing, the agencies must provide a joint analysis on the impact of the standard on consumers and U.S. insurance markets. Before agreeing to any international standard relating to capital, the Fed is required to first promulgate its domestic capital standard rule. The bill imposes similar requirements for negotiations concerning covered agreements. The legislation sets negotiating objectives for U.S. parties and also mandates that the FIO and the Fed report and testify to Congress twice annually. Finally, the draft helps to ensure that the FSOC’s Independent Member with Insurance Expertise is permitted to assist the FSOC in international discussions and attend meetings of international bodies where insurance standards are discussed.