M E M O R A N D U M

To: Members of the Committee on Financial Services

From: FSC Majority Staff

Date: September 23, 2016

Subject: September 28, 2016, Housing and Insurance Subcommittee Hearing on "The Impact of US-EU Dialogues on U.S. Insurance Markets"

The Subcommittee on Housing and Insurance will hold a hearing entitled "The Impact of US-EU Dialogues on U.S. Insurance Markets" on Wednesday, September 28, 2016, at 2:00 p.m. in Room 2128 of the Rayburn House Office Building. This hearing will examine the process by which the Treasury Department and the Office of the U.S. Trade Representative (USTR) may enter into a covered agreement under Section 502 of the Dodd-Frank Act. In addition, the witnesses will provide members of the Subcommittee with a better understanding of 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.

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

- Mr. Michael McRaith, Director, Federal Insurance Office, U.S. Department of the Treasury
- Mr. Tom Sullivan, Senior Advisor, Board of Governors, Federal Reserve System
- Ms. Julie Mix McPeak, Commissioner, Tennessee Department of Commerce and Insurance
- Office of the United States Trade Representative

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 Treasury Department and charged the director of the

FIO with representing the interests of U.S. insurers during the negotiation of international agreements and advising the 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.

Covered Agreement

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 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."

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[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.

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."

International Regulatory Changes

U.S. officials and regulators coordinate through a variety of fora with their foreign counterparts on insurance regulation. Some U.S.-domiciled insurance companies have expressed concern that measures being considered in these international fora could result in the imposition of a bank-like regulatory regime on U.S. insurers, draconian capital requirements that are ill-suited to the business of insurance, and potentially costly new accounting standards that could make U.S. insurers less competitive and impede their ability to expand and create U.S. jobs.

During the global financial crisis, the Group of Twenty Finance Ministers and Central Bank Governors (G-20), of which the U.S. is a member, accelerated the development of new international insurance standards that will affect the U.S. insurance industry. In 2009, the G-20 created an entity called the Financial Stability Board (FSB), a consortium of financial authorities and international standard-setting bodies, and tasked it with overseeing, establishing standards for, and designating large financial institutions as "global systemically important financial institutions" (G-SIFIs). The FSB delegated to one of its members, the IAIS, the task of developing standards for G-SIFI insurance companies, which will be known as global systemically important insurers (G-SIIs). In implementing this regime, the IAIS has developed an assessment methodology to identify any insurers whose distress or disorderly failure, because of their size, complexity and interconnectedness, would cause significant disruption to the global financial system and economic activity. Any such insurers would be regarded as systemically important on a global basis. The FSB published its list of systemically important insurers in the summer of 2013. Three American insurance companies were included: American International Group, MetLife, Inc., and Prudential Financial Inc.[2]

The U.S. is represented by the FIO, the Federal Reserve Board, and the National Association of Insurance Commissioners (NAIC) on the IAIS. IAIS's members include insurance "regulators and supervisors" from over 190 jurisdictions and over 120 insurance professionals. During previous conferences, IAIS members discussed (1) improving international coordination, standards, guidance, and insurance supervision – also referred to as the "Common Framework for the Supervision of Internationally Active Insurance Groups" (ComFrame) – and (2) designating G-SIIs.

[2] Each of these firms has also been designated by the FSOC as a "systemically important financial institution," or "SIFI," which subjects them to heightened prudential supervision by the Federal Reserve Board.