

July 28, 2015

The Honorable Jacob Lew
Secretary of the Treasury
Washington, DC 20220

The Honorable Michael Froman
United States Trade Representative
Washington, DC 20508

RE: Covered Agreements

Dear Secretary Lew and Ambassador Froman:

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers. NAMIC's 1,350 property/casualty insurance company members write \$208 billion in premium and serve more than 135 million policyholders in the U.S. NAMIC members serve 48 percent of the personal lines (automobile/homeowners) market and 33 percent of the business insurance market. Nearly 250,000 people are employed by NAMIC member companies.

NAMIC represents a diverse spectrum of insurers that rely heavily on a robust reinsurance market to conduct their business. Consequently, NAMIC has a significant interest in whether a "covered agreement" should be used to address reinsurance collateral requirements or other issues preempting state law.

Given the importance of these issues and the pending questions before Treasury and the USTR we wanted to bring our concerns about a covered agreement directly to your attention.

NAMIC Supports State Regulation of Insurance

While the current system of state insurance regulation is not perfect, NAMIC strongly supports a reformed system of state-based regulation and has serious concerns about the use of an international trade negotiation process to alter or preempt that system.

A covered agreement is a specific type of international agreement defined by the Dodd-Frank Act as a written agreement between the U.S. and one or more foreign governments or regulatory entities that addresses insurance "prudential measures" and "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." Given this unprecedented negotiating power, NAMIC urges that the USTR and the Department of the Treasury exercise such authority only if they determine that extreme circumstances demand it, and then only after full and transparent due process, including consultation with state legislative and regulatory authorities, approval by Congress, and public hearings and comment procedures. If a covered agreement is going to preempt state laws enacted through a deliberative legislative process then it should do so only following an equally deliberative process. However, it would be ideal if circumstances never gave rise to the need for a covered agreement.

Do Extreme Circumstances Exist Requiring a Covered Agreement?

It is our position that preempting state laws should be viewed as a last measure that should only be used under extreme circumstances. We believe that the treatment of reinsurance collateral at the state level does not require the need for a covered agreement.

The National Association of Insurance Commissioners (“NAIC”) and state legislatures/regulators have taken significant action on reinsurance collateral requirements since the financial crisis and since the adoption of the Dodd-Frank Act to address perceived differences in treatment between domestic and foreign reinsurance companies. In 2011, the NAIC adopted changes to its Credit for Reinsurance Model Act and Regulation to effectuate reinsurance regulatory modernization and change foreign reinsurer collateral requirements. More than 30 states, representing more than 65 percent of the market, have adopted the revised NAIC model act and regulations.

Foreign governments, regulators, and companies, as well as domestic-interested parties were welcomed to review the various drafts of the NAIC model acts under revision and to provide written and oral testimony regarding the approach to the revisions. During 18 months of discussions, various international regulators engaged significantly in the deliberations and collaborated with the NAIC to develop the revised model that began thereafter to move through state legislatures. The NAIC revisions to the model were written in a manner to balance 1) the need for protection of U.S. policyholders and insurance companies that would be relying on foreign reinsurance companies, and 2) the playing field sought by the foreign reinsurers. In the state legislatures the same due process opportunities were available for any interested party to participate in the legislative process as the revised model act was enacted.

Since 2011 there have been several developments at the NAIC and at the state level:

- Thirty-one states have enacted the revised law and five more have bills before the legislatures in 2015. If these additional five states pass the model act the total will represent 93 percent of the insurance market in the United States.
- The NAIC has developed and implemented a process to determine “qualified jurisdictions” that includes a review of their laws and regulations for adequate oversight for reinsurers. Seven countries are now approved as qualified jurisdictions.
- Several states have certified reinsurers from these qualified jurisdictions.
- The NAIC has developed a passporting process that enables a reinsurer certified in one state to be passported into certification in other states.

The state policymakers enacting these laws have considered the issues, listened to interested parties, developed solutions that balance the interests of foreign reinsurers, the U.S. primary insurers that are their customers, and the policyholders of U.S. companies who expect their claims to be paid. The process has been methodical and transparent and the issues fairly and openly debated. Thirty-one states have already acted to enact this new NAIC model and more are preparing to act.

The state implementation process should be allowed to continue without interruption by trade negotiations with the European Union. At this point initiating a new covered agreement effort is superfluous and will not provide the same open and transparent interaction that has already been incorporated into the NAIC model and state law adoptions. The possibility of other issues being included in a covered agreement also raises risks.

Covered Agreement Process Should be Open and Transparent

If circumstances do develop that require the U.S. Treasury and the USTR to move forward with negotiations for a covered agreement at the very least they should institute a clear, transparent procedure for the agreement. U.S. negotiators should clearly define the goals of the agreement and identify the benefits to the U.S. market. Treasury and the USTR should consult with Congress on the scope of the negotiations, and there should be an opportunity for interested parties and members of Congress to review the language of a final agreement before it is signed. An open and transparent process will allow legislators, regulators, and stakeholders the opportunity to raise concerns and point out any potential unintended consequences. Robust due process will help to ensure that all stakeholders, including lawmakers and the public, understand the issues and are confident that any agreement signed by the U.S. does not harm the insurance market.

The state process can be difficult to navigate at times, but it is a part of a system that has successfully protected policyholders for 150 years and helped the property/casualty insurance industry weather the recent financial crisis. We remain concerned with the use of an international trade negotiation process to alter or preempt that system.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles M. Chamness". The signature is fluid and cursive, with a long horizontal stroke at the end.

Charles M. Chamness
President & CEO
National Association of Mutual Insurance Companies