

Reinsurer Collateral Requirements Covered Agreements and US Credit for Reinsurance Model Law

On September 22, 2017, the US signed the Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance (the US-EU Covered Agreement or US-EU Bilateral Agreement). The US-EU Bilateral Agreement addresses group supervision, reinsurance and the exchange of information between supervisory authorities. Among its significant elements is the elimination of collateral posting requirements for US reinsurers operating in the EU and for EU reinsurers operating in the US. This publication addresses some of the recent significant developments relating the US-EU Covered Agreement and reinsurer collateral requirements.

US-UK Covered Agreement – And Then There Were Two

US-UK Covered Agreement Announced. As long as the UK remains a member of the European Union (EU), the US-EU Covered Agreement applies to US and UK reinsurers operating in the two jurisdictions. However, once Brexit occurs and the UK leaves the EU, the terms of the US-EU Covered Agreement almost certainly will not apply to US entities operating in the UK or to UK entities operating in the US.

On December 11, 2018, the US Treasury Department (Treasury) and the Office of the US Trade Representative (USTR) notified the Chairs and Ranking Members of relevant US Senate and US House of Representatives committees that the US had concluded negotiations on the full text of a US-UK Covered Agreement. The agreement has not yet been signed. The letters to congressional leadership note that the US intends to issue a policy statement regarding implementation of the new agreement. Presumably, this policy statement will track the policy statement issued when the US-EU Covered Agreement was signed, and like that earlier policy statement, will be issued when the US-UK Covered Agreement is signed.

The text of the US-UK Covered Agreement is virtually identical to that of the US-EU Covered Agreement. In addition to party name changes, the US-UK Covered Agreement addresses issues related to the timing of Brexit and the application of EU law within the UK. Like the US-EU Covered Agreement, it provides for a Joint Committee to address implementation issues. It requires the parties to consult with the Joint Committee within 90 days after the agreement is effective. To date, a Joint Committee has not been appointed for either of the two Covered Agreements.

The press release announcing the US-UK Covered Agreement states that it:

“...[i]s an important step in providing regulatory certainty and market continuity as the . . . [UK prepares to leave the EU, and] in making U.S. companies more competitive in the domestic and foreign markets.”

The press release also gives a nod to the US regulatory system, stating that the US-UK Covered Agreement benefits the US economy and US consumers by “affirming the state-based system of insurance regulation.”

NAIC Reacts to US-UK Covered Agreement. On December 12, 2018, the National Association of Insurance Commissioners (NAIC) issued a statement on the US-UK Covered Agreement, noting that upon the NAIC’s initial review, it appears to mirror the terms of the US-EU Covered Agreement. The statement says that the NAIC continues to have concerns about both of the Covered Agreements, but in the unique circumstances posed by Brexit, does not object to extending the US-EU Covered Agreement treatment to the UK.

“[T]he UK is an important market for the U.S. and is currently included in the existing U.S./EU covered agreement. Given these unique circumstances, despite our concerns with the covered agreement mechanism, we do not object to its use in this instance to replicate consistent treatment for the UK. Treasury and USTR have indicated that a policy statement to provide further guidance is forthcoming. A policy statement consistent with the one released with the US/EU covered agreement is a critical step to provide guidance and certainty to state legislatures and regulators around the country as we work to implement key provisions.”

Credit for Reinsurance – NAIC Almost to the Goal Line for Model Law Changes

Credit for Reinsurance Model Act and Model Regulation. A significant element of the two Covered Agreements is the requirement that US state insurance regulators eliminate reinsurance collateral requirements for EU reinsurers (and now also for UK reinsurers) within five years, or face potential US federal pre-emption. To implement this, US states and insurance departments must take action to change their existing collateral and credit for reinsurance requirements. The NAIC Reinsurance Task Force (the Task Force) was charged with, inter alia, proposing changes to the NAIC Credit for Reinsurance Model Law and Regulation (Model Law) that will be necessary for US insurance departments to implement the Covered Agreement collateral requirements.

NAIC Status. The Task Force was active in 2018. It met in both public and regulator-only sessions, published several versions of proposed changes in the Model Law, held a packed-house hearing in New York City, and received some 30+ written comment letters from the industry, US regulators and non-US regulators. At the San Francisco NAIC meeting on November 17, 2018, the Task Force adopted its November 9, 2018 proposed changes to both the Model Law (#785) and the Model Regulation (#786). The NAIC Financial Condition (E) Committee adopted the proposed model law and regulation language later that same day. The revised language will be final upon approval by the NAIC Executive Committee and Plenary. This subject was taken off the NAIC Executive Committee and Plenary December 19, 2018 meeting agenda. NAIC President McPeak noted that consideration of proposed Model Law language was being delayed due to input from Treasury and the USTR. At this time, it is not clear when changes in the Model Law will be effective.

EU Concerns. The EU submitted comment letters on the proposed Model Law language on October 16, 2018 and November 16, 2018. Although some wording changes were made in response to EU comments, as of the November 17, 2018 Task Force meeting, the EU continued to object that several sections of the proposed Model Law are inconsistent with the terms of the US-EU Covered Agreement. The EU expressed particular concern about language that appears to give individual US state insurance commissioners the discretion to determine whether an EU member state is in compliance with the Covered Agreement. During the November 17, 2018 Task Force meeting, Task Force Chair, New York Superintendent Vullo reported that (1) the Task Force considered its proposed language to be consistent with the US-EU Bilateral Agreement, and (2) the EU's concerns had been discussed with the US Treasury Department, the Federal Insurance Office (FIO) and USTR, and the Task Force had received no specific information about the US's official position on these issues. At this time, it is unclear how, or whether, the NAIC will address these issues

Federal Insurance Office Leadership

No Replacement Yet for Federal Insurance Office (FIO) Director.

The Dodd-Frank Wall Street Reform and Consumer Protection Act established the FIO. FIO's role is described by Treasury as assisting in matters relating to the Terrorist Risk Insurance Act (TRIA), advising on prudential insurance matters and participating as a non-voting member of the Financial Stability Oversight Council. Michael McRaith, FIO Director until January 2017, was involved in negotiating the US-EU Covered Agreement. Steve Dreyer was appointed the FIO Director in June 2018, and resigned as of November 16, 2018. News media reported that his resignation followed attendance at a meeting with the International Association of Insurance Supervisors. To date, no replacement has been named for the position.

Links to Relevant Documents

- [US-EU Covered Agreement](#)
- [Treasury Fact Sheet on US-EU Covered Agreement](#)
- [Treasury Policy Statement re US-EU Covered Agreement](#)
- [Text of US-UK Covered Agreement](#)
- [12/11/18 Letters Notifying Congressional Leadership of US-UK Covered Agreement](#)
- [12/11/18 Treasury and USTR Announcement re US-UK Covered Agreement](#)
- [November 9, 2018 Reinsurance Task Force Redline of Proposed Changes to NAIC Credit for Reinsurance Model Law](#)
- [November 9, 2018 Reinsurance Task Force Redline of proposed changes to NAIC Credit for Reinsurance Model Regulation](#)
- [EU November 16, 2018 Comment Letter on NAIC Proposed Credit for Reinsurance Model Law Language](#)
- [All Comment Letters on Fall 2018 NAIC Proposed Credit for Reinsurance Model Law Language](#)
- [US Treasury Description of FIO](#)

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