Liberty Mutual.
INSURANCE

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(Via E-mail to Mr. Jake Stultz: jstultz@naic.org)

Superintendent Maria Vullo, Chair
Reinsurance (E) Task Force
National Association of Insurance Commissioners

Dear Superintendent Vullo:

Liberty Mutual Insurance appreciates the opportunity to provide comments regarding the implementation of the collateral provisions of the Bilateral Agreement between the United States of America ("US") and the European Union ("EU") on Prudential Measures Regarding Insurance and Reinsurance ("Covered Agreement"). While our comments are filed after the February 6, 2018, date reflected in the notice, we respectfully request that they be made part of the record as the Reinsurance (E) Task Force undertakes its important work of evaluating how best to proceed with reinsurance collateral reform.

Because of its extra-territorial impact, Solvency II can have significant negative consequences for non-EU-based insurance groups with EU operations, including those based here in the US. As a result, a Covered Agreement negotiation that likely could have been focused solely on the issue of reinsurance collateral expanded to address group level governance, solvency and capital and reporting. From the time agreement on the Covered Agreement's terms was announced in January 2017, Liberty Mutual Insurance articulated the need to clarify certain of its potentially ambiguous provisions. The Statement of the US on the Covered Agreement with the EU issued on September 22, 2017 ("Policy Statement") was an important step in ensuring that the all interested parties – insurance regulators and industry participants alike - understand the approach the US will take with respect to the Covered Agreement's implementation. As a result, Liberty Mutual Insurance believes that the Covered Agreement – as clarified by the Policy Statement – represents an important development in international insurance regulatory cooperation. The Covered Agreement – as clarified by the Policy Statement - also acknowledges the US group supervisory system and provides a way forward for the group capital calculation the NAIC is developing to be recognized by the EU as an effective means to assess group-wide capital. And, to the extent that a covered agreement or similar bilateral commitment with other jurisdictions should be negotiated and concluded in the future, we strongly urge that the clarifications in the Policy Statement be specifically incorporated in any final agreement to ensure clarity of intent between the parties.

However, while we support the Covered Agreement's goals, three points are worth emphasizing:

- First, Liberty Mutual Insurance does not believe that a Covered Agreement was the only, or necessarily the best, means to accomplish the goals of reinsurance collateral reform and recognition of the US' approach to group insurance supervision. In the US, insurance regulation is squarely within the purview of the several states. While the Dodd-Frank Act gave the federal government the authority to preempt state law in certain cases, we believe that such authority should be used sparingly, if ever. The issue of reduction of collateral and EU recognition of the US approach to group supervision could have been addressed by the states through amendments to their substantive law. That said, the treatment of these issues in the Covered Agreement – as clarified by the Policy Statement - may well provide a template for a state-based approach to addressing the same matters with other jurisdictions. An amendment to the Credit for Reinsurance Model Law could be made to apply standards similar to those reflected in the Covered Agreement for reduced collateral by reinsurers in other jurisdictions; *provided, however*, that those jurisdictions recognize the US system of group supervision and its group capital regime. This would put to rest – at least with respect to those jurisdictions - the purely manufactured issue of "equivalence" of the US' insurance regulatory system.

- Second, no part of the Covered Agreement should be read or implemented in isolation from the other parts of the document. In particular, the agreement by the US to reduce reinsurance collateral in Article 3 was the result of a negotiated bargain that is tied to the EU's commitment in Article 4 to recognize the validity of the US system of group supervision, including its assessment of group capital. The integrity of this commitment by the EU has been called into serious question by release of the IAIS Q&A document on January 26, 2018, regarding implementation of ICS 2.0, and by the comments of certain EU representatives at the EU-US Insurance Symposium in Washington, DC, held on the same day. Therefore, whatever approach the NAIC takes to implement Article 3 of the Covered Agreement must be expressly tied to the EU's compliance with Article 4, as clarified by the Policy Statement. If Article 4 is breached by the EU or an EU Member State and/or the Covered Agreement is terminated, then any reduced collateral standards for qualified EU reinsurers should automatically be immediately rescinded.

- Finally, Liberty Mutual Insurance opposes the creation of any new "guardrails" on US ceding companies. This is unnecessary given that any EU reinsurer must meet significant criteria to qualify for a reduction in collateral under the Covered Agreement. The imposition of such requirements would serve only to increase the costs and burdens imposed on US cedants. At a minimum, they would seem to frustrate the purpose of the Covered Agreement. At worst, conditions imposed on US insurers ceding to EU reinsurers that are not also imposed when they cede to US reinsurers would seem to violate Article 3.1. of the Covered Agreement.

Thank you for your consideration of our comments. We look forward to continued engagement with the NAIC, policymakers and industry colleagues on the important issues surrounding implementation of the Covered Agreement.

Very truly yours,

Edmund C. Kenealy