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NCOIL CAUTIONS AGAINST FIO REDUCING CONSUMER PROTECTIONS IN COVERED AGREEMENT NEGOTIATION

Agreement would encroach upon the proven U.S. State-based regulation of insurance and could ultimately harm U.S. insurers and their customers

U.S. and EU representatives recently met and announced their continued efforts towards the pursuit of a covered agreement. NCOIL is part of a large group that is concerned over the standards involved in the possible implementation of a covered agreement.

"We urge that this covered agreement, if implemented, maintain as its floor the collateral requirements adopted in the Credit for Reinsurance Model Law and Regulation, passed by the NAIC in 2011 " cautioned Senator Travis Holdman (R-IN), NCOIL President. "Lower collateral requirements would pose an economic threat to state-based regulation of insurance that potentially undermines US policyholders and companies."

A covered agreement was included in the 2010 Dodd-Frank Wall Street Reform Act, and is defined as a "written bilateral or multilateral agreement regarding prudential measures with respect to the business of insurance or reinsurance that is entered into between the United States and one or more foreign governments, authorities, or regulatory entities and relates to recognition of prudential measures with respect to the business of insurance or reinsurance that 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." A covered agreement can serve as a basis for preemption of State law under certain circumstances.

"As a former state insurance commissioner and the Chair of the NAIC Reinsurance Task Force, I know there is significant value in state based regulation for all parties involved" stated Commissioner Thomas B. Considine, NCOIL CEO. "The further removed companies and policyholders are from those imposing the standards that govern them, the greater chance that something unintended could occur."

A covered agreement relates directly to the EU's new insurance regulatory reform known as Solvency II, which requires the EU to make an "equivalence" determination for non-EU countries in the areas of group supervision, group solvency, and reinsurance. Non-EU based companies from countries that have been deemed equivalent will be subject to less stringent regulatory standards to operate in the EU than those jurisdictions, such as the U.S., that have not been deemed equivalent.

“This is the unraveling of locally made regulation that companies and consumers have relied on for three-quarters of a century.” said Representative Steve Riggs (D-KY), NCOIL Vice President.

While a covered agreement may be one method for achieving “equivalence” under Solvency II, NCOIL considers a covered agreement to be a drastic step because it could potentially preempt State law and undermine the U.S. system of State-based regulation of insurance. The U.S. state-based system has consistently prevailed relatively unscathed despite natural and manmade catastrophes, most recently the financial crisis of 2008. “Based on its proven success” stated Riggs, “it is unprofessional for the EU to take the position that our state-based system is not ‘equivalent.’”

Of specific concern is a covered agreement relating to reinsurance collateral requirements. State insurance regulators have historically required foreign reinsurers to hold 100% collateral within the U.S. for the risks they assume from U.S. insurers, intended to ensure claims-paying capital is available and reachable by U.S. firms and regulators should it be needed, particularly in the wake of a natural disaster. However, foreign reinsurers’ regulators and politicians have objected to their companies having to post a high amount of collateral in the U.S. because it makes such capital unavailable for other purposes.

In 2011, the National Association of Insurance Commissioners (NAIC) worked with State regulators and amended its Credit for Reinsurance Model Law and Regulation (Reinsurance Models) to allow foreign reinsurers to post significantly less than 100% consumer protection collateral for U.S. claims, provided the reinsurer is evaluated and certified. To date, 32 States have passed legislation to implement those Reinsurance Models, with an additional five States having plans to do so. Furthermore, the NAIC recently made the amendments to its Reinsurance Models an NAIC State accreditation standard. States that have passed or will pass the Reinsurance Models strengthen the argument that State regulation is flexible, adaptable to changes in the global insurance and reinsurance markets, and respectful of other competent regulatory structures.

NCOIL believes that if the Federal government enters into a covered agreement on reinsurance collateral, thereby capitulating to the requests of representatives of foreign reinsurers to post little to no collateral in the U.S., small and medium sized U.S. insurers and their customers will be greatly disadvantaged. “The largest U.S. companies can demand foreign reinsurers post collateral as a condition for getting their business,” noted NCOIL President Holdman, “however, small and medium size companies do not have the same clout in the market and if a covered agreement gives away the ability of those companies to obtain collateral, it puts their financial well-being in jeopardy and exposes their policyholder consumers to potential crisis."

NCOIL looks forward to further discussing these issues at its Summer Meeting in Portland, Oregon from July 14-17.

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NCOIL is a legislative organization comprised principally of legislators serving on state insurance and financial institutions committees around the nation. NCOIL writes Model Laws in insurance, works to both preserve the state jurisdiction over insurance as established by the McCarran-Ferguson Ace seventy years ago and to serve as an educational forum for public policy makers and interested parties. Founded in 1969, NCOIL works to assert the prerogative of legislators in making state policy when it comes to insurance and educate state legislators on current and perennial insurance issues.