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U.S. Treasury Report on Asset Management and Insurance Industry Regulation

Trump Executive Order Required Fundamental Reassessment of Existing Rules; Treasury Submits the Third of Four Reports Examining the Regulatory Framework for Asset Management and Insurance

SUMMARY

On October 26, 2017, the U.S. Department of the Treasury ("*Treasury*") issued a report (the "*Report*")[1] recommending a number of comprehensive changes to the current regulatory system for the United States asset management and insurance industries. The Report was issued pursuant to President Trump's Executive Order 13772 (the "*Executive Order*"), released February 3, 2017, which established a set of "Core Principles" to guide the regulation of the U.S. financial system and is intended to "identify any laws, treaties, regulations, guidance, reporting and record keeping requirements, and other government policies that promote or inhibit federal regulation of the U.S. financial system in a manner consistent with the Core Principles."[2] The Report is the third of four reports required by the Executive Order.[3]

Many of the recommendations in the Report could be accomplished through administrative action by federal regulators or modifications to supervisory policy and regulations, while implementation of certain recommendations would require congressional action or, with respect to insurance, legislative action at the state level. Other recommendations relate to international regulatory forums and standard-setting bodies. In many respects, the Report builds on trends already underway, or proposals being developed, in the area of financial institution regulation and supervision.

BACKGROUND

The Executive Order provides that "[i]t shall be the policy of [this] Administration to regulate the United States financial system in a manner consistent with" the following Core Principles (the "*Core Principles*"):[4]

- Empower Americans to make independent financial decisions and informed choices in the marketplace, save for retirement, and build individual wealth;
- Prevent taxpayer-funded bailouts;
- Foster economic growth and vibrant financial markets through more rigorous regulatory impact analysis that addresses systemic risk and market failures, such as moral hazard and information asymmetry;
- Enable American companies to be competitive with foreign firms in domestic and foreign markets;
- Advance American interests in international financial regulatory negotiations and meetings;
- Make regulation efficient, effective, and appropriately tailored; and
- Restore public accountability within Federal financial regulatory agencies and rationalize the Federal financial regulatory framework.

The Executive Order directed the Secretary of the Treasury to consult with the heads of the member agencies of the Financial Stability Oversight Council ("*FSOC*") and to deliver a report to the President on potential areas of regulatory reform. The Report focuses on "identifying laws, regulations, and other government policies that ensure the regulation of the financial system is in accordance with the Core Principles" and identifies significant opportunities for reform, which the Report groups into four broad categories:

- ***Systemic Risk and Solvency:*** Ensuring appropriate evaluation of systemic risk and solvency;
- ***Efficient Regulation and Government Processes:*** Promoting efficient regulation and rationalizing the regulatory framework to decrease regulatory burdens and maximize product and service offerings;
- ***International Engagement:*** Rationalizing U.S. engagement in international forums to promote the U.S. asset management and insurance industries, and encourage firm competitiveness; and
- ***Economic Growth and Informed Choices:*** Enhancing consumer access to a variety of relevant products and services.

Certain of Treasury's key recommendations are described below, and a complete list, organized by topic and noting the relevant Core Principle(s), is provided in *Appendix B* of the Report.

TREASURY REPORT'S FINDINGS AND RECOMMENDATIONS FOR THE ASSET MANAGEMENT INDUSTRY

Treasury organizes its recommendations relating to regulation of the asset management industry into the four framework categories identified above with several findings and recommendations made for each category and with an emphasis on registered investment advisers and investment vehicles. There is limited direct discussion of private funds except to describe how certain of Treasury's recommendations regarding particular rules and regulations would affect them. The Report makes a total of 30 recommendations with respect to the regulation of the asset management industry.

A. SYSTEMIC RISK AND SOLVENCY

The Report makes three recommendations relating to this category, including on systemic risk evaluations and stress testing.

Systemic Risk and Stress Testing

Systemic Risk. The Report acknowledges the fundamental differences between asset managers and prudentially regulated institutions such as banks, noting, in particular, that asset management is an agency-based, rather than principal-based, business model. The Report further argues that asset managers are generally not highly leveraged, do not engage in maturity and liquidity transformation to the same degree as banks, and, in the case of registered investment companies, are subject to existing regulation that mitigates the risk of a bank-like run, including leverage limitations, the diversification of portfolio holdings, custody of assets, liquidity requirements, and the daily valuation of fund assets. In light of these findings, Treasury concludes:

- Entity-based systemic risk evaluations of asset managers or their funds are generally not the best approach for mitigating the risks arising from the asset management industry. Primary federal regulators should focus instead on potential systemic risks arising from asset management products and activities.
- While FSOC should remain primarily responsible for identifying, evaluating, and addressing systemic risks in the U.S. financial system, FSOC should look to the Securities and Exchange Commission (the "*SEC*") to address systemic risks within and across the asset management industry.

Stress Testing. The Dodd-Frank Wall Street Reform and Consumer Protection Act ("*Dodd-Frank*") requires each federal primary financial regulatory agency to issue regulations to implement stress testing, which, to date, the SEC has not proposed. The Report discusses significant implementation challenges in applying prudential stress testing to asset managers, including how to engage in stress testing when fluctuations in asset values are passed through to fund investors by design. The Report concludes:

- Treasury does not support prudential stress testing of investment advisers and investment companies as required by Dodd-Frank and supports legislative action to eliminate the requirement.
- If legislative action is not taken, Treasury supports the view that the legislative requirement would be satisfied by the stress testing provisions of Rule 2a-7 for money market mutual funds and Rule 22e-4 on liquidity risk management programs.

B. EFFICIENT REGULATION AND GOVERNMENT PROCESSES

The Report offers 17 recommendations relating to this category, including on liquidity risk management, derivatives, reporting and disclosure requirements, and the Volcker Rule, among others. Treasury cites the importance of transparency and adequate disclosure to the proper functioning of the asset management industry while focusing on enhancing efficiency and a principles-based, rather than prescriptive, approach to regulation.

Liquidity Risk Management

The Report discusses the post-financial crisis focus on liquidity risk and the existing framework for liquidity risk management, including private funds' contractual provisions governing an investor's ability to take an investment out of (or redeem from) a fund and the regulation of registered investment companies under the Investment Company Act of 1940 (the "*1940 Act*") and SEC guidance. An example of such liquidity risk management requirements is SEC Rule 22e-4, scheduled to become effective in December 2018, which limits mutual funds' aggregate holdings of "illiquid assets" to no more than 15% of a fund's net assets and requires all mutual funds and certain exchange traded funds ("*ETFs*") to adopt liquidity risk management programs. Under the rule, mutual funds will need to use a specific, uniform scheme to classify each of their portfolio investments into one of four defined liquidity categories, known as "buckets." The Report concludes:

- Treasury supports robust liquidity risk management programs, including the 15% limitation on illiquid assets for mutual funds, and believes they are imperative to effective fund management and the health of the financial markets.
- Treasury rejects, however, any highly prescriptive regulatory approach to liquidity risk management and recommends postponement of Rule 22e-4's bucketing requirement, currently scheduled to take effect in December 2018. Instead, Treasury supports the SEC adopting a principles-based approach to liquidity risk management rulemaking.
- Regarding swing pricing, the process of adjusting the net asset value of a fund's shares to pass on the costs from purchase and redemption activity to the investors associated with that activity to protect other investors from dilution, Treasury recognizes the theoretical possibility of the first-mover advantage swing pricing is aimed at addressing. However, Treasury believes that there is insufficient evidence to demonstrate the inadequacy of existing liquidity management practices for mutual funds and other registered investment companies. Treasury encourages further analysis of swing pricing in the context of investor protection and whether funds are appropriately setting the amount of "swing" based on trading costs.

Derivatives

The Report discusses the proposed derivatives rule issued by the SEC in December 2015, which would permit mutual funds, ETFs, and closed-end funds to enter into derivatives transactions as long as (i) either an exposure-based or risk-based portfolio limit was complied with, each of which is designed to limit leverage, (ii) funds segregate qualifying coverage assets, limited to cash and cash equivalents, so funds could meet their obligations in a stress scenario, and (iii) funds engaging in more than a limited amount of derivative transactions or using certain complex derivatives transactions establish formal derivative risk management programs. With respect to derivatives, Treasury finds:

- While Treasury supports consideration of a derivatives rule that includes a derivatives risk management program and an asset segregation requirement, Treasury recommends the SEC reconsider what, if any, portfolio limits should be included. Treasury has concerns that portfolio limits could unnecessarily restrict funds from using derivatives, even for hedging or other risk mitigating purposes. Further, Treasury asserts the proposed rule's use of gross notional exposure as a measure of derivative exposure is problematic since a high gross notional exposure of a fund's portfolio is not necessarily correlated with high leverage or risk levels.
- The SEC should reconsider the scope of assets that would be considered qualifying coverage assets for purposes of the asset segregation requirement, since limiting qualifying coverage assets to cash and cash equivalents could require funds to hold more of those assets, potentially reducing investment returns and causing tracking errors for funds that follow indexes.
- The SEC should examine the derivatives data that will be reported by funds on Form N-PORT beginning in 2018 and publish analysis based on empirical data regarding their use of derivatives.

Exchange Traded Funds

Highlighting the growth of ETFs in recent years, the Report acknowledges potential regulatory hurdles and inconsistencies faced by asset managers when creating ETFs.[5] While the SEC proposed a rule in 2008 to streamline the ETF approval process, it was never finalized. Treasury recommends:

- The SEC should move forward with a "plain vanilla" ETF rule that allows entrants to access the market without the cost and delay of obtaining exemptive relief orders, subject to conditions the SEC determines are appropriate and in the public interest. The SEC should either re-propose the 2008 proposed rule or propose a new rule on ETFs for public comment.
  - In addition to reducing cost and delay for new entrants, a plain vanilla rule would enable ETF sponsors to avoid the potential for costly updates to existing exemptive relief orders when introducing new products and help reduce uneven treatment among ETFs.
- To streamline the ETF process and reduce inefficiency, the SEC should consider establishing a single process for ETF and related approvals, rather than allowing SEC divisions to set multiple and sometimes conflicting requirements.

Business Continuity and Transition Planning

The Report acknowledges that business continuity planning plays an important role in allowing investment companies and investment advisers to operate during times of disruption. However, Treasury notes that business continuity plans have long been required under general fiduciary obligations to investors and, further, in 2003, the SEC adopted principles-based rules requiring investment advisers and investment companies to maintain business continuity plans. These rules require business continuity planning while enabling flexibility to implement plans appropriate for particular entities. In June 2016, the SEC proposed a new Rule 206(4)-4, which has not been finalized, that contains a number of prescriptive requirements for the content of business continuity and transition plans. The Report concludes:

- While Treasury endorses the principle of effective and robust business continuity planning, with the existing principles-based rules already in place there is no compelling need for additional rulemaking in this area. Treasury recommends the current SEC proposed Rule 206(4)-4 be withdrawn.

- The SEC should continue to work with investment companies, investment advisers, and others to recommend improvements to business continuity plans to the extent they are not sufficiently robust, and to address new issues as they arise.

Dual CFTC and SEC Registration

Registered Investment Companies. Prior to 2012, investment companies and their advisers registered with the SEC did not have to register with the Commodity Futures Trading Commission (the "*CFTC*") because they were exempt from the CFTC's definition of commodity pool operators ("*CPOs*"), which are collective investment vehicles designed to trade in commodity interests. In 2012, the CFTC adopted rules that required certain investment companies and investment advisers to register with the CFTC as CPOs even if already required to register with the SEC. As a rationale for the rules, the CFTC argued that certain SEC-registered investment companies were offering "de facto" commodity pools while claiming to be exempt from CFTC registration. However, the CFTC's expanded jurisdiction now captures many funds that do not resemble or compete with traditional commodity pools. In addition, according to the Investment Company Institute, 101 advisers of SEC-registered investment companies were required to dually register with the CFTC as of early 2016, subjecting them to separate reporting and regulatory obligations. Although the CFTC provided limited relief to certain investment companies subject to dual regulation, funds and their advisers must still demonstrate compliance with the conditions of such exemptions. The Report recommends:

- The CFTC rules should be amended so an investment company registered with the SEC and its adviser are exempt from dual registration and regulation by the CFTC as a CPO.
- To address concerns of de facto commodity pools operating without sufficient oversight, the CFTC and SEC should work together to identify a single regulator for these entities.
- The CFTC and SEC should cooperate to share information so disclosures made to one agency can address the information needs of the other agency.

Advisers to Private Funds. Since Dodd-Frank eliminated the applicable exemption under the 1940 Act, advisers to private funds are now generally subject to SEC oversight. After the CFTC's 2012 rules, certain advisers to private funds are also required to register with the CFTC as CPOs. If private funds are offered to investors who are "qualified eligible persons" or accredited investors under the SEC's Regulation D, both the funds and their advisers must register with the CFTC as CPOs. As a result, absent the availability of an exemption, certain advisers to private funds are required to dual register with the SEC and CFTC. The Report recommends:

- The CFTC rules should be amended so private funds and their advisers are exempt from registration as CPOs if the advisers are subject to regulatory oversight by the SEC.
- The CFTC should review and determine what, if any, exemptions should be made available for SEC-exempt reporting advisers.

Modernizing the Delivery of Fund Disclosure

The Report acknowledges that promoting transparency in financial markets, including through appropriate disclosure, is fundamental to investor protection. In May 2015, the SEC proposed Rule 30e-3 that would permit a mutual fund to transmit shareholder reports through a website, rather than the current regulatory default requiring disclosure in paper mail. Under the proposed rule, shareholders could opt-in to receiving paper copies, but there would otherwise be an implied consent to delivery by website. The rule has not been finalized by the SEC. Treasury recommends:

- The SEC should finalize its proposed rule to permit the use of implied consent for electronic disclosures of shareholder reports, which could save up to $2 billion over the next 10 years while providing educational value to investors and reducing environmental waste.
- The SEC should explore other areas for which the delivery of information to investors through an electronic medium using implied consent is appropriate and consistent with investor protection.
- Treasury recognizes that not all people have Internet access and that some investors will prefer to receive paper disclosures. As a result, Treasury strongly believes investors should retain the choice to continue receiving paper disclosures.

Asset Management Reporting and Disclosure Requirements

The Report notes that reporting of fund holdings and other key financial data is essential to a well-functioning financial system, but asserts that duplicative reporting requirements can add considerable burden and costs to funds that are passed on to investors and act as a barrier to entry for new competitors. This is particularly problematic when there are multiple reporting formats required for essentially the same information. Treasury recommends:

- The SEC, the CFTC, self-regulatory organizations, and other regulators should work together to rationalize and harmonize reporting regimes. Duplicative forms should be combined and unnecessary or inconsistent data collection should be eliminated.
- Regulators should continue to update reporting requirements to utilize structured data where appropriate.
- Given rising concerns surrounding information security and cybersecurity intrusions, all regulatory agencies that collect any form of data from registered firms should redouble efforts to ensure the information security measures are meeting and exceeding standards set by Congress and the recommendations of other federal oversight bodies such as the Government Accountability Office.

Volcker Rule

The Report references Treasury's treatment of Section 619 of Dodd-Frank (the "*Volcker Rule*") in its first report issued pursuant to the Executive Order on depository system regulation. In that report, Treasury recommended easing the Volcker Rule's restrictions on proprietary trading and reducing the complexity of the Rule to ease regulatory burden. Since some provisions of the Volcker Rule have a particular impact on the asset management industry, Treasury has made additional recommendations regarding the Volcker Rule in this Report, including:

- The five federal agencies responsible for implementing the Rule should continue to refrain from enforcing the proprietary trading restrictions against foreign private funds that are not "covered funds" under the Rule until a permanent solution to identified challenges is implemented.
- The agencies should refrain from enforcing the restriction on funds sharing names with the banking entities that sponsor them.
- Congress should revise the definition of "banking entity" to cover only insured depository institutions, their holding companies, foreign banking organizations, and affiliates and subsidiaries of such entities, defined as those in which there is 25% or more voting equity or voting power on the investment committee.

C. INTERNATIONAL ENGAGEMENT

The Report makes five recommendations related to this category, including advocating United States participation on international standard-setting bodies for the asset management industry given the relative size of the U.S. asset management industry compared to other countries.

International Engagement

United States engagement in international efforts to regulate the asset management industry is particularly important because, the Report notes, 14 of the 20 largest global asset managers, in terms of assets under management, are based in the U.S., and the world's 20 largest mutual funds are managed by U.S. asset managers. The International Organization of Securities Commissions ("*IOSCO*"), which is recognized as the international standard-setter for the securities sector and the Financial Stability Board (the "*FSB*"), which aims to promote financial stability at the international level, are two prominent international regulatory organizations of which U.S. federal agencies are members. In line with the Core Principle of advocating American interests in international financial regulatory negotiations and meetings, Treasury strongly supports continued U.S. participation in international standard-setting bodies such as IOSCO and the FSB to promote U.S. interests. Treasury further recommends:

- Given that U.S. asset management firms and markets are the largest in the world, the U.S. should play a leading role at international standard-setting bodies such as IOSCO and the FSB. U.S. agencies that have seats on international standard-setting bodies should more effectively coordinate their representation on behalf of the United States.
- Further improvements to the FSB and standard-setting body processes should be made to better promote transparency, accountability, and appropriate representation with respect to policymaking. Treasury encourages the FSB to expand its practice of posting summaries of comments raised through the consultation process and changes made to address such comments.
- U.S. representatives to international standard-setting bodies should work to ensure those bodies utilize a collaborative process that includes, where appropriate, economic analysis and subject-matter expertise.
- The FSB should transition away from using the term "shadow banking" in its monitoring of credit intermediation outside of the regular banking sector and instead refer to it as "market based finance."
- Specific to the work on asset management and insurance, U.S. members of the FSB should work to revise the framework for global systemically important financial institutions ("*G-SIFIs*") so it

appropriately takes into account the differentiated ways that sectors are structured and manage risks.

D. ECONOMIC GROWTH AND INFORMED CHOICES

While not included in a formal recommendations section, the Report advocates five points related to this category.

Economic Growth and Informed Choices

Noting that a significant amount of resources flowing from investors into the asset management industry stem from retirement savings, the Report suggests that having a broad array of choices permits retirement investors to select investments that match their particular risk tolerances. In this context, the Report discusses standards of conduct for financial professionals and the Department of Labor's (the "*DOL*") fiduciary rule adopted in April 2016 (the "*Fiduciary Rule*") in particular.

The Employee Retirement Income Security Act of 1974 ("*ERISA*") imposes fiduciary obligations on those that engage in specified activities with respect to an employee benefit plan or its assets. ERISA is, in part, codified in the Internal Revenue Code, and the DOL has regulatory and interpretive authority with respect to certain of the Code's rules that codify ERISA, including the definition of fiduciary. In April 2016, the DOL amended its definition of fiduciary to expand its scope, citing increased conflict of interest concerns with respect to financial professionals as individuals are increasingly responsible for managing their own retirement savings. On February 3, 2017, President Trump issued a memorandum directing the DOL to re-examine the Fiduciary Rule to determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice. Subsequently, the DOL extended the applicability date of the new fiduciary definition and new impartial conduct standards from April 10 to June 9, 2017 and set January 1, 2018 as the compliance date for all remaining provisions of the Fiduciary Rule. The DOL later postponed the compliance date for the remaining provisions of the Fiduciary Rule to January 1, 2019. The DOL released a request for information seeking public comments on the Fiduciary Rule, which were due on September 15, 2017. In June 2017, SEC Chairman Jay Clayton issued a statement requesting comments on the standard of care under the federal securities laws that should apply to investment advisers and broker-dealers serving retail investors, including retirement investors, and noted DOL Secretary Alexander Acosta's prior statement that the two agencies should engage constructively with one another in this area. The Report finds:

- Treasury supports the current efforts at the DOL to re-examine the implications of the Fiduciary Rule and believes it is appropriate to delay full implementation of the Fiduciary Rule until the relevant issues, including costs of the rule and exemptions, are evaluated and addressed to best serve investors. Such assessment and regulation of standard of conduct issues should include participation by the SEC and other regulators.
- Treasury encourages the DOL to consider stakeholder comments along with other public comments it receives as it continues to evaluate the Fiduciary Rule. These comments include

concern that the rule is likely to harm investors due to a reduction in access to certain retirement savings offerings, retirement products, retirement savings information, or related financial advice, is likely to result in dislocations or disruptions within the retirement services industry, and is likely to cause an increase in litigation and an increase in the prices that investors and retirees must pay to gain access to retirement services.

- Treasury believes conflicts of interest should be addressed in a manner that preserves, to the extent possible, access to a wide range of asset classes, investment products, business models, distribution channels, and other relevant features of financial services.
- Since the DOL's Fiduciary Rule does not regulate retail brokerage accounts other than Individual Retirement Arrangements ("*IRAs*"), there is a possibility that financial professionals will elect to adopt different practices for accounts that are nearly identical except that some are eligible for favorable tax rules and others are not. This creates potential marketplace imbalances.
- Financial professionals involved in securities are already extensively regulated by the SEC and state securities regulators and Treasury believes the SEC and DOL should work together to address standards of conduct for financial professionals who provide investment advice to IRA and non-IRA accounts.
- Treasury recommends that the DOL and SEC engage with state insurance regulators regarding the impact of standards of care on the annuities market given the importance of annuities as the only financial services product that can provide a guaranteed lifetime income stream.

TREASURY REPORT'S FINDINGS AND RECOMMENDATIONS FOR THE INSURANCE INDUSTRY

Treasury organizes its recommendations with respect to the insurance industry into the four framework categories, with several findings and recommendations in each category. The Report makes a total of 31 recommendations with respect to the regulation of the U.S. insurance industry.

A. SYSTEMIC RISK AND SOLVENCY

The Report makes five recommendations relating to this category, including on systemic risk evaluations, capital initiatives, and liquidity initiatives.

Systemic Risk and the Insurance Industry

The Report discusses the designation by FSOC pursuant to Section 113 of Dodd-Frank of three insurance groups as systemically important financial institutions ("*SIFIs*") to be subject to supervision by the Board of Governors of the Federal Reserve System (the "*Federal Reserve*") and to enhanced prudential standards.[6] The Report notes criticisms of entity-based systemic risk evaluations of insurers, including that such evaluations may not take into account fundamental differences between the insurance and banking business models, and that targeting evaluations at a limited number of firms may not further the mitigation of systemic risk where activities or practices are undertaken by a large number of industry participants. The Report indicates that FSOC has the authority to examine activities of potential systemic risk pursuant to Section 120 of Dodd-Frank, but that FSOC has not used this authority to address risks in the insurance industry. The Report also discusses the work of the FSB and the International Association of Insurance Supervisors (the "*IAIS*") with respect to the entity-based designation of "global systemically important insurers" or "G-SIIs." Although the FSB, in collaboration with the IAIS, has designated a list of G-SIIs each year since 2013, the Report notes that the IAIS established a Systemic Risk Assessment Task Force in January 2017 to assess and measure systemic risk through an activities-based approach.[7] Treasury's recommendations in this area include the following:

- Entity-based systemic risk evaluations of insurance companies are generally not the best approach for mitigating risks from the insurance industry. Insurance regulators should instead focus on potential risks arising from insurance products and activities (i.e., an activities-based approach). Although FSOC remains primarily responsible for assessing systemic risk in the U.S. financial system, insurance regulation at the federal level should be conducted in coordination with the states.
- The Federal Insurance Office ("*FIO*") and other U.S. members of IAIS[8] should advocate for the development of an activities-based approach to potential systemic risk in the global insurance sector. The IAIS should reassess the existing policy measures it has published for application to G-SIIs and improve, and make more transparent, its assessment methodology for the designation of G-SIIs.

Preserving Solvency – Capital Initiatives

The Report discusses regulatory capital initiatives at the state, federal, and IAIS level. While capital requirements are imposed only on an insurer legal entity basis under current state insurance regulation, state insurance regulators through the National Association of Insurance Commissioners (the "*NAIC*") are in the process of constructing a group-level capital calculation using a risk-based capital aggregation approach. The Federal Reserve published in June 2016 an advanced notice of proposed rulemaking on group capital requirements for insurance groups supervised by the Federal Reserve (i.e., insurance-based savings and loan holding companies and insurance groups designated by FSOC as SIFIs).[9] The IAIS is also in the process of developing an Insurance Capital Standard (the "*ICS*") for "internationally active insurance groups" or "IAIGs" and has developed a Basic Capital Requirement and Higher Loss-Absorbency Requirement for G-SIIs.[10] Treasury's recommendations with respect to group capital initiatives include:

- The group capital initiatives by the NAIC, states, and the Federal Reserve should be harmonized to mitigate duplicative and unnecessary regulatory burdens. The Secretary will direct FIO to coordinate this work in consultation with state insurance regulators, the NAIC, and the Federal Reserve, and to advocate the U.S. approach to group capital in international forums.
- U.S. members of the IAIS should present a consistent, unified approach to ICS development and ensure that the ICS accommodates the U.S. insurance business model and the existing state-based regulatory regime. Treasury further recommends that the IAIS postpone its current timeline to develop ICS Version 2.0 in 2019 in order to allow for further consultation.

Preserving Solvency – Liquidity Initiatives

The Report discusses the importance of understanding liquidity risk to insurance solvency regulation and oversight, and describes initiatives at the state, federal, and IAIS levels. These include the NAIC's Macro-Prudential Initiative, launched in August 2017, and NAIC work on the construction of a liquidity stress framework; the Federal Reserve's proposed rule on enhanced prudential standards for insurance-based SIFIs, published in June 2016, that included several proposed requirements relating to liquidity risk management and liquidity stress testing;[11] and the IAIS' liquidity-related G-SII policy measures published in 2014, which include a requirement to establish a liquidity management plan, and a 2016 report from the IAIS on potential systemic risk, including liquidity risk, from certain insurance product features.[12]

- Treasury encourages state insurance regulators, the NAIC, and the Federal Reserve to continue their work on assessing potential liquidity risk in the insurance sector, and directs FIO to monitor progress in this area and advocate for improvements to the IAIS' standards on liquidity management and planning.

B. EFFICIENT REGULATION AND GOVERNMENT PROCESSES

The Report offers 16 recommendations in this category, including on the role of state and federal regulation, the terrorism risk insurance program, cybersecurity, and other regulatory matters. Treasury explicitly endorses the state-based regulatory model for the U.S. insurance industry and recommends narrowing the scope of federal involvement, while recognizing the importance of federal involvement in certain key insurance programs. The Report also focuses on areas where state insurance regulation exhibits inefficiency and non-uniformity inconsistent with the goals of the Core Principles.

Revised Role of FIO

The Report establishes five pillars to guide FIO's mission as a means of advancing the Core Principles. Treasury recommends that:

- FIO and Treasury commit to more regular and consistent engagement with state insurance regulators and industry stakeholders, and that FIO's mission be guided by the following five pillars:
    - Promote the U.S. state-based insurance regulatory system and advocate for the U.S. insurance sector in international forums and negotiations and in foreign markets;
    - Provide insurance policy expertise and advice to the federal government, state insurance regulators, and industry through the publication of comprehensive research and analysis, consultation on emerging issues, and evaluation of federal insurance programs;
    - Provide coordinated and collaborative leadership on insurance issues that engage the federal government and state insurance regulators, including through enhanced coordination between the federal government and state insurance regulators;
    - Protect the U.S. financial system and economy by advising the Secretary and FSOC on insurance-related matters that may pose a threat to U.S. financial stability; and
    - Protect U.S. financial security by promoting access to insurance products and administering the Terrorism Risk Insurance Program.

Regulation of Insurer Savings and Loan Holding Companies

The Federal Reserve acts as the group-wide supervisor for savings and loan holding companies that are primarily engaged in the business of insurance ("*Insurer SLHCs*"). The Report discusses the manner in which the Federal Reserve supervises Insurer SLHCs and notes that much of this supervision is duplicative of existing state insurance regulation applied to these entities, leading to costly and inefficient supervision and regulatory requirements. To reduce this duplicative and inefficient oversight, Treasury recommends that:

- The Federal Reserve leverage information procured from Insurer SLHCs by state regulators and the NAIC, and harmonize its financial reporting and recordkeeping requirements with corresponding state regulatory requirements. Treasury also recommends that the Federal Reserve reassess whether its examination of Insurer SLHCs is appropriately tailored and proportionate.

Consumer Financial Protection Bureau (the "*CFPB*")

Although Dodd-Frank excludes the "business of insurance" from the financial products and services within the CFPB's jurisdiction, the Report discusses certain exceptions where the CFPB may exercise authority over the business of insurance.

- Treasury recommends that Congress clarify the "business of insurance" exception to ensure that the CFPB does not engage in the oversight of activities already monitored by state insurance regulators.

Proposed Disparate Impact Rule

In 2011, the U.S. Department of Housing and Development ("*HUD*") proposed a rule that would impose a duty to avoid housing practices that are neutral by legal and regulatory definitions but result in discriminatory effects (i.e., disparate impact). HUD has expressed its intention to apply this disparate impact rule to the insurance industry with respect to underwriting or other practices involving home/rental insurance.

- Treasury recommends that HUD reconsider its use of the disparate impact rule, and that it should consider whether the rule would be consistent with the McCarran-Ferguson Act[13] and existing state law.

SEC Regulation of Variable Annuities

The Report discusses securities law disclosure requirements relating to variable annuities, which generally must be registered with the SEC and sold with a prospectus. The insurance industry has advocated, in place of the existing SEC-mandated disclosure requirements, that variable annuity insurers be allowed to employ a user-friendly summary prospectus and a streamlined annual update document that is available online, which approach the SEC has indicated interest in but not taken any action on to date.

- Treasury recommends that the SEC prioritize annuity-related disclosure reform by proposing a rule permitting a variable annuity summary prospectus and a streamlined prospectus update and to allow statutorily required shareholder reports to be made available on the internet.[14] Treasury also encourages the SEC to engage with insurance regulators and stakeholders to assess how the adoption of FASB and IFRS accounting standards could affect the insurance industry.

Terrorism Risk Insurance Program

The Report makes three recommendations with respect to the Terrorism Risk Insurance Program ("*TRIP*"), the Terrorism Risk Insurance Act ("*TRIA*"), and the Terrorism Risk Insurance Program Reauthorization Act of 2015 ("*TRIP Reauthorization Act*").

- The Secretary will direct FIO to coordinate with state insurance regulators and the NAIC to attempt to eliminate or reduce inconsistencies between existing data collection requirements concerning terrorism risk insurance (including exploring the possibility of conducting a single data call to serve the needs of federal and state authorities).
- The Secretary will direct FIO to apply the process by which an act of terrorism is certified by the Secretary under TRIP in connection with any event that has some reasonable likelihood of resulting in more than $5 million in insured losses under TRIA.
- Treasury encourages the Advisory Committee on Risk-Sharing Mechanisms ("*ACRSM*"), a federal advisory committee established by the TRIP Reauthorization Act, to continue its efforts and develop recommendations for FIO, including how to increase private market participation in the terrorism insurance market.

Cybersecurity

The Report discusses the NAIC's Insurance Data Security Model Law (the "*Cybersecurity Model Law*"), which was adopted by the NAIC in October 2017, and the implementation by the New York Department of Financial Services of a new cybersecurity regulation for entities under its jurisdiction. The Report notes that the Cybersecurity Model Law does not require data breach notification to customers, that adoption of the model law by the states may take time and may not be implemented uniformly, and that its adoption may pose regulatory challenges and inefficiencies for multi-state insurers given the existing patchwork of already-existing and non-uniform state laws regarding privacy, consumer data, and breach notification. The Report also discusses cyber threats and cybersecurity within the insurance sector, and challenges in the market for cyber insurance products. Treasury's recommendations in this area include:

- Prompt adoption of the Cybersecurity Model Law by the states; if adoption and implementation of the model law by the states do not result in uniform data security regulations within five years, Treasury recommends that Congress pass a law setting forth requirements for insurer data security, but with supervision and enforcement to be left to state insurance regulators.
- That the states and NAIC work together to expeditiously pass uniform legislation regarding data breach notification requirements for insurers, and that the NAIC make any such model law an accreditation standard. If adoption and implementation of data breach notification laws do not result in uniform requirements within five years, Treasury encourages Congress to pass a law setting forth requirements for insurer-specific data breach notification, but with supervision and enforcement to be left to state insurance regulators.
- Treasury finally recommends that steps be taken to improve information sharing within the insurance industry with respect to cyber threats and cybersecurity, including through increased participation in the Financial Services Information Sharing and Analysis Center ("*FS-ISAC*"). The Secretary will also direct FIO to establish a working group charged with assessing cybersecurity challenges in the insurance sector.

Product Approval and Speed to Market

The Report discusses insurance product approval, filing, and other compliance requirements under state insurance laws, and notes that there is considerable variability and lack of uniformity among the states relating to insurance product approvals. According to the Report, this lack of uniformity undermines efficient and effective regulation and harms product innovation and the competitiveness of insurance products compared to other financial products. In July 2003, the NAIC adopted the Interstate Insurance Product Regulation Compact (the "*Compact*") and created the Interstate Insurance Product Regulation Commission (the "*IIPRC*") to develop uniform product standards for specified life, annuity, and other products, whereby uniform product approval standards filed and accepted by the IIPRC will supersede the standards of states participating in the Compact. The Report notes, however, that key states (California, New York, and Florida) have not participated in the Compact, and that inconsistent or conflicting state laws and regulations continue to result in significant additional costs for insurers respecting product administration and marketing.

The Report also discusses rate, form, and policy form filing requirements for commercial lines under existing state insurance regulation, noting that such regulations are not uniform across states and are generally not efficient, effective, or appropriately tailored. In this context, the Report discusses the Non-Admitted and Reinsurance Reform Act of 2010 ("*NRRA*"), which is intended to facilitate the placement of commercial risks by "exempt commercial purchasers" or "ECPs" in the non-admitted insurance market, as well as similar initiatives under New York's "Free-Trade Zone" regulations and recommendations of the NAIC's Commercial Lines Working Group to streamline the regulation of commercial insurance.

- Treasury encourages the NAIC to bring in states that have not yet joined the Compact, and encourages the IIPRC to complete the development of standards for product lines within its authority. Treasury also recommends that the states take steps to mitigate inconsistent or conflicting state laws and regulations in this area.
- Treasury encourages state regulators, the NAIC, and industry stakeholders to work together to propose more efficient regulation of commercial lines products, and recommends states to consider the ECP definition under the NRRA, New York's Free-Trade Zone, and the NAIC's recommendations on commercial lines regulations.

Producer Licensing and Appointments

The Report discusses state insurance producer licensing requirements, and notes a lack of uniformity and reciprocity among the states with respect to such requirements, particularly for non-resident producers operating in multiple states. The National Association of Registered Agents and Brokers Reform Act of 2015 ("*NARAB II*") was passed into law in January 2015 to address these licensing inefficiencies and related issues. The Report notes, however, that the Board of Directors to be established under NARAB II has yet to be completely appointed, and, accordingly, NARAB II has yet to be operational or properly implemented. The Report also discusses a lack of uniformity in state insurance requirements relating to agent appointments (i.e., the appointment by insurance companies of producers to be agents of the insurer).

- Treasury will take steps to expeditiously recommend nominees to the President for the NARAB II Board of Directors, who can then be sent to the Senate for confirmation. Treasury recommends that a majority of the Board be comprised of state insurance regulators.
- Treasury encourages state regulators and the NAIC to assess ways to increase the efficiency and uniformity of the producer appointment process, and encourages all states to adopt the NAIC's Producer Licensing Model Act and to interpret the appointment provisions therein consistently.

Federal and State Coordination

The Report notes that federal agencies have not adequately considered the unique business model of insurance when promulgating rules and regulations, including prudential rules that do not appropriately reflect the differences between banks and insurers.

- Treasury recommends that federal agencies and entities establish formal mechanisms to promote coordination and communication across the federal government with respect to insurance-related issues. FIO should establish a more structured and rationalized approach in its engagement with federal agencies and entities, and consult with and advise such agencies and entities when conducting rulemaking or policy action that relates to insurance.
- States should be consulted and afforded the opportunity to provide input when the business of insurance is implicated at the federal level. FIO should lead coordination efforts among federal and state agencies to improve communication and develop policy with respect to insurance-related issues.

C. INTERNATIONAL ENGAGEMENT

The Report makes seven recommendations in this category, including on U.S. engagement with the FSB and IAIS, the role of FIO, and covered agreements, among others.

The FSB and IAIS

The Report discusses the membership, legal authority, and insurance-related activities and initiatives of the FSB and IAIS. In particular, the Report describes industry concerns relating to the absence of U.S. insurance expertise at the FSB, and concerns that the FSB's insurance-related activities are too heavily influenced by central banks and prudential bank regulators, and that IAIS stakeholder engagement lacks sufficient transparency and can be improved. The Report emphasizes that the FSB and IAIS have no legal authority or jurisdiction over the United States. Standards agreed on at the FSB or IAIS are not binding and have no legal force unless enacted at the federal or state level, as applicable.

- Treasury strongly believes the FSB's activities should be limited to monitoring and enhancing global financial stability, and that insurance-related financial stability risk assessments and standards should be undertaken by the IAIS. Treasury will advocate for increased transparency and stakeholder engagement at the FSB, and for standards and principles consistent with the state-based U.S. insurance regulatory system.
- Treasury recommends that any future organizational changes to the IAIS' existing committee structure be done in a manner that ensures appropriate and geographically balanced representation and committee leadership among IAIS members.
- Treasury recommends that the IAIS take additional action to further increase transparency and stakeholder input into IAIS decision-making. Treasury encourages U.S. members of the IAIS

(informally known as "Team U.S.A.") to advocate for increased transparency and collaboration during the international standard development process.

Role of FIO and "Team U.S.A."

According to the Report, stakeholders have expressed that FIO has historically not done enough to ensure there is one coordinated message from Team U.S.A.

- Treasury has redefined FIO's mission on the basis of the five pillars described above, which include increased advocacy and coordination in international forums. Treasury believes FIO should have a permanent, voting membership on the IAIS Executive Committee.
- While recognizing that each member of Team U.S.A. has a different mandate,[15] Treasury believes Team U.S.A. should coordinate its efforts and harmonize its policy positions at the IAIS. The Secretary will direct FIO to: (1) coordinate with other Team U.S.A. members to formally define and implement a strengthened collaborative process, including an enhanced inter-agency process to coordinate on international prudential insurance matters; (2) conduct quarterly coordination meetings with stakeholders to engage with Team U.S.A. members to increase transparency on IAIS issues; and (3) consider establishing an advisory committee or other mechanism to provide increased stakeholder input.

Access to Foreign Markets by U.S. Insurers

The Report describes measures imposed by certain non-U.S. jurisdictions that prevent greater insurance penetration by U.S. insurers, reinsurers, and intermediaries, and which impede their ability to compete on a level playing field.

- The Secretary will direct FIO and the Undersecretary for International Affairs to enhance engagement in multilateral and bilateral dialogues on issues concerning the insurance sector's international market access. Treasury also recommends that Team U.S.A. members encourage the IAIS to analyze whether certain market access restrictions in some jurisdictions are consistent with the goals of the IAIS Insurance Core Principles.

Covered Agreements

The Report discusses "covered agreements" under Dodd-Frank, focusing on the bilateral covered agreement between the United States and the European Union that was signed on September 22, 2017 (the "*U.S.-EU Covered Agreement*").[16] The Report states that, given the benefits associated with the U.S.-EU Covered Agreement, additional covered agreements may be mutually beneficial to the United States and other foreign jurisdictions. In particular, the Report suggests a covered agreement between the United Kingdom and the United States may be beneficial in light of the United Kingdom's potential withdrawal from the European Union (i.e., Brexit).

- The Secretary will direct FIO to continue to improve its coordination with state insurance regulators, the NAIC, and stakeholders as the provisions of the U.S.-EU Covered Agreement are implemented. Treasury will also consult with the Office of the United States Trade Representative, Congress, state insurance regulators, and stakeholders as it explores entering into covered agreement negotiations with other foreign jurisdictions.

D. ECONOMIC GROWTH AND INFORMED CHOICES

The Report makes three recommendations relating to this category.

Insurer Investment in Infrastructure

The Report discusses that U.S. insurance companies in the current persistent low interest rate environment have sought higher-yielding investments, including infrastructure investments. The Report analyzes why infrastructure investment is attractive to insurers, but notes that current state requirements regarding the amount and type of capital insurers must hold do not reflect the special features of infrastructure investments and may actually, in some cases, penalize insurers for holding such investments.

- Treasury recommends that state insurance regulators and the NAIC evaluate potential steps to encourage the development of more calibrated regulatory treatment of high-quality infrastructure investments, including considering revisions of Risk-Based Capital charges to reflect the stable cash flows of high-quality infrastructure investments as compared to general equity investments.

Promotion of Lifetime Retirement Income

The Report discusses the growing need for retirement income in the United States, in particular the need to insure against "longevity risk" (i.e., the risk of outliving assets accumulated during a retiree's working years). The Report notes that annuities are a valuable component of a retirement savings portfolio since they offer a guaranteed income stream that cannot be outlived. According to the Report, however, annuities are not widely offered in defined contribution plans, primarily because employers have felt deterred from offering in-plan annuity options given concerns over legal liability under ERISA. In 2008, the DOL adopted a "safe harbor" rule providing that plan sponsors selecting an annuity provider could satisfy ERISA's fiduciary standard by meeting specified conditions, but the Report indicates that the terms and application of the safe harbor are not clear, resulting in many employers and professional advisers being uncomfortable relying on the safe harbor.

- Treasury recommends that the DOL and Treasury develop proposals on how to establish or certify one or more expert, independent fiduciary entities to assess the long-term financial strength of annuity providers in order to assist ERISA-governed plan sponsors in complying with their fiduciary duty obligations in selecting annuity providers for plans and enable fiduciaries to rely on such assessments as a safe harbor.

Long-Term Care Insurance ("*LTC*")

The Report discusses challenges facing the LTC market and states that these challenges require a coordinated response from the federal government because they are of national interest.

- Treasury will convene an inter-agency task force to develop policies to complement reforms at the state level relating to the regulation of LTC. The task force's work should be coordinated with ongoing work of the NAIC and state regulators.

CONCLUSION

The Report emphasizes the need for improving and streamlining regulations affecting the U.S. asset management and insurance industries to advance the Core Principles. Many of the Report's recommendations build on work that is already underway in the area of financial institution regulation and supervision and can be accomplished through the administrative action of federal agencies. However, the implementation of certain recommendations would require congressional action or legislative action at the state level. The Report advances principles of efficient regulation, transparency, and promotion of a robust domestic economy in a manner that is consistent with the Treasury's first two reports on depository system and capital markets regulation.

We expect Treasury's recommendations in its fourth report on nonbank financial institutions, financial technology, and financial innovation to build on and track the principles emphasized in the first three reports.

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ENDNOTES

1 U.S. Department of the Treasury, A Financial System That Creates Economic Opportunities: Asset Management and Insurance (Oct. 26, 2017), available at https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-That-Creates-Economic-Opportunities-Asset_Management-Insurance.pdf; *see also* U.S. Department of the Treasury, A Financial System That Creates Economic Opportunities: Asset Management and Insurance Fact Sheet (Oct. 26, 2017), available at https://www.treasury.gov/press-center/press-releases/Documents/Asset_Management_and_Insurance_Fact_Sheet.pdf.

2 For further information, see our Client Memorandum, President Trump Takes Initial Steps Aimed at Reshaping Financial Industry Regulation: Executive Order Requires Fundamental Reassessment of Existing Rules; Labor Department to Reexamine its "Fiduciary Rule," dated February 4, 2017, available at https://www.sullcrom.com/siteFiles/Publications/SC_Publication_President_Trump_Takes_Initial_Steps_Aimed_at_Reshaping_Financial_Industry_Regulation.pdf.

3 The first report, issued on June 12, 2017, addressed depository system regulation, covering banks, savings associations, and credit unions. U.S. Department of the Treasury, A Financial System That Creates Economic Opportunities: Banks and Credit Unions (June 12, 2017). For further information, see our Client Memorandum, Treasury Issues Comprehensive Report on Depository System Regulatory Reforms, dated June 14, 2017, available at https://sullcrom.com/siteFiles/Publications/SC_Publication_Treasury_Issues_Comprehensive_Report_on_Depository_System_Regulatory_Reforms.pdf.
The second report, which addressed U.S. capital markets regulation, was issued on October 6, 2017. U.S. Department of the Treasury, A Financial System That Creates Economic Opportunities: Capital Markets (Oct. 6, 2017). For further information, see our Client Memorandum, Treasury Issues Comprehensive Report on Capital Markets Reform, dated October 11, 2017, available at https://sullcrom.com/siteFiles/Publications/SC_Publication_Treasury_Issues_Comprehensive_Report_on_Capital_Markets_Reform.pdf. The remaining report will address nonbank financial institutions, financial technology, and financial innovation. Treasury intends to also issue separate reports on the Orderly Liquidation Authority established in Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Financial Stability Oversight Council's designation of systemically important nonbank financial companies and financial market utilities. *See* Presidential Memorandum for the Secretary of the Treasury: Orderly Liquidation Authority (Apr. 21, 2017), available at https://www.whitehouse.gov/the-press-office/2017/04/21/presidential-memorandum-secretary-treasury-0; Presidential Memorandum for the Secretary of the Treasury: Financial Stability Oversight Council (Apr. 21, 2017), available at https://www.whitehouse.gov/the-press-office/2017/04/21/presidential-memorandum-secretary-treasury.

4 Exec. Order No. 13772, 82 Fed. Reg. 9965 (Feb. 8, 2017), available at https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-executive-order-core-principles-regulating-united-states.

5 Since the introduction of ETFs in 1993, investor interest has continued to grow, leading to a growing market share and expanding diversity of product offerings. For an ETF to begin trading on a national exchange, it must file an application with the SEC for an exemptive relief order, which exempts the ETF from certain provisions of the 1940 Act and other SEC rules. As of the end of 2016, the total number of ETFs grew to more than 1,700, and exemptive relief orders apply to each one. Further, one SEC division handles the exemptive relief order process, while another handles any required changes in listing standards associated with the ETFs' listings. Since these divisions within the SEC administer different underlying statues, they can apply different criteria and requirements in obtaining approvals, which can change over time.

6 The FSOC designated American International Group, Inc. (AIG) and Prudential Financial Inc. (Prudential) in 2013, and MetLife Inc. (MetLife) in 2014. A federal court order rescinded MetLife's

ENDNOTES (CONTINUED)

SIFI designation in March 2016, which has been appealed by the FSOC and remains pending. The FSOC rescinded the designation of AIG in September 2017. Prudential remains the only nonbank financial company designated under Section 113 of Dodd-Frank.

7 The FSB's G-SII list that was announced in November 2016 includes AIG, MetLife, and Prudential, along with six other non-U.S. insurance groups. The FSB has not yet announced a G-SII list for 2017.

8 U.S. members of the IAIS include the NAIC and the insurance regulators of the U.S. states, the District of Columbia and U.S. territories, plus the Federal Reserve and FIO.

9 See our Client Memorandum, Federal Reserve Proposes Regulatory Capital Frameworks for Supervised Insurers and Enhanced Prudential Standards for Insurers Designated as Systemically Important, dated June 7, 2016, available at https://www.sullcrom.com/siteFiles/Publications/SC_Publication_Federal_Reserve_Proposes_Regulatory_Capital_Frameworks_06_07_2016.pdf. The Federal Reserve proposed two approaches: a "building block approach" intended to be applied to insurance-based savings and loan holding companies (and conceptually similar to the aggregation approach being considered by the NAIC) and a "consolidated approach" intended to be applied to insurance-based FSOC-designated SIFIs.

10 See our Client Memorandum, IAIS – Global Insurance Capital Standard ICS 1.0, dated August 14, 2017, available at https://sullcrom.com/siteFiles/Publications/SC_Publication_IAIS_Global_Insurance_Capital_Standard_ICS_1_0.pdf. The ICS is intended to replace the Basic Capital Requirement for G-SIIs once the ICS is finalized.

11 See our Client Memorandum, Federal Reserve Proposes Regulatory Capital Frameworks for Supervised Insurers and Enhanced Prudential Standards for Insurers Designated as Systemically Important, dated June 7, 2016, available at https://www.sullcrom.com/siteFiles/Publications/SC_Publication_Federal_Reserve_Proposes_Regulatory_Capital_Frameworks_06_07_2016.pdf.

12 On the IAIS work on assessing systemic risk from insurance product features, see our Client Memorandum, IAIS Issues Updated G-SII Assessment Methodology, dated June 28, 2016, available at https://sullcrom.com/siteFiles/Publications/SC_Publication_IAIS_Issues_Updated_GSII_Assessment_Methodology.pdf.

13 Under the McCarran-Ferguson Act (15 U.S.C. §§ 1011-1015), passed by Congress in 1945, state laws governing the business of insurance cannot be invalidated, preempted, impaired, or superseded by any federal law unless the federal law specifically relates to the business of insurance.

14 The Report also recommends that the SEC take steps to improve the efficiency and effectiveness of its regulation of insurance products, for example by waiving certain disclosure requirements for non-exempt annuity contracts not eligible for registration on Form N-4.

15 The Report notes that state insurance regulators and the NAIC generally focus on policyholder protection, whereas the Federal Reserve focuses on safety and soundness.

16 "Covered agreements" are defined under Dodd-Frank as written bilateral or multilateral agreements between the United States and one or more foreign governments, authorities, or regulators regarding prudential measures with respect to insurance or reinsurance. On the U.S.-EU Covered Agreement, see our Client Memoranda, U.S. and European Regulators Conclude Covered Agreement Negotiations, dated January 16, 2017, available at https://sullcrom.com/siteFiles/Publications/SC_Publication_SC_Publication_U.S._and_European_Regulators_Conclude_Covered_Agreement_Negotiations.pdf; U.S. and EU Sign Covered Agreement, dated September 27, 2017, available at https://sullcrom.com/siteFiles/Publications/SC_Publication_US_and_EU_Sign_Covered_Agreement.pdf.

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