

Statement for the Record
The National Association of Insurance Commissioners
Hearing on
Legislative Proposals on
Capital Formation and Corporate Governance
February 28, 2019

On behalf of the regulators of the U.S. insurance sector, the National Association of Insurance Commissioners (NAIC)¹ submits this written statement for the Senate Banking Committee Hearing on “Legislative Proposals on Capital Formation and Corporate Governance.” We appreciate this opportunity to express our support for the International Insurance Standards Act (H.R. 4537 in the 115th Congress).

The International Insurance Standards Act will provide safeguards to help ensure that federal objectives are more closely aligned with the interests of U.S. consumers, the U.S. insurance sector and its regulatory system. It has been vetted and refined through House committee hearings and bipartisan collaboration, ultimately passing the House of Representatives by voice vote on July 10, 2018, and as part of S. 488, the JOBS and Investor Confidence Act on July 17, 2018.² We believe it is vital that these bipartisan international insurance provisions to protect U.S. insurance consumers and companies are passed into law.

The NAIC greatly appreciates the work done to enact S. 2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act, in the 115th Congress, which included legislation introduced in the 114th Congress (S. 1086) by Senators Dean Heller (R-NV) and Jon Tester (D-MT). The NAIC supported that legislation from the outset and advocated for its inclusion in S. 2155. Those provisions will bring about an additional level of congressional oversight to international insurance standard-setting activities and are a significant step forward in addressing concerns relating to the lack of transparency of international activities. However, while significant, those provisions were limited in scope and did not seek to address several other concerns regarding international insurance regulatory standard-setting activities and the covered agreement process. H.R. 4537, sponsored by Representatives Sean Duffy (R-WI) and Denny Heck (D-WA) during the 115th Congress, addresses these remaining concerns, is complementary to, and builds upon S. 2155 as delineated below.³

¹ Founded in 1871, the NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

² S. 488 passed the House of Representatives by a vote of 406-4.

³ Some erroneously claim that certain aspects of the legislation raise constitutional concerns due to limitations placed on federal participants in international insurance negotiations. However, Congress has the clear constitutional authority “to regulate commerce with foreign nations.” U.S. Const. Art. I, § 8, cl. 2. Further, there are examples in current law of Congress providing instructions to or limitations on U.S. negotiators, as well as prescribing those who may participate in international negotiations. *See, e.g.*, the Omnibus Trade and Competitiveness Act of 1988, 19 USC § 2905 (limiting the ability of the President to enter into trade agreements

Recognition of the U.S. System of Insurance Regulation

One of the most important provisions of International Insurance Standards Act, Section 3(a)(1), would require that federal representatives only agree to international standards or agreements that would recognize the U.S. system of insurance regulation as satisfying such proposals. In so doing, the bill bolsters and complements the international insurance provisions found in S. 2155 by preserving the ability of domestic lawmakers and regulators—rather than international bodies—to determine appropriate insurance regulatory requirements for the United States.

The United States is the largest and most competitive insurance market in the world and our system of insurance regulation has been operating effectively for well over a century. While international standards are not legally binding, our system is held accountable to them even when they may not be appropriate for our market. For instance, international organizations such as the Financial Stability Board (FSB) and the International Association of Insurance Supervisors (IAIS) are developing new global regulatory standards that may be incompatible with the U.S. system of insurance regulation and not in the best interests of U.S. consumers and industry. While not binding, the IAIS's Insurance Core Principles (ICPs) form the basis for the International Monetary Fund's Financial Sector Assessment Program (FSAP). An FSAP encourages adherence to the standards often without regard for differences in legal and regulatory structures.

As the NAIC and state insurance regulators have been directly involved in the negotiations of international regulatory standards at the IAIS since its establishment, it is our considered view based on our experience, that Section 3(a)(1) will provide significant leverage for U.S. interests in international discussions. It makes clear to foreign participants that those representing the U.S. are not at liberty to negotiate away core aspects of the U.S. approach to regulation and therefore must work with U.S. federal and state representatives to develop standards that are compatible with the U.S. system. While we value the perspective of our international colleagues and have adapted some of their best practices for our own use through the years, we must do so through processes here at home, not through agreements at unaccountable international organizations abroad.

Full Participation of Insurance Regulators in International Discussions

Section 4 of the International Insurance Standards Act requires the federal government to “closely consult, coordinate with and seek to include” state insurance regulators (or designees) in international insurance standard-setting discussions, wherever they may occur. Despite significant efforts to work with federal agencies on international matters, we have historically been disappointed in the lack of depth in the interactions as well as the refusal to include state insurance regulators in international insurance discussions in forums other than the IAIS. In recent years, state regulators have been barred from critical meetings or relegated to an observer role. For example, the U.S. Department of the Treasury, the Federal Reserve Board and the Securities and Exchange Commission are members of the FSB. FSB working groups have had several discussions

with countries that did not meet certain conditions), 12 USC 3911 (providing the FDIC equal representation with the other banking regulators at the Basel Committee). Lastly, H.R. 4537 places limitations on authorities first granted to federal agencies by Congress just eight and a half years ago in the Dodd-Frank Act of 2010. The authorities Congress grants, Congress can take away or limit.

regarding insurance regulatory matters, yet state insurance regulators have been predominantly excluded from such deliberations.

Similarly, in recent years, the Treasury's Strategic and Economic Dialogue with China and its successor, the U.S.-China Comprehensive Economic Dialogue, as well as the Financial Markets Regulatory Dialogue, have not included state regulators, even though our regulatory counterparts from those jurisdictions were included, and in the past state regulators had a role in those meetings. As a more recent example, the U.S.-EU Joint Financial Regulatory Forum which took place February 5-6, 2019, in Washington, D.C. did not include insurance regulators despite the inclusion of the European Insurance and Occupational Pensions Authority (EIOPA) and the discussion of insurance regulatory matters such as the Covered Agreement between the U.S. and the EU.

As our counterparts from other countries are seated at the table in international insurance standard-setting negotiations, it is appropriate and necessary to ensure U.S. insurance regulators can participate fully in these discussions. While it is unfortunate that legislation is necessary to provide for this participation in international fora, it is imperative that the perspective of the primary regulators of the insurance industry be fully represented. If past experience is any indication, our participation is not guaranteed.

Clarification of the Role of the FIO at the IAIS

The International Insurance Standards Act clarifies that the Federal Insurance Office (FIO) represents the United States Federal Government and not state insurance regulators at the IAIS. Similar to the International Organization of Securities Commissions (IOSCO) and the Basel Committee, the IAIS is an international regulatory standard-setting body. Its membership is composed of insurance regulators and supervisors from around the world. The NAIC and state insurance regulators are founding members of the IAIS and have been engaged in its deliberations throughout its existence. The FIO and the Federal Reserve more recently joined the IAIS as members, but they have their own objectives and more narrow authorities. In particular, the FIO is not a regulator and its perceived role has historically complicated our own engagement at the IAIS.

Unlike the IAIS, full membership at IOSCO and the Basel Committee is limited to regulatory representatives, and, therefore, FIO's involvement at IAIS was understandably confusing to our foreign counterparts. In fact, there have been instances when the FIO has taken positions counter to those of insurance regulators even though they have no responsibility for implementing international insurance regulatory standards. While we believe the Treasury Department has a role to play internationally, the FIO should not be making commitments on international regulatory standard-setting matters that could be perceived as commitments to be undertaken by U.S. state insurance regulators. By making clear that FIO represents the Federal Government and not the individual states at the IAIS, the legislation provides clear lines of demarcation between the roles of FIO and the primary regulators of the U.S. insurance sector at the IAIS.

Improvements to the Covered Agreement Process

Unlike S. 2155 which did not address the covered agreement process, the International Insurance Standards Act would apply greater transparency and congressional oversight to future covered agreements. Certainly, the covered agreement process with the EU demonstrated the need for these improvements. Covered agreements are unlike other international agreements in that the Treasury Department and the U.S. Trade Representative (USTR) can make commitments U.S. insurance regulators are required to implement or face preemption of state law. Unlike a trade agreement, which is subject to established procedures for input from the states and a vote by Congress, consultation with a broader group of U.S. stakeholders including industry and consumer participants is not required and did not occur. State regulators were assured we would have direct and meaningful participation in the covered agreement process, but we were relegated to mere observers, subject to strict confidentiality with no ability to consult staff and fellow regulators. Illustrating the need for coordination with primary regulators, the Treasury Department and the USTR were forced to provide a statement of U.S. policy clarifying the covered agreement with the EU in key areas like capital, group supervision, reinsurance and the Joint Committee. Had state regulators been closely consulted and coordinated with during the process as H.R. 4537 requires, the statement may not have been necessary. Requiring the evaluative process to include regulators who are responsible for implementing any covered agreement will only make the process run more smoothly and better ensure support from states prior to the conclusion of negotiations.

In addition to providing more robust participation of state insurance regulators, the International Insurance Standards Act would provide a mechanism for congressional disapproval for any proposed covered agreement. It is incongruous to require approval for other international agreements, but make an exception for insurance related agreements, and for foreign jurisdictions to require the approval by their legislative bodies, but not for the U.S. to do so. In fact, compromise language contained in the International Insurance Standards Act does not even provide the affirmative approval of Covered Agreements that other jurisdictions require. Rather, Section 7 merely establishes a mechanism for a resolution of disapproval to be filed and considered in the Senate and House relating to a covered agreement within a 90-day period.

Conclusion

Thank you for the opportunity to submit this statement for the record. We ask the Senate Banking Committee to take up and pass the provisions of H.R. 4537 or otherwise incorporate it in any legislative package relating to capital formation and corporate governance you may consider including Jobs Act 3.0 from the 115th Congress. Clarifying the respective roles of "Team USA," and requiring federal negotiators to seek the expertise of insurance regulators will not only establish a sensible process for international negotiations but, more importantly, better outcomes for U.S. stakeholders. Likewise, stronger congressional oversight and charges to federal representatives will strengthen the ability of American negotiators to defend the United States insurance regulatory system that has successfully protected insurance consumers and sustained the most robust market in the world.