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February 2, 2012

Mr. Daniel Mullaney  
Assistant U.S. Trade Representative  
for Europe and the Middle East  
Office of the U.S. Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

***Subject: U.S.-EU High Level Working Group***

Dear Mr. Mullaney:

This submission is in response to the January 11, 2012 *Federal Register* notice request for comments on options for increasing trade and investment between the United States and the European Union. ACE is a global insurer with offices in 54 countries, providing coverage for clients in over 170 countries. As a global insurer with extensive operations in both markets, ACE has a vested interest in a strong and growing economic partnership between the U.S. and Europe. As such, we welcome the High Level Working Group's mandate to increase trade and investment to support mutually beneficial job creation, economic growth and international competitiveness.

***The Current Environment for the Insurance Sector***

Based on total premium volume in 2009, the U.S. and Europe together accounted for two-thirds of global insurance premiums. These two mature economies have demonstrated what an open market environment will enable, namely two fiercely competitive markets that are at the forefront of industry innovation, whose ultimate beneficiary is the consumer. While these two markets have achieved notable levels of success, the historical path to the present was not identical. Different cultures, norms and legal/regulatory structures have influenced the current state of play. While differences exist between the two markets, ACE believes the common thread that has led to the successful development of the respective insurance markets has been the propensity to keep their markets open to competition. Both the U.S. and EU were instrumental in the creation of the World Trade Organization (WTO), through which the principles of non-discrimination, open competition, predictability and transparency are governed. These principles should remain the foundation upon which reforms are considered.



From a regulatory perspective, the two insurance markets are currently undergoing significant changes. Due to the 2008 financial crisis, both governments are under pressure to prevent a similar recurrence. In Europe, this is mainly being debated through the Solvency II Directive, which will codify and harmonize insurance regulation in the EU. In the U.S., the Dodd-Frank Act legislated various regulatory reform initiatives including the creation of the Federal Insurance Office (“FIO”). At the state level, regulators have undertaken the Solvency Modernization Initiative (SMI), which is a self-examination of the United States’ insurance solvency regulation framework and includes a review of international developments regarding insurance supervision, banking supervision, and international accounting standards and their potential use in U.S. insurance regulation. It is critical that as both markets undergo reform initiatives they not lose sight of the principles outlined above. ACE believes that one of the most important roles the EU-U.S. High Level Working Group can play is to identify those acts/directives that drift from those principles and remind one another how those principles have been overwhelmingly beneficial to both economies.

### ***First, Do No Harm***

Borrowing from the medical profession, we call on U.S. and EU leaders to *First, Do No Harm*. With a few exceptions, insurers fared well during the financial crisis. This can be attributed to the effective, albeit different, regulatory structures in both the EU and the U.S. The goal of these regulatory reform initiatives should be consumer focused, seeking to address gaps or emerging issues that have not been addressed in existing regulation. In some instances, regulatory authorities have swung the pendulum in an excessive manner, for example, forcing seasoned senior executives to “justify” their credentials. We believe such initiatives restrain regulators who are already time constrained from performing more effective functions.

The goal should not be to find fault with counterpart regulatory structures. Given the maturity of our two regulatory regimes, it is unrealistic to assume that identical regulation is possible. Rather, our two economies should focus on an outcomes-based approach. The EU-U.S. High Level Working Group can play an important role in this area. Insurance regulators from both the U.S. and EU should not be expected to defer to their foreign counterparts. They are proud and protective of the systems they enforce. It is the responsibility of our political leaders to assure that the respective regulatory regimes can co-exist and achieve their goals without damaging the broader, mutually beneficial two-way economic relationship.



## ***The Issues***

### *Solvency II Equivalency Assessments*

As highlighted above, there are significant modifications ongoing from a regulatory perspective in both markets. Under Solvency II, the EU mandates an equivalency assessment for third countries for reinsurance supervision, group solvency calculations and group supervision. The EU has arrogated to itself the responsibility to decide whether the world's various insurance regulatory approaches are equivalent or not, and appears to be taking a highly prescriptive approach to the definition of equivalence, at least if their initial reviews of Bermuda, Switzerland and Japan are a precedent. Without strong intervention, equivalence determinations will evolve into a form of extra-territorial regulation in which divergence of regulatory approach will be suppressed in favor of a particular style preferred on one continent. We note that if the U.S. regulatory system is not found to be equivalent to that of the EU, U.S. companies will be negatively impacted and put at a competitive disadvantage when they do business within the EU. This would certainly violate the *First, Do No Harm* principle! The likely outcome would be retaliatory measures from the U.S., leading to an unnecessary trade war which would serve in no one's interest. Political leadership must rise above this and encourage a more rational approach. Encouraging continued regulatory dialogue is a start, but there must be a deadline for a mutually beneficial agreement. Given that the EU Parliament has yet to approve the Omnibus II Directive and with the establishment of FIO and the ongoing SMI Initiative, we believe a path to resolution is possible with the appropriate guidance from leaders on both sides of the Atlantic.

### *Collateral Requirements for Foreign Reinsurers*

For the last 10 years the NAIC has been reviewing whether to change the requirement that foreign reinsurers, regardless of their financial rating, need to fully collateralize their obligations in order for U.S. cedents to take capital credit for the reinsurance. Foreign regulators and reinsurers view this requirement as a protectionist measure by the U.S. which is out of step with the principles outlined above as well as with the emerging global approach of open insurance markets based on mutual recognition of the regulatory system of other competent jurisdictions. Our European counterparts are rightfully irritated by this. The NAIC passed the Model Credit for Reinsurance Act this past November which states that collateral requirements should be based on financial strength, not domicile. While the NAIC has now issued a Model Act, that Act has no effect until it is passed in each of the states, a process that could take years and may result in conflicting versions of the Act passing state by state. The Europeans are not satisfied by this outcome and seek to have a single entity with which they can negotiate agreements around regulatory requirements and market access. The Administration should work through the newly created FIO and with NAIC to develop a more efficient approach.



### *Discriminatory Tax Treatment*

In late 2011, Representative Richard Neal (D-MA) and Senator Robert Menendez (D-NJ) once again introduced legislation that would disallow the deduction for reinsurance premiums paid to a foreign affiliate. The Obama Administration also included a similar proposal in their 2012 budget. These proposals would place a discriminatory tax on a commonly used and economically prudent business practice to diversify risk both financially and geographically. Insurers of U.S. risks purchase reinsurance from both related and unrelated parties to manage risk, provide capacity, and allocate capital efficiently. Reinsurance with related parties (affiliates) is a common capital management tool used by all the major insurance groups whether based in the U.S., the EU or any other major country around the world. Affiliate reinsurance provides the ability to pool capital from subsidiaries around the globe, which allows a company to write business they otherwise would not be able to write. In fact, over 50% of all insurance subsidiaries of large U.S. insurance groups cede more than half of their premiums to affiliated companies within the U.S. The prevalence of affiliate reinsurance within U.S. based groups underscores the underlying business purpose for such transactions. However, these proposals single out foreign reinsurers for treatment worse than U.S. reinsurers. Just as foreign countries can't protect their insurance markets for their domestic insurance companies and treat U.S. companies unfairly, the U.S. can't protect its market for domestic insurance companies and treat foreign companies unfairly. These protectionist and discriminatory proposals have led the EU and many individual countries to complain that they violate WTO commitments and U.S. tax treaties. Such discriminatory measures should be avoided by leaders on both sides of the Atlantic.

### *The Importance of Ensuring an Appropriate Framework for the Flow of Data*

The U.S. and EU can play an important role in establishing an appropriate framework for the critical flow of information and data. Most services transactions today take the form of digital information flowing through the internet. Financial transactions today are conducted in this manner. While digital trade is the common form of business today, trade rules have not kept pace with this reality. Companies today face a myriad of barriers around the world related to this issue, including arbitrary blockages of data, requirements of "forced localization" of data storage/processing within countries and unrealistic liability requirements placed upon insurance entities. While we have predictable rules for the flow of goods, there are no such rules for the free flow of information. Both European and U.S. insurers face increasing administrative complexity and cost related to this issue, translating into increased costs for consumers. In addition, conflicting legal requirements restrict the ability of such insurers to offer their full scope of services.



A number of countries have already enacted or are pursuing restrictive policies governing the provision of digital commercial and financial services, technology products or the treatment of information to favor domestic interests over international competition. Even where policies are designed to support legitimate public interests, such as national security or law enforcement, businesses can suffer when those rules are unclear, arbitrary, unevenly applied or more trade-restrictive than necessary to achieve the underlying objective. What's more, multiple governments may assert jurisdiction over the same information, which may leave businesses subject to inconsistent or conflicting rules. The U.S. and EU could take a leadership role in this area and seek to develop a framework that provides the appropriate regulatory environment while maintaining the principles of non-discrimination, openness and transparency.

#### *Cooperation on Third Country Issues*

The *Federal Register* notice specifically seeks input on the question of enhanced cooperation for the development of rules and principles on global issues of common concern and also for the achievement of shared economic goals relating to third countries. ACE believes this is a critical area, one in which the U.S. and EU could make substantial progress, or conversely create new barriers. With respect to the development of rules and principles on global insurance issues of common concern, the forum for such discussion today is the International Association of Insurance Supervisors (IAIS). The IAIS is currently developing a Common Framework to Supervise Internationally Active Insurance Groups ("ComFrame"). ACE supports efforts to establish principles which lead to more efficient and coordinated supervision of global insurance groups; however, these efforts should not create an additional layer of "international" supervision for global groups, but rather should set forth principles that national supervisory regimes should meet. These principles should be adaptable and practical in nearly all countries and should not attempt to prescribe specific rules that do not respect differences of approach among countries and cultures. Unfortunately, ComFrame as currently drafted appears to be adopting international solvency standards based on the EU Solvency II regulatory model. This clearly puts the EU at odds with the U.S. within the insurance industry's main international forum. Given the size of the two respective markets, little can be accomplished if the EU and U.S. are at odds with one another. Instead, the U.S. and EU should work together to develop solvency principles that assess the recognition and equivalence between local solvency regimes, which while detailed and outcome oriented, should not prescribe strict alignment between regimes. Importantly, these efforts to establish global standards should not result in additional barriers to participation in these markets. In addition, recognizing that many countries, including emerging developing countries, do not strictly prescribe to the principles of openness and non-discrimination, the U.S. and EU could spend their time much more productively by educating other IAIS members on the benefits of open insurance markets.



In closing, we would like to thank you for providing ACE with the opportunity to submit our comments on the options for increasing trade and investment between the U.S. and Europe.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yancy Molnar'.

Yancy Molnar