

April 5, 2006

Dear Mr. M:

This responds to your letter dated December 15, 2005, regarding the applicability of the mandatory availability (“make available”) requirements of section 103(c) of the Terrorism Risk Insurance Act of 2002<sup>1</sup> (“TRIA” or “Act”) to package policies.

In your letter, you state that your firm represents XYZ Insurance Company (“XYZ”), an insurer that offers commercial property and casualty insurance in 35 states, principally to small business owners. You further state that it is the regular practice of XYZ to offer such insurance through policies representing a package of standard coverages that typically are not individually negotiated (“package policies”). For new and renewal policies offered after TRIA was enacted,<sup>2</sup> you state that XYZ included coverage for certified acts of terrorism under TRIA in all its package policies and charged a premium for this coverage. A policyholder or applicant could reject the package policy by declining to purchase the entire package policy or could accept the entire package including the terrorism risk insurance component, but could not accept the package without the terrorism risk insurance component.

Your letter asks whether the “make available” provision of section 103(c) of TRIA permits an insurer to offer coverage for losses from certified acts of terrorism within a package policy of property and casualty insurance without offering the applicant an option to decline the terrorism risk insurance component of the package policy.

### **TRIA Statutory and Regulatory “Make Available” Requirements**

TRIA section 103(c) requires that each insurer subject to the Act:

- (A) shall make available, in all of its property and casualty insurance policies, coverage for insured losses; and
- (B) shall make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

Treasury’s make available regulation is located at 31 CFR 50.21(a). The regulation provides, in part, that the requirement to make available coverage for losses from

---

<sup>1</sup> Pub. L. 107-297, 116 Stat. 2322, 15 USCS § 6701, note. The TRIA Program was recently extended through 2007 by Pub. L. 109-144, 119 Stat. 2660, 15 USCS § 6701, note.

<sup>2</sup> At the time TRIA became effective on November 26, 2002, a number of these package policies contained exclusions for losses from acts of terrorism. As you note, these exclusions were nullified by section 105(a) of TRIA when the Act became effective.

certified acts of terrorism applies at the time an insurer makes the initial offer of coverage as well as at the time an insurer makes an initial offer of renewal of an existing policy.

### **Application of Make Available Requirements to Package Policies**

Treasury's regulation 31 CFR 50.21(a) addresses the times at which insurers must make offers of coverage for insured losses. There is no requirement in TRIA that an applicant/policyholder accept an offer, nor is there a requirement that an insurer negotiate changes in a policy to allow exclusion of terrorism risk coverage after an insurer has made an offer that included terrorism risk coverage (in accordance with section 103 of the Act and Treasury regulations) and that offer was rejected.

Further, in specific response to your question, TRIA does not require an insurer to make coverage for losses from certified acts of terrorism optional in a package policy. If the terms, amounts and coverage limitations for the terrorism coverage component of the policy are not materially different from those for other component coverages in the policy, a package policy could satisfy the make available requirements of TRIA. There is nothing inherent in a package policy that is prohibited by TRIA's make available requirements.

This letter only addresses the applicability of the make available requirements of TRIA to package policies. We express no opinion, and take no position, on the application of any state law or regulatory agreement concerning the packaging of policies.<sup>3</sup>

Sincerely,

Jeffrey Bragg  
Executive Director  
Terrorism Risk Insurance Program

---

<sup>3</sup> See TRIA section 106(a) concerning preservation of state law.