

December 1, 2003

Dear Mr. M:

This letter is written in response to your recent letter in which you requested an interpretation concerning the application of the Terrorism Risk Insurance Act of 2002 (the "Act") and Treasury's regulations implementing the Act, to the calculation of an insurer's deductible once an insurer is no longer an "affiliate" of other insurers.¹

Background

As specified by the Act and the implementing regulations, the amount of federal payment for an insured loss resulting from a certified act of terrorism is to be determined based upon insurance company deductibles and excess loss sharing with the Federal Government. An insurer's deductible is calculated based on a percentage of the value of direct earned premiums collected over certain statutory periods.² Once an insurer has met its individual deductible, the federal payments cover 90 percent of insured losses above the deductible, subject to an annual industry-aggregate insured loss limit of \$100 billion.³

In calculating its direct earned premium, an insurer must also include the direct earned premium of the insurer's "affiliates."⁴ The direct earned premium of the affiliated insurers is combined and used to calculate one deductible that must be jointly or severally met by the affiliated insurers before the Federal Government shares in compensating the insurer for the insured loss.

Questions Presented

You have asked for an interpretation concerning how an insurer calculates its direct earned premium after an insurer disaffiliates from a group of insurers. You have used the example of a subsidiary "spinning off" from its parent company. The questions presented are as follows: Will the now-disaffiliated insurer's deductible be based on the affiliated group's combined, prior year's direct earned premium because during that previous year the insurer was part of the affiliated group of insurers or will the insurer's deductible be based on its own individual, prior year's direct earned premium?

¹ This response is being issued pursuant to 31 C.F.R. §50.9, which sets forth a procedure whereby persons actually or potentially affected by the Act or regulations may request an interpretation.

² See §102(7) of the Act; see also 31 C.F.R. §50.5(g).

³ See §103(e)(2) of the Act.

⁴ See generally, 68 FR 41250 (Jul. 11, 2003); see also §102(2), (4) and (6) ("The term 'insurer' means any entity including any affiliate thereof –"); 31 C.F.R. §50.5(c)(1), (d) and (f).

Discussion

In such a circumstance as presented, assuming that the insurer has sufficiently divorced itself from the control shared with its former affiliates, it is Treasury's current view that the insurer's deductible would be based on its own individual prior year's direct earned premium. For purposes of determining an insurer's direct earned premium and its calculation of its deductible, Treasury will likely examine an insurer's affiliations, if any, as of the date when an act of terrorism occurs (which may be different from when the act of terrorism is certified). Treasury's examination will depend on the facts and circumstances surrounding the divestiture to ensure that the corporate transaction was not done solely for the purpose of circumventing the purposes of the Act and regulations.

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Treasury reserves the right to revise the view expressed in this letter when presented with an actual situation, upon its own initiative, or upon the enactment of amendments to the Act or regulations.

Dated: December 1, 2003

TERRORISM RISK INSURANCE PROGRAM

Jeffrey S. Bragg
Executive Director