

August 19, 2004

Dear Ms. D:

Thank you for your letter requesting an interpretation of the Terrorism Risk Insurance Act (TRIA)<sup>1</sup> with regard to the status of ABC Aircraft Insurance Group (ABC Group) as an insurer under Section 102(6). After reviewing the material you provided, we conclude that ABC Group qualifies as an admitted or licensed insurer under TRIA Section 102(6) and Treasury's implementing regulations at 31 C.F.R. § 50.11(f).

### **Background**

According to your letter and accompanying background material, ABC Group is a state licensed voluntary joint underwriting association<sup>2</sup> that issues policies of aviation insurance.<sup>3</sup> ABC Group was established in 1928 and is managed by XYZ Underwriters, Inc. (XYZ), a New York licensed insurance agent. The insurer members of ABC Group authorize XYZ to underwrite, manage and administer the aviation, aerospace and aviation-related insurance and reinsurance assumed by ABC. XYZ acts as manager for ABC Group insurance operations and in that capacity issues policies in the name of ABC. Through XYZ, ABC Group conducts business throughout the 50 states and must satisfy all applicable requirements to conduct business as an insurer in those states.

### **Status as Insurer**

To be an insurer under TRIA section 102(6), an entity must satisfy the requirements of subsections (A), (B) and (C) of that section. There are five distinct categories of insurer under TRIA Section 102(6) (A), the first being a state "licensed or admitted" insurer in subsection (i). In response to comments, the final Regulation provides additional clarification about what is necessary for a joint underwriting association, pooling arrangement, or other similar entity to be considered state "licensed or admitted" insurers. 68 FR 41250, 41261 (July 11, 2003). The final Regulation required that such entities must:

- (1) Have gone through a process of being licensed or admitted to engage in the business of providing primary or excess insurance that is administered by the State's insurance regulator, which process generally applies to insurance companies or is similar in scope and content to the process applicable to insurance companies;
- (2) Be generally subject to State insurance regulation, including financial reporting requirements, applicable to insurance companies within the State; and
- (3) Be managed independently from other insurers participating in the Program.<sup>4</sup>

---

<sup>1</sup> Public Law 107-297, 116 Stat. 2322, 15 USCS § 6701.

<sup>2</sup> For a discussion of the distinction between voluntary, involuntary and intercompany underwriting associations, see NAIC, REGULATION OF VOLUNTARY UNDERWRITING AND REINSURANCE POOLS WHITE PAPER (Adopted December 10, 2002).

<sup>3</sup> ABC functions through three separate pools: Hull & Casualty, Satellite, and Workers Compensation. A number of recognized, national insurers were ABC member companies for the 2002-2003 policy year and participated in at least one of these pools. As permitted by the terms of its Member Agreements, the number, identity and participation levels of member insurers vary from year to year.

<sup>4</sup> 31 C.F.R. § 50.5 (f) (1) (i) (A) (1)-(3).

Because ABC Group is an entity that operates as a voluntary joint underwriting association or pooling arrangement, it must meet the three criteria listed above for state licensed or admitted insurers. Based on available information described below, Treasury is satisfied that ABC Group satisfies those criteria.

First, ABC Group has obtained a license to provide primary aviation, aerospace, and aviation-related insurance and reinsurance in at least 13 states.<sup>5</sup> As examples, ABC Group provided copies of the certificates of authority authorizing it to operate as a joint underwriting or joint reinsurance organization in the states of North Carolina and Texas. To obtain these state licenses, ABC Group followed a process that included filing a written application for licensure, providing the names of officers and directors, filing copies of its articles of incorporation and by-laws, submitting the names of all its members, providing the name and address of an agent for receipt of service of process and submitting such other information as required by the commissioner of insurance<sup>6</sup> - requirements applicable to all insurance companies seeking authority to conduct the business of insurance in the state. Treasury concludes that the state licensing process ABC Group pursued in North Carolina, Texas and other states to obtain its certificate of authority from the insurance commissioners in those states was “similar in scope and content to the process applicable to insurance companies.”

Second, based on available information, we conclude that ABC Group is “generally subject to State insurance regulation...applicable to insurance companies” in North Carolina, Texas and the other states where ABC is licensed as a joint underwriting association. In these states, ABC Group is generally subject to the jurisdiction and oversight of the insurance commissioner who has authority to review its activities and operation to make sure they are not “unfair, unreasonable, or otherwise inconsistent” with the provisions of the state’s insurance code.<sup>7</sup> ABC Group must also allow the commissioner access to its books and records and is subject to examination like any other insurer.<sup>8</sup> ABC Group also files audited financial statements pursuant to financial reporting requirements for voluntary underwriting associations doing an insurance business in Texas<sup>9</sup> and New York.<sup>10</sup> These audited financial statements are generally the type of “financial reporting requirements” applicable to insurance companies in those states<sup>11</sup> and provide Treasury the mechanism to verify ABC’s direct earned premium and insured losses under the Program.<sup>12</sup>

---

<sup>5</sup> State laws governing joint underwriting associations such as ABC differ from state to state. However, at least 13 states specifically require voluntary joint underwriting associations operating within the state to obtain a license as an admitted insurer. These states include: Arizona, California, Connecticut, Illinois, Georgia, Kentucky, Montana, Nebraska, New Jersey, New Mexico, North Carolina, North Dakota and Texas.

<sup>6</sup> See TEX. INS. CODE Art. 21.49-3b; N.C. STAT. LAWS 58-40-60.

<sup>7</sup> N.C. STAT. LAWS § 58-50-60(c).

<sup>8</sup> *Id.* at § 58-50-90; TEX. INS. CODE Art. 21.49-3b § 10.

<sup>9</sup> TEX. INS. CODE Art. 21.49-3b § 10.

<sup>10</sup> TEX. INS. CODE Art. 1.15A section 6 allows the Texas Insurance Commissioner to accept the audited financial report of another state if the Commissioner determines that the other state’s requirements for audited financial reports “are substantially similar” to TEX INS CODE Art. 1.15A. ABC representatives explained this is the reason that ABC files and submits its audited financial statements to New York. As state of domicile for XYZ, manager for ABC, the New York Insurance Department requires the annual submission of audited financial statements for ABC. Texas accepts the New York financial report as satisfying TEX INS CODE Art. 1.15A.

<sup>11</sup> TEX INS CODE Art. 21.49-3b section 10 requires all joint underwriting associations to be audited annually “as provided by TEX INS CODE Art. 1.15A “ TEX INS CODE Art. 1.15A is the governing law in Texas for insurer audited financial reports. Section 10 of that Article specifies the contents of the audited financial report to be filed by all insurers. The contents are quite extensive and must reconcile with NAIC Annual Statement entries.

<sup>12</sup> ABC’s audited financial statements are prepared in conformity with accounting practices prescribed by the New York Insurance Department. Those accounting practices are consistent with the NAIC Accounting Practices and Procedures Manual. All premium and loss amounts reported in the financial statements represent insurance that

Third, ABC Group appears to be managed independently from the insurers who comprise its membership. ABC Group has long been treated in the marketplace as an independently managed insurer, separate and distinct from its member insurers. Your letter indicated “XYZ, a New York licensed agent, has managed ABC Group since both organizations were created in 1928.” Through the Member Agreements, individual member insurers authorize XYZ to underwrite risks, issue policies, pay claims, place reinsurance and recover reinsurance on their behalf.

To be considered an “insurer” under TRIA, the entity also must receive direct earned premium for commercial property and casualty insurance coverage including aviation, aerospace and workers’ compensation. ABC Group satisfies this requirement because its agent, XYZ, issues policies and accepts premiums for those policies on behalf of ABC. By maintaining operating funds at the pool level, premiums deposited into ABC Group accounts are “received” by ABC. Audited financial statements confirm receipt of premium by ABC. Even though net distributions are periodically made to individual ABC members as specified in the Membership Agreement, premiums for ABC coverage are received by ABC separately.

\* \* \* \*

This response addresses the application of the Act and regulations to the specific situation set forth in your request, as you have represented the facts to Treasury. If there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this response, then you may not rely on that conclusion generally or as support for any proposed or subsequent activity. This response is provided by the Terrorism Risk Insurance Program as a means of stating its current interpretation of the Act and regulations. The program may revise or revoke this interpretation upon its own initiative or upon the enactment of amendments to the Act or regulations.

Sincerely,

Jeffrey S. Bragg  
Executive Director  
Terrorism Risk Insurance Program

---

meets the TRIA definition of “commercial and casualty insurance.”