NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

September 16, 2013

Via Electronic Portal

Michael T. McRaith, Director
Federal Insurance Office
Room 1319 MT
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: President's Working Group on Financial Markets: Terrorism Risk Insurance Analysis

Dear Director McRaith:

I write in response to the request for comments issued by the Department of the Treasury to assist the President's Working Group on Financial Markets in composing its report to Congress on the long-term availability and affordability of insurance for terrorism risk. For the following reasons, the New York Department of Financial Services ("DFS") supports reauthorization of the Terrorism Risk Insurance Act ("TRIA")[1] to avoid its expiration on December 31, 2014, and strongly suggests that TRIA be made permanent.

With its primary location in our nation's financial capital, a stone's throw from Ground Zero, DFS has firsthand experience with the need for TRIA reauthorization. Our staff remembers the truck bomb that in 1993 exploded under the North Tower of the World Trade Center. No one can forget the horrific events of September 11, 2001. And we have seen more recent attempts to carry out terrorist plots, such as the plan three years ago to explode a bomb in Times Square.

We also witness daily the completion of the Freedom Tower and the other post-9/11 rebuilding efforts that continue apace. New York City is amazingly resilient, but reconstruction takes time. Ground Zero rebuilding is still in progress a full twelve years after the terror attack that shook our nation. And no business with any sense would take the risk of rebuilding a large or iconic structure in New York City without terrorism insurance.[2] But DFS has seen no indication that

[1] For simplicity's sake, this letter refers to the law DFS seeks to have extended, the Terrorism Risk Insurance Program Reauthorization Act of 2007, by its original acronym, "TRIA," except where the need arises to distinguish TRIA, the Terrorism Risk Insurance Extension Act of 2005 ("TRIEA"), and the Terrorism Risk Insurance Program Reauthorization Act of 2007 ("TRIPRA") from one another.

[2] As one catastrophe risk modeling firm has put it, "terrorists intentionally focus on striking cities, especially centers of financial and political power like New York and Washington D.C." Dr. Gordon Woo, President's Working Group on Financial Markets: Terrorism Risk Insurance Analysis at 3 (RMS White Paper 2013).

the private market is prepared or equipped to write such risks on its own. Rather, it is TRIA that ensures the availability and relative affordability of terrorism coverage.

1. TRIA Increases the Availability of Commercial Property/Casualty Insurance

New York is one of only two states that bar terrorism exclusions in policies that include standard fire coverage. Because coverage for the risk of terrorism cannot be excised from a commercial property/casualty policy, the only way for a property/casualty insurer to moderate its terrorism risk, absent TRIA, is to decline to insure property altogether.

The consequences of a constricted market for commercial property/casualty insurance would be grave. Businesses that could not find or afford sufficient coverage would have to self-insure against property damage and liability, and banks would refuse to make construction loans to builders that carried insufficient levels of property/casualty insurance. Rebuilding from the destruction of 9/11 and, more recently, from Superstorm Sandy, would grind to a halt for those without coverage. Simply put, for the TRIA backstop to disappear would needlessly stifle commercial development in New York City.

2. TRIA Increases the Affordability of Terrorism Coverage

TRIA makes it possible for carriers to offer terrorism coverage in New York at prices a fair number of businesses can afford. No one can forecast the frequency or severity of terrorist attacks from past experience; the severity of the World Trade Center truck bomb in 1993 told us nothing about how soon another attack would occur, or about its astronomical toll.[3] This fact means that it is actuarially infeasible to price accurately for terrorism coverage.

TRIA is valuable because it introduces a measure of predictability into the marketplace. With TRIA, a carrier knows that its terrorism liability is capped at $100 million -- the point at which federal government coverage begins -- plus the 20% of earned premium deductible, and the 15% of insured losses that exceed the deductible. While TRIA does not eliminate every element of uncertainty, carriers nonetheless are much more able to assess their potential liabilities. That enables them, in turn, to quantify their ultimate exposure, and thereby offer more moderate pricing to businesses and others that need the coverage.

3. TRIA Should Be Made Permanent

The Boston Marathon bombings of April 2013, not to mention the recurrent attacks on the World Trade Center and the attempted Times Square bombing, give us every reason to believe that certain areas of our country will remain terrorist targets indefinitely. Because the threat of terrorism is likely permanent, TRIA should be made permanent as well, to help promote longer-term stability for commercial policyholders, lenders, builders, and the businesses that operate in areas, such as big cities, that are most likely to suffer a terrorist attack.

Making TRIA permanent would avoid the market upheaval that has occurred in the past as the expiration dates of TRIA's various iterations have approached. As those dates neared, insurers extended conditional coverage limitations for terrorism coverage for renewal policies --

[3] The one certainty as to loss severity is that terrorists seek to cause as much loss as possible. See id. at 4.

limitations that would have greatly reduced if not eliminated insurance payouts in the event of a terrorist event. And although New York law bars those sorts of limitations, uncertainty about TRIA's reauthorization nevertheless insurers in a bind about whether to write the terrorism coverage and accept the chance of massive terrorism exposure for which they had not priced or accounted for, or else to not write such coverage at all. These unnecessary dislocations could be avoided entirely if TRIA were made permanent.

Conclusion

To enable New York City's post-9/11 and post-Superstorm Sandy rebuilding to continue, to avoid paralyzing commercial development in America's financial heart, and to keep the United States in the company of the 22 other countries that have implemented some form of public-private partnership for insuring against terrorism risk, DFS urges that Congress reauthorize TRIA and make it permanent.

Sincerely,

Benjamin M. Lawsky
Superintendent
New York State Department of Financial Services