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NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

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June 2, 2004

The Honorable Wayne A. Abernathy
Assistant Secretary for Financial Institutions
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: Comments on “Make Available” Determination

Dear Assistant Secretary Abernathy:

We are writing to urge the Secretary of the Treasury to extend the “make available” requirements for Year 3 of the Terrorism Risk Insurance Act of 2002 (TRIA).

The National Association of Insurance Commissioners (NAIC) has appointed a Terrorism Insurance Implementation Working Group that has worked closely with the Treasury to provide regulatory input when it is warranted. This working group has closely monitored the implementation and impact of TRIA on the insurance marketplace. The presence of the federal backstop has provided a measure of security to the insurance industry and has enabled them to extend offers of coverage for acts of terrorism in the wake of the tragic events of September 11th.

Insurance regulators believe that extension of the “make available” requirement will maintain stability in the marketplace. If insurers are not required to offer coverage, areas that face low risk of losses from acts of terrorism would likely experience little disruption, however, many of the nation’s prominent cities and other locations with attractive targets for terrorist activity might be at risk of losing vital coverage for those risks. Insurance regulators expect that prominent cities and other locations might face availability and affordability problems that would reflect negatively on the economies of those cities and on the nation as a whole. Insurance is the mechanism that makes risk taking by business possible. Without adequate insurance coverage, including coverage for acts of terrorism, business ventures and lenders are reluctant to place their capital at risk. This lack of coverage could have a dampening effect on the economy, particularly real estate development in the prominent cities and other locations.

State insurance regulators do not believe the insurance marketplace is ready to take on the entire risk of providing coverage for acts of terrorism. During the first week of May 2004, insurance regulators began receiving contingent filings from Insurance Services Office, Inc., the nation’s largest insurance advisory organization. In the event Congress does not act this year to extend TRIA, these filings would reinstate the coverage limitations that were in effect prior to TRIA’s enactment. These filings clearly demonstrate that the insurance industry is not willing to take on the entire risk of insurance losses from acts of terrorism by themselves at this time.

Insurance regulators believe that the “make available” requirement has contributed to the overall effectiveness of the program during the first two years. It has provided choices to American businesses that they might not otherwise have been able to make. This is true for both large and small businesses. It has given them the opportunity to make an informed choice regarding coverage for acts of terrorism. This choice might not have been available to them, but for the Terrorism Risk Insurance Program. There are many who believe that the U.S. economy remains vulnerable to terrorist attack. This is evidenced by an increased take-up rate for terrorism coverage that was observed in a recent survey conducted by Marsh, Inc. In its survey, Marsh found that in the fourth quarter of 2003, 32.7% of companies surveyed purchased terrorism coverage compared with 23.5% in the second quarter and 26.0% in the third quarter.

In deciding whether to extend the “make available” requirement, Treasury is required to consider is the capacity of the insurance industry to accept the risk of loss from acts of terrorism. Insurance capacity is generally measured by determining the amount of capital and surplus that is available to insurers to support their writings. In that regard, the NAIC is pleased to report that, according to financial information reported by insurers to state regulators, 2003 was a year where property and casualty insurers showed improvements in profitability results. Aggregated policyholder surplus, adjusted to exclude indirect and direct preferred and common stock from property and casualty insurance affiliates, increased approximately 26% to $375 billon in 2003. It should be noted however, that policyholder surplus declined each year from 1999 to 2002 and the $375 billion figure is only 4.3% higher than the $360 billion in policyholder surplus held in 1999. Further, less than half of those funds are used to support commercial lines writings. More importantly, when Treasury is considering whether the insurance industry has the capacity to underwrite the risk of loss from acts of terrorism on its own, it must consider whether the industry is willing to put its capital at risk. As stated earlier, insurance regulators believe that the answer is no. Acts of terrorism remain a troubling risk for insurers that is difficult to price accurately. Unknown frequency, coupled with the potential for substantial severity of a loss makes coverage for acts of terrorism one that insurers might choose to avoid if given the opportunity. Until insurers and their reinsurers are comfortable that the efforts of the U.S. Government are sufficient to protect citizens from terrorist acts, or at least become more predictable than they are today, they will be reluctant to accept complete risk transfers from American businesses, particularly those businesses that they view as having a greater risk of loss from acts of terrorism.

Insurance regulators strongly urge Treasury to extend the “make available” requirement into Year 3. This will avoid any market disruptions that would occur in the absence of the mandated coverage offer. Such action will ensure the insurance market’s continued role supporting economic development. In addition, insurance regulators encourage the Secretary to support a short-term extension of TRIA by Congress to avoid market uncertainty this fall. The short-term extension would provide sufficient time for the next Congress to consider longer-term solutions to the terrorism insurance risk and the nation’s economic security. An extension of two years would provide Congress with the time it needs to evaluate the study and report required of Treasury on the effectiveness of TRIA and the insurance industry’s capacity to provide terrorism insurance. It will also provide sufficient time to review and evaluate information provided by others

We stand ready to work with you to address this issue of great importance to our nation’s economic security.

Sincerely;

Donna Lee H Williams

Donna Lee Williams
Commissioner, Delaware Dept. of Insurance
Chair of the Terrorism Insurance Implementation Working Group

cc: The Honorable John Snow

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