American Bankers Association
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September 16, 2013

Filed via http://www.regulations.gov

President's Working Group on Financial Markets: Terrorism Risk Insurance Analysis
C/O Kevin Meehan
Federal Insurance Office
U.S. Department of the Treasury
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 Mr. Meehan:

The American Bankers Association and its insurance and securities subsidiaries, the American Bankers Insurance Association (ABIA) and the ABA Securities Association (ABASA)[1], appreciate the opportunity to provide comments about the long-term availability and affordability of terrorism risk insurance.[2] We believe we are in a unique position to comment since a Financial Holding Company, of which ABA represents many, may act as a lender, insurance broker, and securities underwriter for a variety of large corporate customers. Because of our cumulative experience in these markets, we believe that TRIA is vital to the smooth operation of the capital markets and, therefore, the economy at large.

At the time Congress last considered and passed re-authorization of TRIA in 2007, we commented that TRIA "provides capacity and reliable pricing for terrorism risk insurance in a market that otherwise has been unable to accurately and efficiently price risks associated with terrorist events."

There have been no material changes to the insurance marketplace since then that would compel us to change our opinion. TRIA is necessary to help companies that need terrorism coverage solve the problem of being unable to obtain it.

[1] The American Bankers Insurance Association (ABIA) and the ABA Securities Association (ABASA) are separately chartered trade associations and subsidiaries of the American Bankers Association.
[2] See 78 Fed. Reg. 42588 (July 16, 2013).

Were TRIA to lapse, a variety of undesirable market conditions would result; lenders would not be able to underwrite or syndicate large commercial loans; companies would not be able to secure coverage for terrorism risk, a necessary precedent to securing real estate-related credit; and, existing loans made with the condition that terrorism risk coverage be continuous would be found in default.

Holders and issuers of Commercial Mortgage Backed Securities (CMBS) would also be negatively affected as rating agencies might judge these assets adversely. One rating agency, Fitch, said this:

"Fitch may decline to rate or cap its ratings on CMBS transactions with inadequate terrorism insurance."[3]

While lapse would be the worst possible condition, we also want to point out that market disruptions are being experienced currently due to contract terms extending beyond the expiration date of the program. For example, insurance policies with terrorism coverage for any term extending beyond 2014 can't be issued to commercial customers. Accordingly, multi-year commercial loan products, which require property insurance policies backing them, are at risk now; new loans and refinancing can only be issued on a short term basis or not at all.

We appreciated previous opportunities to provide information to the Treasury. Please find our comments addressing questions regarding coverage and expiration of the TRIA program below.

Coverage

Our members' experiences with terrorism risk insurance have indicated that absent TRIA, the availability of coverage would be minimal and the private insurance marketplace would function inefficiently at best. Previous reauthorizations of TRIA have expanded available coverage and allowed for the market to function in a more effective fashion.

The 2007 reauthorization covered domestic terror events in addition to those of a foreign nature, removing ambiguities about whether a particular event would be covered, or not. Given the events in Boston earlier this year, we find this provision highly relevant. We recommend that this provision remain. It has benefited both policyholders and insurers.

We also want to point out that the most valuable provision in the Act is the "make available" provision, where property and casualty insurers who offer property coverage to a commercial customer must make terrorism coverage available as well. It's critical this provision survive re-authorization too.

[3] "Fitch Ratings' Report: U.S. Terrorism Reinsurance: Looming Uncertainty of Program Renewal" July 31, 2013

Despite the increased clarity and efficiency afforded by TRIA, corporate insurance customers in high-risk urban areas still encounter difficulty obtaining coverage with sufficient limits. This is due in large part to the inability of the marketplace to ascertain the potential risks of a terrorist event in urban centers and, with confidence, provide the capacity needed to address those needs.

Without TRIA, it is our judgment that coverages for such high risks would be virtually unavailable.

Expiration

We believe it is important to address TRIA re-authorization now, before the program expires at the end of next year. We do not believe states would be able to mandate sufficient policy requirements to protect commercial consumers needing terrorism risk insurance coverage in the absence of this federal program.

In addition, the private sector has not demonstrated an ability to provide terrorism risk coverage at affordable prices, absent TRIA. Terrorism risk cannot be underwritten by traditional means since data on predicted frequency and severity in any given location is unobtainable. As a result, there is no reason to presume that coverage levels and prices would remain consistent if TRIA were allowed to expire.

Conversely, many observers suggest that TRIA inhibits the development of capacity in the traditional re-insurance marketplace. We believe this to be true in principle. Accordingly, to encourage private market development we urge the government to consider reducing the potential liability TRIA represents to the Treasury. Over time, more efficient markets may evolve to a point where TRIA may be discontinued.

We want to point out, however, that several large brokers like Marsh and Willis report that right now, affordable terrorism risk insurance only exists because TRIA does too. We believe them.

Legislative Vehicles

Several bills have been introduced in the House that propose to extend the TRIA program for at least 5 years. This seems to be the minimum practicable extension sufficient to allow insurance markets to respond. Other bills extend the program for 10 years. We are in favor of either approach.

Various enhancements to TRIA are also proposed;

- Changing the aggregate financial responsibility of the Treasury in the event of an attack;
- In addition to the Secretary of the Treasury, including the Secretary of the Department of Homeland Security in the certification process for acts of terrorism; and,
- Changing the "recoupment" provisions TRIA requires the Secretary of the Treasury to impose.

Each of these provisions would enhance the value of the program and we encourage the Administration to support them; however, the most important feature of the legislation is that it suggests the TRIA program be reauthorized promptly.

We strongly support that intent.

Should you have any questions regarding these comments or wish to obtain any further information from the ABA, please contact me at (202) 663-5172 or by email at kmkechn@aba.com.

Regards,

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SVP & Director, Office of Insurance Advocacy