Market Bulletin

LLOYD'S

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FROM:	Director, Worldwide Markets
LOCATION:	G12
EXTENSION:	5998
DATE:	31/03/2003
REFERENCE:	Y3020
SUBJECT:	U.S.TERRORISM RISK INSURANCE ACT OF 2002: NY INSURANCE DEPARTMENT TERRORISM REGULATION
SUBJECT AREA(S):	US commercial P & C business
ACTION POINTS:	
DEADLINE:	Immediate

Purpose of bulletin

To notify the market that, on the 10th March 2003, the New York Insurance Department promulgated emergency amendments to Regulations 57 and 41 to take effect upon filing with the New York Secretary of State (this filing subsequently occurred on the 13 March 2003).

These amendments taken together require both admitted and excess (surplus) lines insurers to return premium to insureds on a pro-rata basis upon cancellation of that portion of a policy that covers an "insured loss" (as defined under the Terrorism Risk Insurance Act of 2002 (TRIA)), where the premium for such coverage is divisible from the remainder of the policy premium. The regulations are only effective prospectively from 13th March 2003, applying to policies issued or renewed on or after this date.

Background to the Act

The Federal Terrorism Risk Insurance Act of 2002 (TRIA), which came into effect in November 2002, provides a federal backstop for commercial lines property and casualty insurance covering "acts of terrorism". It imposes obligations on encompassed property and casualty insurers, and also takes aim at improving the availability and affordability of insurance for losses arising out of certain acts of terrorism. The Program is administered and implemented by the US Treasury and further information is available on their website at www.treasury.gov/trip.

Details of the Act have been provided in Market Bulletins issued on the 22/11/2002 (Y2917) and on the 27/11/2002 (Y2924). Further Market Bulletins covering additional guidance and clarification provided by Treasury have also been issued. All bulletins can be accessed on Lloyd's web site at: http://www.lloyds.com/index.asp?ItemId=3421.

Amendment to New York regulations

The New York Insurance Department has, on an emergency basis, promulgated amendments to Regulation No.57 (Responsibilities in construction and application of rates) adding a new section to determine the amount of return premium due to insureds upon cancellation of that part of a policy covering "insured losses" under TRIA. The purpose of the amendment is described as follows:

"Some policies that provide coverage for insured loss may provide that the policy premium is fully earned upon policy issuance. Upon policy termination, this provision may unjustly enrich the insurer by allowing it to retain the entire unearned premium. This treatment results in an excessive rate for the period during which coverage was in force. This section establishes the rules to apply when determining the amount of return premium upon policy cancellation for that portion of a policy providing coverage for insured loss."

Applicability

The regulation applies only to the coverage for "insured loss" in every policy of the types as specified in Appendix 1, where of course, the premium for such coverage is divisible from the remainder of the policy premium. These covered risks include property and casualty insurance, as well as other covered lines, with various specific exemptions as specified in Appendix 1, including but not limited to reinsurance, accident and health, and types of marine insurance. These promulgated amendments to the regulations will apply to policies issued or renewed on or after the effective date of these amendments, the 13 March 2003. The promulgated amendments to Regulation No. 41 (Excess Line Placement Governing Standards) state that, "No excess line broker shall procure a policy of insurance under this Part from an unauthorised insurer unless the insurer has agreed to comply with the provisions of Section 160.7 of Part 160 of this Title."

Determining the amount of return premium

All relevant policies are subject to a rating rule, which provides for a return of unearned premium in the event of cancellation of the policy before the policy expiration date. A policy premium is not considered fully earned upon policy issuance, with exceptions for audit premiums or other premium adjustments determined after the policy period has expired.
In determining the pro-rata basis for return premium to insureds, if the policy is cancelled by the insurer, even for non-payment of premium, a daily pro-rata basis is utilised. However, if cancelled by the insured, these amendments permit insurers to utilise a short rate calculus (.90 or greater of the daily pro rata unearned premium) to take into account administrative expenses - see Appendix 1, section (d). This section regarding cancellation by the insured also provides that an alternative method may be utilised if the policy is for a specific event or a particular project, or if the nature of the exposure is seasonal or otherwise not evenly distributed over the policy term.

Further Information

Appendix 1 provides a summary of the regulation. Full details are available via the New York Insurance Department Web site at http://www.ins.state.ny.us/remgindx.htm – scroll down the page to, "Emergency Adoption of the Sixth Amendment to Regulation No 57 (11 NYCRR 160)".

For further information contact Worldwide Markets division in Lloyd's, on extension 6677 (email at market.services@lloyds.com).

The LMA has also provided extensive information to the market in respect of TRIA. Contact Martin Roberts on Lloyd's extension 8370 (by email at martin.roberts@lloyds.com).

This bulletin has been sent to active underwriters and compliance officers of managing agents and Lloyd's brokers.

Appendix 1

Sixth Amendment to 11 NYCRR 160 (Regulation No. 57) and Eighth Amendment to 11 NYCRR 27 (Regulation No. 41)

A new Section 160.7 is added to read as follows:

Section 160-7 Rules to determine the amount of return premium upon cancellation of that part of a policy covering insured loss under the Terrorism Risk Insurance Act.

(a) Definition.

For the purpose of this section, the term "insured loss" shall have the meaning ascribed in section 102(12) of the federal Terrorism Risk Insurance Act of 2002 (Pub. L. 107-297).

(b) Purpose.

Some policies that provide coverage for insured loss may provide that the policy premium is fully earned upon policy issuance. Upon policy termination, this provision may unjustly enrich the insurer by allowing it to retain the entire unearned premium. This treatment results in an excessive rate for the period during which coverage was in force. This section establishes the rules to apply when determining the amount of return premium upon policy cancellation for that portion of a policy providing coverage for insured loss.

(c) Applicability.

(1) This section applies only to the coverage for insured loss in every policy of the types specified in paragraphs (2) and (3) of this subdivision, issued or renewed on or after the effective date of this section, where the premium for such coverage is divisible from the remainder of the policy premium.

(2) This section applies to coverage for insured loss under the kinds of insurance that are subject to article 23 of the Insurance Law*, except the following kinds of insurance as defined in section 1113(a) of the Insurance Law:

(i) surety as defined in section 1113(a)(16)(C), (D), (E), and (F);
(ii) credit insurance;
(iii) title insurance;
(iv) residual value insurance;
(v) mortgage guaranty insurance;
(vi) credit unemployment insurance;
(vii) financial guaranty insurance;
(viii) gap insurance; and
(ix) prize indemnification insurance.

**Worldwide Markets Note – N.Y. Article 23 applies to all kinds of insurance written on risks or operations of New York by an insurer authorized to do business in New York except: reinsurance; accident and health insurance; annuities, life insurance, including provisions for non-cancelable disability benefits in conjunction therewith; marine insurance (other than inland marine insurance and insurance upon automobiles, airplanes, seaplanes, dirigibles or* *other aircraft); marine protection and indemnity insurance; insurance issued by an assessment cooperative fire insurance company; and service contract reimbursement insurance.*

(3) This section also applies to coverage for insured loss under policies written by assessment cooperative property/casualty insurance companies.

(d) Requirements for determining the amount of return premium upon policy cancellation for that portion of a policy providing coverage for insured loss.
(1) A policy premium may not be considered fully earned upon policy issuance. However, this prohibition does not apply to audit premiums or other premium adjustments determined after the policy period has expired.

(2) Every policy shall be subject to a rating rule that provides for a return of unearned premium in the event of cancellation of the policy before the policy expiration date.

(3) Policies cancelled by the insurer. The unearned premium for a policy cancelled by the insurer shall be calculated on a daily pro rata basis even if the reason for cancellation is nonpayment of premium.

(4) Policies cancelled by the insured.

(i) Except as otherwise provided in this paragraph, the unearned premium for a policy cancelled by the insured shall be calculated on a daily pro rata basis.

(ii) In recognition of certain fixed administrative and processing costs, a short rate method of calculating the return premium may be used in which the return premium is .90 or greater of the daily pro rata unearned premium.

(iii) If the policy is for a specific event or a particular project, or if the nature of the exposure is seasonal or otherwise not evenly distributed over the policy term, an alternative method may be used to determine an appropriate return premium, where such method appropriately reflects the distribution of the exposure.

(e) Requirements for financed premiums.

Notwithstanding any other provision of this section, in regard to an insurance contract the premium for which is advanced under a premium finance agreement, an insurer shall comply with section 3428(d) of the Insurance Law.

A new subdivision (d) is added to section 27.11 of Part 27 to read as follows:

(d) No excess line broker shall procure a policy of insurance under this Part from an unauthorized insurer unless the insurer has agreed to comply with the provisions of section 160.7 of Part 160 of this Title.