Market Bulletin

LLOYD'S

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FROM:	Director, Worldwide Markets
LOCATION:	G12
EXTENSION:	5998
DATE:	23 October 20003
REFERENCE:	Y3170
SUBJECT:	US TERRORISM RISK INSURANCE ACT OF 2002 ("TRIA"): NEW YORK REGULATION
SUBJECT AREA(S):	Commercial P&C business in the state of New York
ATTACHMENTS:	
ACTION POINTS:	
DEADLINE:	**Immediate**

Purpose of bulletin

To notify the market of a change to New York insurance regulation relating to TRIA coverage and affecting the placement of excess (or surplus) lines business. This updates Lloyd's Market Bulletin Y3020, issued on 31 March 2003.

New York insurance regulation

On March 13 2003, the Superintendent of the New York Insurance Department ("NYID") issued an 8th Amendment to Regulation 41 (Excess Line Placement Governing Standards). It required excess line brokers to place excess line insurance policies only with eligible excess line insurers who consented, except in certain specific situations, to pro-rate TRIA premiums.

The local insurance industry had concerns that this 8th Amendment was too restrictive and did not provide the necessary flexibility required for excess line insurers to meet the needs of the insurance consumers they served. An industry coalition, including the Excess Line Association of New York ("ELANY"), presented these concerns to the NYID.

Consequently, it was agreed that the NYID will allow the 8th Amendment to Regulation 41 to expire, without prejudice, at its next expiration date, which was September 7, 2003. In return, ELANY would publish a "Best Practices" guidance document, setting out limitations on the earned premium charged to TRIA policies.

The "Best Practices" guidance is set out in ELANY Bulletin 2003-19, issued September 4 2003. All current ELANY Bulletins, and Bulletin 2003-19 in its entirety, can be accessed at www.elany.org . The key section of Bulletin 2003-19 states that:

"Most excess line policies in today's market are being issued subject to a 25% minimum earned policy provision. By allowing the 8th Amendment to Regulation 41 to expire, Regulation 41 will not prohibit applying a 25% minimum earned premium provision to TRIA premium as well. However, a charge of more than a 25% minimum earned TRIA premium is not within the **"Best Practices"** for the excess line market and would be considered an excessive charge. The Department's goal is to not unfairly restrict an insured from shopping for TRIA coverage. ELANY strongly urges each excess line broker member of the association and every eligible excess line insurer to adopt guidelines consistent with the foregoing **"Best Practices"**."

In other words, should an insured cancel an excess lines policy with TRIA coverage, in the initial policy period, the minimum premium that the insurer can require them to pay for the TRIA coverage cannot be more than 25%.

When a policy is cancelled mid-term, underwriters should exercise discretion in allocating premium over the policy term, so as to allow a reasonable premium in the circumstances.

The ELANY Bulletin provides some factors to help identify the insureds potentially subject to the protection of the "Best Practices" approach:

- Only polices where the insured agrees to purchase TRIA coverage are affected.

- The approach does not apply to certain types of coverage for instance, event policies, seasonal policies, exempt lines including marine, marine protection and indemnity, service contract reimbursement insurance, credit insurance, residual value, prize indemnification and certain sub-classes of surety.

- In most cases, excess line brokers and companies will simply be applying the same 25% minimum earned policy provision for the TRIA coverage as is applied to the other coverages in the policy subject to that 25% minimum earned.

- If the insured is charged for the non-TRIA coverage a minimum premium which exceeds a 25% minimum earned and which is not otherwise exempt as noted above, the insurer should apply no more than a 25% minimum earned provision to the TRIA coverage. This is notwithstanding whatever minimum earned provision applies to the other coverages in the policy in the event the policy is cancelled prior to its natural expiration.

Further information

For further information contact Lloyd's Worldwide Markets on extension 6677 (e-mail at market.services@lloyds.com).