LLOYD'S

MARKET BULLETIN

From	Director, Worldwide Markets (extn 6677)
Date	20 December 2005
Reference	Y3706
Subject	US Terrorism Risk Insurance Extension Act of 2005 (“TRIEA”)
Subject areas	Update on developments as U.S. Congress reaches agreement on the extension of the US Terrorism Risk Insurance Act 2002 ("TRIA"), due to cease on 31st December 2005.
Attachments	Appendix 1 & 2
Action points	**Managing agents and Lloyd's brokers to note the contents of this bulletin**
Deadlines	**For immediate attention**

Purpose of bulletin

To advise the market of the US Terrorism Risk Insurance Extension Act of 2005, (“TRIEA”) which is due to be imminently enacted and which extends TRIA for two additional years.

Whilst the Bill has been passed by US Congress, it has not yet been signed by the President. This summary is based on information to date and we will provide specific transition advice for the market in a separate market bulletin shortly (The Bill is expected to signed into law within the next seven days).

Background

The US Terrorism Risk Insurance Act of 2002 (“TRIA”), which is due to expire on 31 December, 2005, established Federal reinsurance support for commercial property and casualty exposures against an “act of terrorism” (as defined in the Act) in the US. It obliges insurers, including Lloyd’s, to make available coverage for terrorism (for a defined “act of terrorism” under the Act) and restricts the exclusion of such coverage.

The Terrorism Risk Insurance Extension Act of 2005 ("TRIEA") was approved by Senate on 16 December, 2005 and the House on 17 December, 2005. The agreement extends TRIA for two additional years (2006-2007).

As the market will be aware, there was an intense debate over the last several months in the US Congress on the merits of extending or revising the existing TRIA legislation. The Senate committee leadership, supported by the Bush Administration, was in favour of a substantially curtailed program. The House had passed a Bill which was viewed by the Senate and the Administration as too generous to the insurance industry and their policyholders. However, in the view of Lloyd's legal advisors, the House Bill, which included a proposed system of "silos" for specific covered lines and incentives to dedicate capital to the line of business, could have potentially saved the US Treasury substantial amounts over the Senate version.

The House-passed Bill was in fact a mixed bag for insurers, but it did feature some advantageous provisions which had been advocated by Lloyd's, including, for example, pre-emption of State surplus lines "diligent search" requirements for policies including terrorism coverage and it would have made multi-state policies for certain sophisticated purchasers subject to the surplus lines law in only the purchaser's home state. Our representatives worked hard to get these and other provisions into the House legislation and sought to make them part of the final compromise between House and Senate.

In the end, however, the political dynamics—with both the Administration and the Senate committee leadership against the more innovative House version and threatening to let TRIA expire completely — were such that the only changes which were made to TRIA in the extension Bill were ones which narrowed its lines of coverage and limited somewhat the industry's access to the backstop.

Summary of the Bill

TRIEA does not make any major structural changes to the TRIA program. Those insurers, including Lloyd's syndicates, that were subject to TRIA will continue to be subject to the extended program. Specifically, TRIEA, once signed into law, will:

- Remove certain lines currently covered by the program:
    - Commercial automobile insurance
    - Burglary & theft insurance
    - Surety insurance
    - Professional liability insurance (excluding D&O)
    - Farmowners multiple peril insurance

- Increase the insurer deductible (currently 15% of the previous year's direct earned premium) to 17.5% in 2006, and 20% in 2007;

- Impose a new program trigger or floor on Federal compensation of $50 million for insured losses in 2006 (after 31 March, 2006) and $100 million in 2007. That is, Federal compensation under the Program will be available only if aggregate insured losses sustained by all insurers exceed trigger level (individual insurer deductibles also apply)

- Decrease the federal share of compensation (above the insurer deductible) to 85% in 2007. The current federal share of 90% will apply during 2006.

- Amend the current Section 107 litigation management requirements to codify the Treasury regulations requiring advance approval of certain settlements which an insurer intends to submit for reimbursement under the TRIA program.

Attached at Appendix 1 is a chart which summarises the key TRIEA provisions in comparison with current law. The text of TRIEA, as it was passed by Congress, is attached at Appendix 2.

A specific transition advice in a separate market bulletin will be issued shortly.

Further information

If you have any queries about this market bulletin, please contact Lloyd's Worldwide Market Services:

Lloyd's Worldwide Market Services
Tel: 020 7327 6677
Email: market.services@lloyds.com
Box 190b, Gallery 1

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

Julian James
Director,
Worldwide Markets

Appendix 1

COMPARISON OF
TERRORISM RISK INSURANCE EXTENSION ACT OF 2005 (TRIEA) AND CURRENT LAW
December 16, 2005

	TRIEA (S. 467)	TRIA (Current Law)
Duration	Two-year extension through December 31, 2007	Three-years (expiring December 31, 2005)
Covered Lines	Same lines covered by the current program **except** deletes the following: commercial auto, professional liability (other than D&O), surety, burglary & theft, farm-owners multi-peril	Most commercial property and casualty lines, including workers' comp and surety while excluding crop, private mortgage, medical malpractice, financial guarantee, and flood provided under NFIP No health or life, including group life insurance
Act of Terrorism Definition	No change	Violent act causing damage with United States or to US flag vessel or air carrier (or mission premises) and certified by Treasury Secretary to be have (2) been committed by or on behalf of foreign person or interest to coerce or influence US policy and (2) resulted in at least $5 million in insured losses (not during act of declared war except for worker comp)
Insurers Covered by Backstop and Mandate	No change	All licensed insurers, IID-listed surplus lines insurers and insurers approved under Federal insurance programs for marine, aviation, and transport
Program Trigger (Industry Aggregate Insured Losses) **[New Provision]**	2006: $50 million (starts after Mar. 31) 2007: $100 million	No provision
Make Available	Same as current law	Requires insurers to make available in all covered lines coverage for certified acts that "does not differ materially" from terms, amounts and other

	TRIEA (S. 467)	TRIA (Current Law)
		limitations (other than price) that apply to other perils in policy
Deductibles (% of Prior year DEP)	2006: 17.5% 2007: 20.0%	15% in final year
Federal Share of Insured Losses Exceeding Deductible	2006: 90% 2007: 85%	90%
Annual Program Cap (Combined Federal and Industry Shared Insured Losses)	No change	$100 billion
Post-Event Recoupment of Federal Share via Policyholder Surcharges	Mandatory recoupment of difference between -- $25 billion (2006) or $27.5 billion (2007) -- and aggregate insurer retention; same 3% limitation. Discretionary recoupment of balance of federal payments.	Mandatory recoupment of difference between $15 billion and aggregate insurer retention (deductibles/co-shares); surcharge limited to 3% of premium in covered lines per year (possible rural area adjustment) Discretionary recoupment of balance of federal payments
Long-term Availability	The President's Working Group on Financial Markets is required to report to Congress by September 30, 2006 concerning the long-term availability and affordability of terrorism insurance, including the availability and affordability of (1) group life and (2) NBCR coverage.	Treasury was required to report to Congress on the effectiveness of the program and private market capacity, but was not required to make specific recommendations.
Litigation Management	The bill continues current litigation management provisions and codifies existing Treasury regulations concerning advance approval of certain settlements which an insurer intends to submit for reimbursement under the	Federal cause of action created for property damage, personal injury and death arising out of or resulting from a certified act of terrorism and state causes of action preempted

	TRIEA (S. 467)	TRIA (Current Law)
	TRIA program.	

Appendix 2

AMENDMENT NO.________ Calendar No.______

Purpose: To provide for a complete substitute.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. 467

To extend the applicability of the Terrorism Risk Insurance Act of 2002.

Referred to the Committee on ____________________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. SHELBY

Viz:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Terrorism Risk Insurance Extension Act of 2005".

SEC. 2. EXTENSION OF TERRORISM RISK INSURANCE PROGRAM.

(a) PROGRAM EXTENSION.—Section 108(a) of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note; 116 Stat. 2336) is amended by striking "2005" and inserting "2007".

(b) MANDATORY AVAILABILITY.—Section 103(c) of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note; 116 Stat. 2327) is amended—

(1) by striking paragraph (2);

(2) by striking "**AVAILABILITY.**—" and all that follows through "each entity" and inserting "**AVAILABILITY.**—During each Program Year, each entity"; and

(3) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively, and moving the margins 2 ems to the left.

SEC. 3. AMENDMENTS TO DEFINED TERMS.

(a) PROGRAM YEARS.—Section 102(11) of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note; 116 Stat. 2326) is amended by adding at the end the following:

"(E) PROGRAM YEAR 4.—The term 'Program Year 4' means the period beginning on January 1, 2006 and ending on December 31, 2006.

"(F) PROGRAM YEAR 5.—The term 'Program Year 5' means the period beginning on January 1, 2007 and ending on December 31, 2007.".

(b) EXCLUSIONS FROM COVERED LINES.—

(1) IN GENERAL.—Section 102(12)(B) of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note; 116 Stat. 2326) is amended—

(A) in clause (vi), by striking "or" at the end;

(B) in clause (vii), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

"(viii) commercial automobile insurance;

"(ix) burglary and theft insurance;

"(x) surety insurance;

"(xi) professional liability insurance; or

"(xii) farm owners multiple peril insurance.".

(2) CONFORMING AMENDMENT.—Section 102(12)(A) of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note; 116 Stat. 2326) is amended by striking "surety insurance" and inserting "directors and officers liability insurance".

(c) INSURER DEDUCTIBLES.—Section 102(7) of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note; 116 Stat. 2325) is amended—

(1) in subparagraph (D), by striking "and" at the end;

(2) by redesignating subparagraph (E) as subparagraph (G);

(3) by inserting after subparagraph (D), the following:

"(E) for Program Year 4, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 4, multiplied by 17.5 percent;

"(F) for Program Year 5, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 5, multiplied by 20 percent; and"; and

(4) in subparagraph (G), as so redesignated, by striking "through (D)" and all that follows through "Year 3"and inserting the following: "through (F), for the Transition Period or any Program Year".

SEC. 4. INSURED LOSS SHARED COMPENSATION.

Section 103(e) of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note; 116 Stat. 2328) is amended—

(1) in paragraph (1)—

(A) by inserting "through Program Year 4" before "shall be equal"; and

(B) by inserting ", and during Program Year 5 shall be equal to 85 percent," after "90 percent"; and

(2) in each of paragraphs (2) and (3), by striking "Program Year 2 or Program Year 3" each place that term appears and inserting "any of Program Years 2 through 5".

SEC. 5. AGGREGATE RETENTION AMOUNTS AND RECOUPMENT OF FEDERAL SHARE.

(a) AGGREGATE RETENTION AMOUNTS.—Section 103(e)(6) of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note; 116 Stat. 2329) is amended—

(1) in subparagraph (B), by striking "and" at the end;

(2) in subparagraph (C), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(D) for Program Year 4, the lesser of—

"(i) $25,000,000,000; and

"(ii) the aggregate amount, for all insurers, of insured losses during such Program Year; and

"(E) for Program Year 5, the lesser of—

"(i) $27,500,000,000; and

"(ii) the aggregate amount, for all insurers, of insured losses during such Program Year.".

(b) RECOUPMENT OF FEDERAL SHARE.—Section 103(e)(7) of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note; 116 Stat. 2329) is amended—

(1) in subparagraph (A), by striking ", (B), and (C)" and inserting "through (E)"; and

(2) in each of subparagraphs (B) and (C), by striking "subparagraph (A), (B), or (C)" each place that term appears and inserting "any of subparagraphs (A) through (E)".

SEC. 6. PROGRAM TRIGGER.

Section 103(e)(1) of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. note, 116 Stat. 2328) is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by inserting after subparagraph (A) the following:

"(B) PROGRAM TRIGGER.—In the case of a certified act of terrorism occurring after March 31, 2006, no compensation shall be paid by the Secretary under subsection (a), unless the aggregate industry insured losses resulting from such certified act of terrorism exceed—

"(i) $50,000,000, with respect to such insured losses occurring in Program Year 4; or

"(ii) $100,000,000, with respect to such insured losses occurring in Program Year 5.".

SEC. 7. LITIGATION MANAGEMENT.

Section 107(a) of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note; 116 Stat. 2335) is amended by adding at the end the following:

"(6) AUTHORITY OF THE SECRETARY.—Procedures and requirements established by the Secretary under section 50.82 of part 50 of title 31 of the Code of Federal Regulations (as in effect on the date of issuance of that section in final form) shall apply to any cause of action described in paragraph (1) of this subsection.".

SEC. 8. ANALYSIS AND REPORT ON TERRORISM RISK COVERAGE CONDITIONS AND SOLUTIONS.

Section 108 of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note; 116 Stat. 2336) is amended by adding at the end the following:

"(e) ANALYSIS OF MARKET CONDITIONS FOR TERRORISM RISK INSURANCE.—

"(1) IN GENERAL.—The President's Working Group on Financial Markets, in consultation with the National Association of Insurance Commissioners, representatives of the insurance industry, representatives of the securities industry, and representatives of policy holders, shall perform an analysis regarding the long-term availability and affordability of insurance for terrorism risk, including—

"(A) group life coverage; and

"(B) coverage for chemical, nuclear, biological, and radiological events.

"(2) REPORT.—Not later than September 30, 2006, the President's Working Group on Financial Markets shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on its findings pursuant to the analysis conducted under subsection (a).".