July 6, 2015

Mr. Aaron Brandenburg
Terrorism Insurance Implementation Working Group
National Association of Insurance Commissioners
2301 McGee
Suite 800
Kansas City, MO 64108

RE: Terrorism Risk Insurance Supplement Blanks Proposal

Dear Mr. Brandenburg:

The undersigned parties appreciate the opportunity to comment on the Terrorism Risk Insurance Supplement and Instructions, which was exposed on June 19, 2015 by the Terrorism Insurance Implementation Working Group.

We had appreciated the initial response of the Working Group to the industry's efforts to survey our members and seek to develop some reliable information that could guide both the NAIC and Treasury in structuring any necessary data calls relating to terrorism risk insurance coverage. Following discussion of this issue at the Spring meeting in Phoenix, it was our understanding that the NAIC had agreed that it was desirable to allow sufficient time to develop this information and that doing so would ultimately lead to a more useful data call whether it occurred in the context of an annual statement supplement or otherwise. We were therefore disappointed when there was an abrupt change of course in June and another draft blanks proposal was released before industry had a chance to complete our member survey and share the results.

If the NAIC is going to conduct a data call, we continue to believe that the NAIC would be well-served to take the time to get this data collection effort right rather than rushing the vehicle for collecting data that will not produce useful results. It is in the collective interest of state regulators, the Federal Insurance Office (FIO), and industry to ensure that the Treasury study or other data call reflects relevant and accurate information that demonstrates the continued need for development of a private terrorism insurance market. This information will provide the basis for Congressional action to continue the

terrorism insurance program after 2020. As the NAIC well knows, although the program has served, and continues to serve, the purpose of providing a catastrophic backstop to support the existence of a well-functioning private terrorism risk insurance market, there are many skeptics that will attempt to misuse data to call for an end to TRIA, or to advocate for changes to the program that will undercut its purpose.

It is unclear to us whether the NAIC's desire to rush approval of this new Blanks Supplement relates primarily to a desire to assist the FIO with its statutorily mandated study or whether the NAIC believes regulators should collect this information for other unrelated purposes. If the former, we again respectfully suggest that the NAIC at least take the time to consult with FIO and with industry in order to ensure that any NAIC data collection efforts will serve Treasury's purposes and thus avoid potentially duplicative data calls on insurers. If the latter, we question why it is necessary to rush this proposed Blanks Supplement through so hurriedly now, without adequate time to craft and tailor the request for data when the NAIC has not previously felt it necessary to collect this information since 2002 when TRIA was first enacted.

SUMMARY

We therefore question whether: (1) the proposed Blanks Supplement is the right vehicle for terrorism risk data collection; (2) the data requested by the Supplement constitutes relevant information; and (3) there are more relevant and reliable sources for the data. We urge the NAIC to take its time to determine the public policy goals of collecting information on this coverage.

There are a number of sources available to the NAIC to collect meaningful data on terrorism risk insurance coverage, including data already in the possession of state regulators. For example, regulators should review the various filed rates and rating plans to gain an understanding of how premiums are determined within state, territory, and industry type. This type of data could be modeled, which should help the regulators in understanding the jurisdictional issues.

The President's Working Group on Financial Markets (PWG) is mandated by the Terrorism Risk Insurance Act (TRIA) to conduct, on an ongoing basis, an analysis of the long-term availability and affordability of insurance for terrorism risk. For example, the key findings of the PWG from the 2014 report were as follows:

- Insurance for terrorism risk currently is available and affordable. The availability and affordability of insurance for terrorism risk has not changed appreciably since 2010.
- Prices for terrorism risk insurance vary considerably depending upon the policyholder's industry and the location of the risk exposures.
- Such prices have declined since TRIA was enacted and, in the aggregate, currently approximate 3 to 5 percent of commercial property insurance premiums.
- Take-up rates have improved since the adoption of TRIA and are roughly stable at 60 percent in the aggregate.

- Information provided to the PWG in response to the PWG Notice indicates that the market currently is tightening in light of uncertainty as to whether TRIA will be renewed.
- The private market does not have the capacity to provide reinsurance for terrorism risk to the extent currently provided by TRIA.
- In the absence of TRIA, terrorism risk insurance likely would be less available. Coverage that would be available likely would be more costly and/or limited in scope.

We urge the NAIC to review the PWG report. There are other publicly available sources that will provide significant insight on the pricing of terrorism risk insurance by region, including the recent report issued by Marsh, *2015 Terrorism Risk Insurance Report*, which analyzes terrorism risk insurance pricing and take-up rates, breaking down the data by company size, industry, and region. The Congressional Budget Office has issued several reports on TRIA; the various analyses should prove helpful to the NAIC in developing the appropriate public policy goals for collecting data. The industry stands ready to assist the NAIC in determining which publicly available sources will yield the most relevant data for the ongoing, annual reports mandated by the latest reauthorization of TRIA.

DISCUSSION

The following sets forth more specific comments about some of our practical concerns with respect to the Blanks Supplement proposal and provides some preliminary information gleaned from the survey we conducted of member companies. Additionally, the information below regarding workers compensation insurance is generally consistent with a separate analysis performed by NCCI.

I. Annual Statement Blank Limitations

Evaluation of the pricing of terrorism coverage requires additional detailed information specific to the way in which terrorism coverage is provided and possibly other detail that is considerably different from what is captured for purposes of financial analysis. Since the original program was only temporary, there were no established standards for data. Even today, the program is only reauthorized through 2020.

Although the latest Supplement contains instructions for reporting coverage that is included both for a charge and coverage included for no additional charge, there are other breakdowns that could be difficult to fit into the blank. For example, other coverage limitation (e.g. sub-limits, specific exclusions) are not captured for either Part 1 or Part 2. Because such information is not strictly financial in nature, an annual statement supplement is not the most appropriate method of collecting it.

The following are just a few illustrative examples of the inconsistencies that we have identified with the proposed Blanks Supplement:

1. Inaccurate References
    a) The title of Part 1 is inaccurate. The Terrorism Risk Insurance Program does not provide, create or require "Terrorism Risk Insurance Coverage." Instead, the program imposes certain availability and disclosure requirements for coverage and provides certain rights of reimbursement with respect to losses in certain lines of commercial property and casualty insurance. To be accurate, the title of Part 1 should read "Lines of Coverage subject to the Terrorism Risk Insurance Program."
    b) The title to Part 2 is likewise inaccurate. To be accurate, the title of Part 2 should read "Lines of Coverage not subject to the Terrorism Risk Insurance Program."
    c) The instructions contain similar inaccuracies that should be addressed consistent with the above.
2. Incomplete Line References in Part 1
    a) "Allied Lines" should note the exclusion of federal crop insurance if reported on this line.
    b) "Other Liability" should note the exclusion of medical malpractice and other professional liability insurance.
    c) "Excess Workers' Compensation" (Line 17.3) should be included in Part 1.
3. Incomplete Line References in Part 2
    a) "Allied Lines" should note the inclusion of any federal crop insurance if reported on this line.
    b) "Other Liability" should note the inclusion of medical malpractice and other professional liability insurance.
    c) "Excess Workers' Compensation" (Line 17.3) should be included in Part 1, not Part 2.
    d) "Workers Compensation" should be included in Part 1, not Part 2.
    e) Otherwise it should be noted that Part 2 should <u>not</u> include any information already reported in Part 1 in order to avoid double counting.

II. <u>Premium Data Must Reflect Market Circumstances</u>

We remain concerned that premium amounts alone, although specifically required by the law for the Treasury study, have the potential for misuse without recognition of commensurate exposures assumed in exchange for that premium. Equally important, information on TRIA earned premium does not advance the understanding of how that premium relates to terrorism exposure (and in what jurisdiction). Nor does this methodology provide data on high visibility locations (i.e., Manhattan, Washington D.C., Disney World, Downtown Los Angeles, etc.).

Also, the draft Supplement includes policy count and premium without any context of exposure base. Since coverage for smaller exposures may be provided at no cost with large exposures at considerable cost, policy count does not adequately address these circumstances. Again, we believe that a Blanks Supplement is not the most appropriate

vehicle for collecting the data that would be needed to paint a more complete and useful picture of the private market for purposes of assessing the effectiveness of the terrorism risk insurance program.

III. Timing

The proposed Blanks Supplement will apply to the 2016 policy year, but 2016 figures are not reported to the NAIC until the first quarter of 2017. If the purpose of this data collection is to assist Treasury with its studies, the first of which must be completed by mid-2016, the use of a financial statement blank supplement would not appear to mesh well with Treasury's statutorily imposed deadlines. If complete information is not available until early 2017, this may not provide enough time for full analysis even for Treasury's mid-year 2017 report.

IV. Reinsurance

For the reinsurance question (column 6), aside from a stand-alone terrorism cover or a set of transactions (such as a catastrophe program) that offers options for the coverage of terrorism and for its exclusion, reinsurance premiums for terrorism are often not discernable. The reinsurance market doesn't typically provide a split on rate or premium for any portion of terrorism coverage provided, so reinsurance premium for terrorism exposure has typically not been reportable.

V. Survey Results

To be responsive to both the NAIC and Treasury, the undersigned parties conducted a survey of our respective members in June to determine the type of information that would be readily available for Treasury's June 2016 report. Our survey reflects a very limited sample size. The survey provides a preliminary perspective on the types of issues that insurers would face – and thus that NAIC and Treasury would face – in conducting a meaningful data call.

One of the major obstacles noted in the survey comments is that there has not been a business need to incorporate the Section 111 referenced data elements into insurers' systems. Nor are these data elements required to be reported to any statistical agency. When data is available, it is predominantly high level rather than specific. Current calendar year data is more readily available than prior years. We did not see any significant trends based on company size.

Following are key results from the survey:

- **Earned Premium**
  - Only 68.18% (75/110) of respondents can readily identify earned premium associated with terrorism coverage for 2015. Providing prior calendar years becomes increasingly more difficult.
  - For workers compensation, earned premium can be identified.
  - For property, high level information may be available. However, detail premium information may not be readily available for the following types of coverage: direct damage – building, contents, building and contents, time element, and other ancillary coverages.
  - For liability, high level information may be available. However, detailed premium information may be not readily available on products liability standalone, pollution liability standalone, umbrella/excess, D & O, and other ancillary coverages.
  - A number of respondents indicated that they provide terrorism coverage at no additional charge. As a result, an insurer cannot account for earned premium associated with terrorism coverage included at no additional charge.

- **Geographical Location**
  - Only 44.26% (54/122) of respondents can provide information on exposure units/limits for risk of loss due to terrorism by zip code and state for 2015. Providing prior calendar years becomes increasingly more difficult.
  - For workers compensation, premium is rolled up by state.
  - For commercial property, there may be data available by zip code and state. One constraint cited in providing location-specific information is that some insurers are coding all locations within a given state to the highest valued location per a stat plan requirement.
  - For liability, one constraint was that data may be reflective of headquarter state or state of domicile, which can skew individual state data.

- **Policies with a Terrorism Exclusion or Limitation**
  - 73.39% (80/109) of the respondents indicated that they could provide the number of policies with exclusions.
  - Some insurers indicated that the information would have to be extracted by endorsement number(s).
  - For workers compensation, insurers are not allowed to exclude. Therefore, there would be no exclusions for this line of business.

- **Reinsurance Limits Providing Coverage for Risk of Loss from Terrorism**
  - 40.9% (45/110) of the respondents can provide some information on reinsurance. Providing prior calendar years becomes increasingly more difficult.
  - Some insurers indicated that reinsurance is at the company level, not at the policy level.

The challenge facing the NAIC, Treasury, and the industry is that insurer processing systems were designed based on individual state requirements, statistical plan requirements, and specific insurer needs. Insurers can modify their processing systems to report specific terrorism coverage data on a prospective basis; however, it cannot be done on a retroactive basis.

VI. Mismatch Between Annual Statement Lines and TRIA Covered Lines

The Annual Statement lines of business do not line up neatly with the lines of business covered under TRIA. For example, the Annual Statement line of Fire includes both personal and commercial monoline fire, while TRIA only covers commercial fire. Although Part 1 and Part 2 of the proposed Supplement seek to separate TRIA-covered lines for non-TRIA-covered lines, there still could be a mix of risks not commensurate with the TRIA-specific lines.

Moreover, collection of terrorism coverage data for lines that may typically include it due to the very low exposure may skew the picture of other lines with significant exposure and covered under TRIA. In the context of evaluating the relationship between the current program and its objective of maintaining a well-functioning private market, any distortions would not be in our common interest.

VII. Loss Data is Not Available Absent a Covered Event and would be Duplicative of TRIA's Provisions

The draft Supplement includes losses, although there have not been any insured losses covered under TRIA. Furthermore, there is already a contract in place under Treasury auspices for collection of certified event losses for administration of the program that could be utilized for additional loss analysis. Collection of such information under the Supplement would be an unnecessary duplication of effort. Industry would encourage Treasury to share loss information with state regulators and the NAIC as appropriate, subject to confidentiality concerns noted below.

Actuarial analysis of excess-of-loss agreements requires loss history for events below and above the attachment point, not just above the attachment point. But these events are so rare that they are probably better handled through a survey rather than an annual statement filing. The event most relevant for this analysis is the Boston Marathon bombing, not the small "one-off" events that target just one or a handful of individuals or properties.

VIII. Confidentiality and Privacy Protections Must Be Afforded

Section 111 of the 2015 TRIA reauthorization legislation provides for the confidential protection of data collected under the Section. However, the NAIC's Annual Statement data is considered public information and is not subject to confidentiality protection. This raises serious concerns for policyholders, especially in the case of a small event. By

compelling individual insurers to publicly reveal the amount of insured loss from such events in Part 1, the Supplement could become a tool to invade the privacy and financial condition of the families most affected by a terrorist attack. For example, if a particular insurer is the workers compensation insurer for an employer that had a single employee maimed by an attack, the value of his or her benefits would become public information through the annual statement. There can be no societal value to the publicity of such information.

Part 2 is even more invasive as the life insurance benefits, disability benefits and health benefits recovered by victims of small scale terrorist attacks become publicly available.

Perhaps one potential solution is to allow a statistical aggregator(s) to perform analyses and provide the results to both NAIC and to the FIO. Such an approach would allow data collection to focus on relevant results, while protecting the privacy and confidentiality interests of insureds and insurers. Again, however, collecting this data on the Annual Statement approach does not lend itself to this approach.

CONCLUSION

We hope that our comments will be helpful to you. While we do not believe the Blanks Supplement approach is the right vehicle to produce relevant data that will support the fundamental purpose of Section 111 of TRIA (the periodic evaluation of the terrorism risk insurance program and its impact on the development/stability of a private terrorism risk insurance market), we believe that there are existing sources of information through rate filings and data used to support prior PWG market reports that may yield the right type of information going forward. The undersigned parties stand ready to work with the NAIC and other interested stakeholders in this regard.

Sincerely,

American Association of Managing General Agents (AAMGA)
American Insurance Association (AIA)
Insurance Services Office (ISO)
National Association of Mutual Insurance Companies (NAMIC)
National Council on Compensation Insurance (NCCI)
Property Casualty Insurers Association of America (PCI)

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