SIIA SELF-INSURANCE INSTITUTE OF AMERICA, INC.
Protecting and Promoting Self-Insurance and Alternative Risk Transfer Since 1981.

May 31, 2016

Federal Insurance Office
Attention: Richard Ifft
Room 1410 MT
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

RE: <u>2015 TRIA Reauthorization Proposed Rules Comments</u>

Dear Mr. Ifft:

The Self-Insurance Institute of America, Inc. ("SIIA") respectively submits these comments in response to the Notice of Proposed Rulemaking implementing changes to the Terrorism Risk Insurance Program ("TRIP") required by the Terrorism Risk Insurance Program Reauthorization Act of 2015 (hereinafter referred to as the "TRIP Proposed Regulations"). In particular, our comments respond to various questions set forth in the TRIP Proposed Regulations relating to the participation of captive insurers in TRIP.

SIIA is a member-based association dedicated to protecting and promoting the business interests of companies involved in the self-insurance/alternative risk transfer industry, both domestically and internationally. SIIA's membership includes captive insurance benefit managers and industry experts, risk retention groups, third party administrators, excess/stop-loss/reinsurance carriers, and self-insured employers.

Overview

While the Department of Treasury ("Treasury") has previously advised that State-licensed captive insurers participate in TRIP by virtue of their status as licensed insurance entities, Treasury has not issued any rules specifically concerning the participation of captive insurers in TRIP. In anticipation of the development of rules concerning the participation of captive insurers and, potentially, other self-insurance arrangements in TRIP, Treasury posed eight (8) questions that may be helpful in formulating proposed regulations in this area. SIIA provides the following comments on five (5) questions specific to captive insurers and captive insurance arrangements.

Comments

- *Question #1*: What is the current role of captive insurers (both State-licensed entities and otherwise) in providing insurance in TRIP-eligible lines?

- *Answer #1*: Captive insurance arrangements provide a valuable risk transfer mechanism within the current terrorism risk lines of insurance. In particular, captive insurance arrangements are being used to fill gaps in an insureds' risk programs, which is often times necessary due to the prohibitively high premium rates for commercial insurance products, or insufficient capacity among commercial insurers to provide terrorism risk-related insurance coverage to public and private entities. In certain instances, captive insurance plays a critical role in the provision of TRIP-eligible coverage, including for "trophy risks" (also discussed below). By way of example, the power generation industry utilizes captive insurance arrangements to provide coverage for certain power generation assets (i.e., power generation plants, switchyards, and other assets).

  Captive insurance arrangements also offer coverage that may be specifically tailored to a large corporation and members of its "controlled group," and the captive may provide insurance coverage that is not otherwise available on the commercial market. For example, it is extremely difficult, if not impossible, to access products to insure against terrorist attacks involving nuclear, biological, chemical, or radiological weapons ("NBCR"). However, by having an insurance license, the captive can more efficiently protect against these types of potentially severe attacks by reinsuring under TRIP.

- *Question #2*: Should captive arrangements that insure U.S.-based risks, other than those involving State-licensed insurers, participate in TRIP? Upon what basis should such participation take place?

- *Answer #2*: Existing Treasury regulations address the issue of whether captives would be regarded as "insurers" under TRIA, and thus subject to its requirements. The analysis and guidance provided by Treasury, with respect to the inclusion of State-licensed captives within the definition of insurer, should be considered in the context of the debate over whether non-State licensed insurers should be allowed to participate.

  More specifically, SIIA believes that this question requires a balance between (1) ensuring proper regulation over the insurer (such as capitalization requirements) and (2) meeting TRIA's statutory objective of "ensuring that policyholders have widespread access to the terrorism risk insurance benefits of [TRIP], and spreading potential costs of [TRIP] associated with any federal loss-related payments." A strong argument can be made that allowing non-State licensed insurers to participate in TRIP promotes access to insurance and spreads the risk across a broader spectrum of insurers. One potential example of when a non-State licensed insurer could be permitted to participate in TRIP would be if an insured is using a non-State licensed captive arrangement to fulfill a specific need or requirement under a Federal or State law because the insured cannot secure the appropriate insurance coverage in the commercial market, or there is insufficient capacity through State-licensed insurers.

- *Question #3*: Should separate rules address the criteria for which captives, of any type, qualify for reimbursement under TRIP? In response to this question, please address whether and/or how the relatively small TRIP-eligible premiums of such insurers should affect their insurer deductible.

- *Answer #3*: SIIA believes that captive insurers should be treated no different than other insurers with respect to participation in TRIP.

  When captive insurance arrangements are used to fill gaps in an insureds' terrorism insurance scheme (i.e., due to a coverage not being available in the commercial market, only available at exorbitant pricing, or available but with limited capacity) applying different criteria to qualify for reimbursement penalizes those public and private entities seeking insurance coverage through a captive because of these various limitations in the commercial market.

  In addition, using separate criteria by which captive insurers can qualify for participation in TRIP could introduce unfair conditions for public and private entities seeking insurance coverage through a captive arrangement. Commercial insurers could seek to increase prices for coverage, knowing an insured faces additional costs if the entity seeks to utilize a captive. This could also shift more of the burden to the insureds. By keeping the requirements for participation the same, or putting in place a sliding scale, the market remains on a level playing field. It is important to understand that captives are complex. A one-size approach is not the solution and will create an unequal, adverse impact.

- *Question #4*: Given the relatively small size of some captive insurers, should some assessment be made of their capital and claims paying ability in connection with their participation in TRIP? If so, how should Treasury consider and address such issues?

- *Answer #4*: Currently, only State-licensed captive insurers participate in TRIP. In that context, the States that license the captive are already monitoring the captive arrangements' capital and claims paying ability. Imposing different assessments or requirements would usurp State regulations.

  Furthermore, if a captive arrangement insures TRIA-eligible risks as well as non-TRIA eligible risks, how would any additional assessment be applied between the capital structure and claims paying ability for those two classes of risks?

- *Question #5*: To what extent are captives being relied upon to insure so-called "trophy risks" that might be deemed to be subject to a heightened risk of terrorism?

- *Answer #5*: As discussed above, one example of providing coverage for "trophy risks" is captive arrangements that are currently being used to insure numerous power generation-related risks, including power generation plants and other critical components.

Captive insurers are simply a type of self-insurance with some key differentiations. Companies that choose to self-insure bear the risk of loss on their own, while a captive insurance arrangement allows a company to finance a part of the risk they choose to take on themselves. Captives are often established by a parent company or even a pool of companies, in order to finance an overall, common, or third-party risk. In some cases, companies that cannot mitigate a risk affordably in the commercial market – such as terrorism – are self-insuring risks, often times by financing that risk through a captive. It is important to note that captive insurance arrangements come in many forms based on the risk, company, or pool structure, and that a one-size fits all approach does not often times work for the complex nature that can be attributed to a captive owner or their risk.

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Thank you in advance for considering these comments. Please do not hesitate to contact me if you have questions, or if members of SIIA can serve as a resource on these very important matters.

Sincerely,

Ryan C Work

Ryan C. Work
Vice President, Government Affairs
Self-Insurance Institute of America, Inc.