Treasury's "Take" on TRIA

by Ronald R. Robinson

The Terrorism Risk Insurance Act of 2002 ("TRIA"), a $100 billion government/private market "partnership" insurance program for terrorism losses caused by or on behalf of foreign persons or interests, expires on December 31, 2005. The U.S. Treasury Department administers the TRIA Program and, as mandated, has now produced a 135 page analysis of: (1) its effectiveness; (2) private market capacity to offer such insurance if TRIA is not extended; (3) the availability and affordability of post TRIA coverage; and (4) the market impacts of continuing, altering or abandoning TRIA. (See "Assessment: The Terrorism Risk Insurance Act of 2002;" http://www.treas.gov/press/releases/js2618.htm)

What is *"Treasury's 'Take' on TRIA"*? While TRIA provided insurers a necessary "transitional period" to assume terrorism risk in a post-9/11 world, Treasury concludes that, "TRIA's effectiveness for these purposes does not imply continuation of the Program." Insurers should, Treasury opines, continue coverage of this risk alone and rely, not on TRIA, but instead on "…the development of the private re-insurance market and other risk transfer mechanisms…" to replace TRIA's "free" federal reinsurance. Treasury's analysis candidly leads it to the startling finding that "…the immediate effect of the removal of the TRIA subsidy is likely to be less terrorism insurance written by insurers, higher prices and lower policy takeups."

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Insurers bear, and are able to reinsure, about $35 to $40 billion of TRIA's $100 billion coverage program; depending on the varying circumstances of losses, insurer deductibles and federal premiums. This "share" of terrorism risk equals about 10 percent of the relevant insurers' $375 billion total policy surplus. A.M. Best's insurer solvency analysis concludes that any loss significantly above 10 percent of this "total policy surplus" can raise rating concerns. One 9/11 scale attack would reach 10 percent of total surplus. Two, three or four would cripple or destroy many of the insurers who provide it. Add to this risk the historic losses of natural catastrophes and the economic impact of the end of TRIA is stark and unacceptable.

Treasury's assessment painstakingly analyzes a blizzard of relevant figures, facts, and projections, concluding that insurers ought to assume more of this risk. Its analysis accurately discloses that, without TRIA, insurers will be unable to fund the current governmental share of program coverage; approximately $70 billion in federal "reinsurance." Prior to TRIA, the unavailability of private re-insurance caused insurers to withdraw terrorism coverage through exclusions. This market reality will repeat if TRIA expires. As Treasury reports, 47 states and the District of Columbia (exceptions being Florida, Georgia, and New York) have today authorized property loss exclusions post TRIA. Most analysts expect broader exclusions to follow.

Throughout its exhaustive inquiry, Treasury's Assessment provides refreshingly frank non-partisan data that ought to be viewed as a valuable resource for Congress' TRIA extension debate; now poised to start. As such, it is silent on the ultimate questions at issue; not the least of which is whether less terrorism insurance at higher prices for fewer people is an appropriate trade-off for withdrawal of TRIA's protection. Nevertheless, "spin-masters" are already advancing the goals of their disparate agendas wrapped up as "Assessment Conclusions."

The current House bill mandates TRIA's extension for two years, a greater private share of risk and the end of any governmental role. The competing Senate bill contemplates a similar risk-sharing change and extension period. However, it would astutely impanel a Presidential Working Group, consisting of the "brightest and best" stakeholder advocates, charged to develop proposals for viable long term terrorism insurance programs; with the key question of governmental participation to be debated, not decided by legislative fiat. The pending Senate TRIA extension bill's proposed Presidential Working Group is a viable forum for meaningful analysis and debate of TRIA and the future of terrorism insurance.

National security requires a thorough and independent debate of terrorism insurance's critical questions. Specifically, TRIA extension and reform should not be tied to litigation and tort reform agendas, as currently advocated by many in Congress and the administration. If interjected into the TRIA debate, these issues will absolutely skew, delay, or derail the opportunity to create a solvent and comprehensive insurance program.

Now is the time to find the common ground that resolves TRIA's issues. Congress, the administration and private marketplace stakeholders should have but one priority. They must focus the TRIA debate: on the issues that bear directly on providing financial security in the face of terrorist attacks; on an open consideration of all governmental and private market resources; and on treatment of the marketplace's need for solvent and comprehensive terrorism risk insurance at reasonable rates as the national security issue it clearly is. Treasury's assessment can fairly serve as a cornerstone of this debate.

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