

March 15, 2006

Dear Mr G:

Thank you for your letter requesting Treasury guidance on the status of ABC Property/Casualty Pool, Inc. (“ABC”), a group self-insurance pool in Michigan, under the Terrorism Risk Insurance Act<sup>1</sup> (“TRIA” or the “Act”). As explained below, after review and consideration of your request, we have concluded that ABC is not a State licensed or admitted insurer within the meaning of TRIA section 102(6)(A)(i).

You indicate that ABC is a group self-insurance pool sponsored by a Michigan association of municipal entities that operates pursuant to the provisions of Act 138 of Michigan Public Acts of 1982, MICH. COMP. LAWS § 124.5 *et. seq.* That Act permits two or more municipal corporations to form a group self insurance pool for the purpose of providing participating members risk management and insurance coverage for specified property and casualty risks. Presently 450 of the approximately 550 municipal entities of this type participate in the pool. Gross written premiums from member entities amount to more than \$33 million annually.

You have asked us to specifically consider whether ABC is eligible to participate in the Terrorism Risk Insurance Program as a state licensed or admitted insurer. Under section 102(6) of TRIA, an insurer is an entity that falls within one of the categories described in section 102(6)(A); that receives direct earned premiums for any type of commercial property and casualty insurance coverage, with certain exceptions; and that meets any other criteria that the Secretary may reasonably prescribe.<sup>2</sup> One of the categories of insurer in section 102(6)(A) is an entity that is “licensed or admitted to engage in the business of providing primary or excess insurance in any State.”

As discussed in our Final Rule issued on July 11, 2003, some pooling arrangements may not fit neatly within what is traditionally thought of as the “state licensed or admitted market.”<sup>3</sup> To provide more clarity, the rule sets out additional criteria which a pooling arrangement or other insurance entity must meet to qualify as a TRIA insurer. An entity is a TRIA insurer if:

(A) It is licensed or admitted to engage in the business of providing primary or excess insurance in any State...and, if a joint underwriting association, pooling arrangement, or other similar entity, then the entity must:

(1) Have gone through a process of being licensed or admitted to engage in the business of providing primary or excess insurance that is administered by the State's insurance regulator, which process generally applies to insurance companies or is similar in scope and content to the process applicable to insurance companies;

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<sup>1</sup> Public Law 107-297, 116 Stat. 2322, 15 USCS § 6701 note.

<sup>2</sup> As of this date, no other criteria have been prescribed by the Secretary.

<sup>3</sup> 68 FR 41250, 41261 (July 11, 2003).

(2) Be generally subject to State insurance regulation, including financial reporting requirements, applicable to insurance companies within the State; and

(3) Be managed independently from other insurers participating in the Program.<sup>4</sup>

After reviewing the materials you have submitted to us, we have concluded that ABC does not meet the criteria in our regulations for “state licensed or admitted” insurers. The reasons for our conclusion are as follows:

- No certificate of authority is issued by the insurance commissioner to a group self-insurance pool established pursuant to Michigan Act 138.<sup>5</sup>
- The approval process for group self-insurance pools in Michigan does not apply to insurance companies and is not similar in scope and content to the process for licensing insurance companies in Michigan.<sup>6</sup>
- Group self-insurance pools in Michigan are generally not subject to the insurance regulation that is applicable to insurance companies in the state.<sup>7</sup>

Accordingly, ABC is not an “insurer” for purposes of the Program, as that term is defined in the Act and our regulations.

Our conclusion that ABC is not a state licensed or admitted insurer is based on the application of the Act and Treasury regulations to the specific facts set forth in your request, as you have represented those facts to Treasury. If there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this response, then you may not rely on our conclusion to support any proposed or subsequent activity. This response is provided by the Terrorism Risk Insurance Program as a means of stating its current interpretation of the Act and implementing regulations. The Program may revise or revoke this interpretation upon its own initiative or upon the enactment of amendments to the Act or regulations.

Sincerely,

Jeffrey Bragg  
Executive Director  
Terrorism Risk Insurance Program

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<sup>4</sup> 31 C.F.R. § 50.5(f)(1)(i)(A)(1)-(3).

<sup>5</sup> Admitted insurers must obtain such a certificate of authority to transact an insurance business in Michigan. *See* MICH. COMP. LAWS § 500.402. Although group self-insurance pools in Michigan must submit their intergovernmental contract to the insurance commissioner for his review for compliance with Michigan Act, MICH. COMP. LAWS § 500.124.1 *et. seq.*, this is not equivalent to issuing a certificate of authority to an insurer as provided in MICH. COMP. LAWS § 500.402.

<sup>6</sup> *Compare* MICH. COMP. LAWS §§ 500.124.7a, *with* MICH. COMP. LAWS §§ 500.402, 408, 410, 436b, 5040.

<sup>7</sup> *Compare* MICH. COMP. LAWS §§ 500.124.5 to 124.11, *with* MICH. COMP. LAWS §§ 500.410 (minimum capital & surplus); 436a (continuing operation of insurer); 500.1615 (policy form approval); 2403 (rate-making provisions).