

March 18, 2004

Dear Mr. L:

Thank you for your letter requesting an interpretation of the Terrorism Risk Insurance Act<sup>1</sup> (TRIA) with regard to the status of AAA Mutual Association, Ltd. (AAA) as an insurer under TRIA. After careful review and consideration of your request, we have concluded that AAA is an “insurer” under the Act and thus subject to the benefits and the requirements of the Program.

### **Background**

According to your letter and accompanying background material, AAA is a mutual insurer created in 1997 under the laws of a foreign jurisdiction. AAA has elected to be taxed as a U.S. company under 28 USC § 953(d) and files an annual corporate tax return with the Internal Revenue Service. AAA is authorized by the U.S. Department of Labor (DOL) to provide coverage for the liabilities of AAA member employers under the federal Longshore and Harbor Workers’ Compensation Act.<sup>2</sup>

You state that AAA provides workers’ compensation insurance to more than 260 member employers in a wide range of maritime-related industries. You note the company offers coverage in the same way that any other typical insurer would – by providing quotations for coverage through traditional insurance brokers and charging premiums to members based on risk factors, including the employer’s claims history, workplace safety and number of workers covered. Each AAA member is issued a Certificate of Insurance which is similar to a declarations page of an insurance policy. Members generate substantial annual premium (approximately \$31mm) to AAA for workers compensation and marine liability insurance.

You ask whether AAA meets the definition of “insurer” under TRIA section 102(6)(A)(iii) because it is “approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime activity”. You indicate that AAA is approved by the DOL to provide workers compensation insurance to employers in the longshore and related maritime industries under 20 CFR 703.301; this part of DOL’s regulation implementing the Longshore and Harbor Worker’s Compensation Act permits employers to self-insure their workers’ compensation obligations. The DOL’s characterization of AAA apparently has led to some uncertainty as to AAA’s status under TRIA section 102(6)(A)(iii), particularly in view of language in the commentary to Treasury’s recent final rule indicating that self insurance arrangements approved by Federal agencies are not included as insurers under 31 CFR 50.5(f)(1)(C). You thus seek

---

<sup>1</sup> Public Law 107-297, 116 Stat. 2322, 15 U.S.C. § 6701 *et seq.*

<sup>2</sup> 33 U.S.C. § 901.

guidance from Treasury as to whether AAA meets the requirements for a federally approved insurer under TRIA section 102(6)(A)(iii).

### **Status As Insurer**

After reviewing the materials you provided and analyzing the requirements under TRIA, we conclude that AAA qualifies as a federally approved insurer within the meaning of section 102(6)(A)(iii) of the Act. Our conclusion is based on the following:

1. AAA is a separately incorporated entity authorized to carry on the business of insurance on a mutual basis under enabling legislation of a foreign jurisdiction.
2. AAA is authorized by the DOL to provide workers' compensation coverage for employers subject to the federal Longshore and Harbor Worker's Compensation Act.
3. AAA prepares financial statements that report assets, liabilities, premiums and losses consistent with insurance industry practices.
4. AAA offers workers' compensation insurance to maritime employers through traditional insurance distribution channels.
5. AAA calculates premiums for its workers' compensation insurance based on employer risk factors, including claim history, number of workers covered and employer safety record.

While no single factor leads to our conclusion that AAA is a federally approved insurer that offers insurance to maritime employers within the parameters of section 102(6)(A)(iii) of TRIA, collectively the foregoing factors support the conclusion that AAA is a federally approved insurer and not a "self-insurer" for purposes of TRIA.

This response addresses the application of TRIA and Treasury regulations to the specific situation set forth in your request, as you have represented the 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 that conclusion generally or as support for 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 Treasury's 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