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Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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BETH LINDSTROM
DIRECTOR, CONSUMER AFFAIRS
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JULIANNE M. BOWLER
COMMISSIONER OF INSURANCE

February 27, 2003

RE: Terrorism Risk Insurance Act of 2002

Dear President and/or Chief Executive Officer,

The Massachusetts Division of Insurance (hereinafter "Division") has learned that some insurers are engaging in practices that may be inconsistent with the Terrorism Risk Insurance Act of 2002 (hereinafter "TRIA"). TRIA provides, in pertinent part, that no federal payment will be made to any insurer unless "the insurer provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses...." (TRIA, section 103(b)(2)). Furthermore, TRIA mandates the manner in which the "premium charged for insured losses" must be disclosed to the policyholder. TRIA also states, "[A]n insurer may reinstate a preexisting provision in a contract for property and casualty insurance that is in force on the date of enactment of this Act and that excludes coverage for an act of terrorism **only...if the insurer has received a written statement from the insured that affirmatively authorizes such reinstatement; or...if the insured fails to pay any increased premium charged by the insurer for providing such terrorism coverage....**" (TRIA, section 105(c)). These provisions seem to imply that:

- An insurer shall disclose the premium that will be charged for the certified terrorism coverage only, and
- That the policyholder may choose not to pay the premium attributed to the certified terrorism coverage.

It has come to the Division's attention that some insurers may be notifying policyholders that the purchase of certified terrorism coverage is mandatory. In some cases an insurer may be canceling the policyholder's entire policy if he/she fails to pay the additional cost for the certified terrorism coverage. Please be advised that the Division does not consider a policyholder's failure to pay the additional cost for certified terrorism coverage to be a nonpayment of premium sufficient to justify the cancellation of the policyholder's entire coverage. The Division will consider it to be an unfair and deceptive trade practice for an insurer to condition continued eligibility for coverage on the policyholder's purchase of certified terrorism coverage, or to cancel a policyholder's coverage for failure to pay the additional cost of the certified terrorism coverage.

The Division also considers it an unfair and deceptive trade practice to charge any additional premium to an in-force policy for standard fire coverage resulting from a certified terrorist event. Coverage for property damage resulting from a fire is statutorily mandated pursuant to G.L. ch. 175, §99. Thus, the policyholder may not decline coverage for fire resulting from a certified terrorist event. However, neither may an insurer charge a policyholder an additional premium for fire resulting from a certified terrorist event. The replacement costs resulting from a fire, whether caused by a terrorist event or any other cause, should be a component of the original premium. Insurers may not charge an additional premium for any standard fire coverage on an in-force policy.

In order to avoid any market conduct and enforcement actions, insurers that have engaged in any of the above-enumerated practices shall immediately notify their insureds of their error, reinstate any policies that were cancelled for non-payment of premium as described above, and return any additional premium charged for in-force fire policies.

Sincerely,

Julianne M. Bowler
Commissioner of Insurance