

# MARKET BULLETIN

REF: Y5065

<b>Title</b>	US: TRIA compliance for cyber insurance policies
<b>Purpose</b>	To inform the market that TRIA compliance is required for cyber liability policies
<b>Type</b>	Scheduled
<b>From</b>	Yael Chen, Senior Manager, International Regulatory Affairs
<b>Date</b>	9 February 2017
<b>Deadline</b>	Effective 1 April 2017
<b>Related links</b>	<a href="#">FIO TRIA Cyber Liability Guidance</a>

## Summary

Terrorism Risk Insurance Act (“TRIA”) compliance is required for commercial lines of property and casualty insurance (referred to herein as “covered lines”).

Last year, the Federal Insurance Office (“FIO”) confirmed to Lloyd’s that TRIA compliance is required for cyber policies that cover damage to physical property; i.e. the CZ risk code..

In December 2016 FIO issued guidance clarifying that cyber liability policies (as defined below) also require TRIA compliance.<sup>1</sup>

## Background

TRIA and subsequent reauthorizations – most recently the Terrorism Risk Insurance Program Reauthorization Act of 2015 (TRIPRA / TRIA) – establish a US Federal Government programme that provides a backstop of up to USD 100 billion for covered

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<sup>1</sup> 81 Fed. Reg. 95312 (Dec. 27, 2016).

lines.<sup>2</sup> Please refer to the US Federal page on [Crystal](#) for more information on the TRIA programme.

### TRIA Requirements

Last year, the National Association of Insurance Commissioners (“NAIC”) added “Cyber Liability” to the Uniform P&C Product Coding Matrix<sup>3</sup> as a sub-line under Line 17 – Other Liability, which is a covered line under TRIA.

The NAIC defines “Cyber Liability” for state regulatory purposes as:

*Stand-alone comprehensive coverage for liability arising out of claims related to unauthorized access to or use of personally identifiable or sensitive information due to events including but not limited to viruses, malicious attacks or system errors or omissions. This coverage could also include expense coverage for business interruption, breach management and/or mitigation services. When cyber liability is provided as an endorsement or as part of a multi-peril policy, as opposed to a stand-alone policy, use the appropriate Sub-TOI of the product to which the coverage will be attached.*

As a result of this change, Underwriters writing policies that fall within the NAIC definition of “Cyber Liability” are obligated to comply with the requirements of TRIA – namely the “make available” and disclosure notice requirements. This applies to stand-alone cyber policies and potentially policies covering cyber risk through an endorsement or as part of a multi-peril policy (see below). TRIA compliance continues to be required for policies with a CZ risk code. Importantly, failing to comply with TRIA requirements for cyber policies potentially jeopardises an insurer’s eligibility for reimbursement under the TRIA programme for all its business.

When cyber risk coverage is written as part of a multi-peril policy or as an endorsement, Underwriters should comply with the requirements of TRIA if the cyber coverage is included in a type of policy that is itself a covered line under TRIA. If cyber coverage is included in a policy that is not in a covered line, then the existence of cyber cover is not enough to trigger TRIA eligibility for the product as a whole. If Underwriters are writing a cyber insurance policy which they believe does not fall within the above definition and is also not coded under the CZ risk code, then Underwriters should document for their files as to why they believe TRIA compliance is not required for that particular policy.

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<sup>2</sup> 31 CFR§50.4(w) clarifies that TRIA covers commercial lines of property and casualty insurance including excess insurance, workers compensation and D&O liability. “Property and casualty insurance” has been further defined to include the following lines from the NAIC’s Exhibit of Premiums and Losses; fire, allied lines, commercial multiple peril (liability portion), commercial multiple peril (non-liability portion), ocean marine, inland marine, workers’ compensation, other liability (i.e. Line 17), products liability, aircraft (all perils), and boiler & machinery.

<sup>3</sup> [NAIC 2017 Uniform Property and Casualty Product Coding Matrix, Line 17.0028](#); N.B. The Product Coding Matrix provides guidance as to how to categorize business for NAIC filings.

### *“Make Available”*

At the time of offer or renewal, insurers must “make available” terrorism coverage for all policies written within covered lines on terms which “do not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism”. For cyber products, the “make available” requirement will be met so long as the product would provide coverage for losses resulting from a cyber terrorism event. Underwriters should note that the “make available” requirement does not mandate that insurers cover particular risks (e.g. cyber). TRIA requires only that if coverage for a risk that falls within a covered line is included, terrorism coverage must also be offered on materially similar terms.

### *Disclosure Notice*

Insurers are required to provide a TRIA disclosure notice at the time the insurer first formally offers to provide insurance coverage or renew a policy. Additionally, insurers must make reference back to that disclosure notice at the time the transaction is completed. This may be satisfied by including a “separate line item” within the policy referencing back to the notice.

Notices must contain certain specific disclosures. The LMA has produced model disclosure notices – based upon the [NAIC model notices](#) – which meet requirements of TRIA and are available on the [Lloyd’s Wording Repository](#) (LMA9103, LMA9104, LMA9105, LMA5217, LMA5218 and LMA5219).

### **Next steps**

Managing agents must now comply with TRIA for cyber liability policies as well as those with a CZ risk code. The guidance stipulates that new and renewal cyber liability policies must comply with TRIA, effective **1 April 2017**.

Lloyd’s will continue to monitor this issue closely for further developments and will inform the market accordingly.

### **Further information**

If you require information regarding TRIA requirements, please contact:

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