

FROM: Manager, Development, Regulatory Division
LOCATION: 58/NC1
EXTENSION: 5659
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REFERENCE: 068/2000
SUBJECT: **CASH CALL REQUIREMENTS**
SUBJECT AREA(S): Requirements relating to the making of cash calls
ATTACHMENTS: Yes
ACTION POINTS: **Managing Agents to Note**
DEADLINE: **For Immediate Attention**

At its meeting on 6 September, the Council agreed to amend the cash call requirements explicitly to require managing agents to prepare cash flow forecasts in support of all cash calls.

The revised requirements, incorporating the amendment (see paragraph 4(c)) are attached. These requirements come into effect immediately.

This bulletin has been sent to all managing agents and for information to members' agents, Market Associations (including the ALM) and all syndicate auditors. Any queries on its content should be addressed to Andrew Adie, Manager, Development (extension 5659).

Andrew Adie
Manager
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CASH CALL STATEMENTS (CONTENTS AND FORM)
REQUIREMENTS (1999)

1. These requirements are made by the Council of Lloyd's under paragraph 7.1(b) of Schedule 3 (Managing Agent's Agreement in respect of individual members) and Schedule 4 (Managing Agent's Agreement (Corporate Member)) (both such agreements hereinafter referred to as "the standard managing agent's agreements" of the Agency Agreements Byelaw (No. 8 of 1988) (hereinafter referred to as "the Byelaw") and shall apply to every cash call statement made by a managing agent otherwise than for the purpose of satisfying an audited closed year loss.
2. In these requirements the expressions listed below shall have the following meanings;

"annual report" means an annual report in respect of a syndicate prepared under the Lloyd's syndicate accounting rules,

"audited closed year loss" means a loss ascertained at the closing of a year of account of the managed syndicate, the amount of which is set out in an annual report complying with the Syndicate Accounting Byelaw (No. 18 of 1994) in relation to which the syndicate auditor has reported in the terms specified in paragraph 14(c) of that byelaw;

"cash call statement" means a request made by a managing agent under clause 7.1(a) of the standard managing agent's agreements to the members of a syndicate managed by the managing agent that each underwriting member make available to the trustees of the Premiums Trust Deed or where relevant of an Overseas Direction or Special Trust Direction of that underwriting member sufficient funds to enable that managing agent's trustees or the trustees of the relevant Overseas Direction or Special Trust Direction to pay all claims and all necessary and reasonable expenses and outgoings incurred in connection with the underwriting carried on by each underwriting member and other amounts which may be paid from the relevant trust fund under the terms of the governing deed at the direction of the Managing Agent;

"syndicate allocated capacity" means, in relation to a syndicate, the aggregate of the member's syndicate premium limits of all the members for the time being of the syndicate.

Part A - Managing Agents' Statements in Support of a Cash Call

3. Every cash call statement to which these requirements apply (hereinafter referred to as a "cash call statement") shall comply with the provisions of these requirements.

4. Every cash call statement made by a managing agent to an underwriting member who participates on a syndicate managed by the managing agent shall:-

(a) be in the form of a written statement addressed to the underwriting members of that syndicate and:-

(i) where the syndicate is a direct syndicate (as defined in the standard managing agents agreement), or the participating member is a corporate member not underwriting through a members' agent, be served on the underwriting member; or

(ii) where the syndicate is not a direct syndicate, or the participating member is a corporate member underwriting through a members' agent, be served both on the members' agent of the underwriting member and, where he has more than one such members' agent, his co-ordinating members' agent;

(b) state the date on which the information, explanations and indications contained in the cash call statement are expressed to be given;

(c) be prepared with due skill and care on the part of the managing agent after proper consideration of all relevant factors including but not limited to cashflow forecasts in support of the cash call;

(d) be approved by a resolution of the board of directors of or, as the case may be, of the partners in the managing agent;

(e) be signed by a director of or partner in the managing agent; and

(f) be accompanied by-

(i) a copy of a report prepared on the cash call statement by the syndicate auditor of the managed syndicate (hereinafter referred to as a "syndicate auditor's report") which complies with the provisions set out in Part B of these requirements; and

(ii) a request to the members' agent of the underwriting member concerned that it make available to the underwriting member a copy of the latest annual report in relation to the year of account of the managed syndicate in respect of which the request for funds is being made by the managing agent, if that report has not already been sent to that underwriting member.

5. Every cash call statement made by a managing agent shall include the following matters:-

(a) **Title**

The title of a cash call statement shall refer to the syndicate number and the year of account of the managed syndicate in relation to which the cash call is made.

(b) Amount of the proposed cash call

The cash call statement shall show the amount of the proposed cash call:-

- (i) in sterling or United States Dollars;
- (ii) excluding any amount attributable to personal expenses, as a percentage of the syndicate allocated capacity;
- (iii) excluding any element attributable to personal expenses, as a sterling amount per £10,000 share on the managed syndicate.

(c) Due date for payment of the cash call

The cash call statement shall state:-

- (i) the date(s) by which the underwriting member is to pay the amount of the cash call (provided always that the underwriting member shall be allowed a period of not less than 28 days after the date by which he or, as the case may be, his members' agent, is deemed under clause 18.1 of the standard managing agent's agreements to have received the cash call statement to pay the due amount to the trustees of his Premiums Trust Fund); and
- (ii) whether in the event of payment after the date referred to in sub-paragraph (c)(i) above, the managing agent intends to charge interest on the overdue sum as provided for under clause 7.1(c) of the standard managing agent's agreements provided always that where the managing agent intends to charge interest on the overdue sum, such interest shall not begin to accrue until the expiry of the 28 day period referred to in sub-paragraph (c)(i) above.

(d) Explanation for the making of the cash call

The cash call statement shall contain an explanation by the managing agent as to the following matters:-

- (i) the circumstances giving rise to the cash call (for example, shortage of funds due, wherever appropriate, to early losses, expenses or timing differences on claims and recoveries);
- (ii) a statement as to any alternative methods of funding which were considered by the managing agent and an explanation as to why they were not adopted;
- (iii) the reasons for the timing of the requested cash call; and
- (iv) any other matter which the managing agent considers necessary for a proper understanding of the amount or timing of the cash call.

(e) Indication as to the expected outcome of the year of account

The cash call statement shall include a statement made by the managing agent as to:-

- (i) the managing agent's current opinion as to whether further cash calls are likely to be made in respect of the year of account of the managed syndicate and if so, over what period of time; and
- (ii) the managing agent's current evaluation of the expected outcome of the year of account of the managed syndicate and, where the expected outcome is significantly different from that indicated in any underwriter's report of the nature referred to in Schedule 8 of the Syndicate Accounting Byelaw (No. 18 of 1994), or any cash call statement previously made available to the underwriting members on the managed syndicate (or if there is more than one such report or statement, the one sent most recently), an explanation of the expected difference.

(f) Years of account becoming run-off accounts

Where a cash call statement is made in relation to a deficit shown in an underwriting account made up to the date at which the year of account concerned would normally have been closed in accordance with the accounting policies adopted for the syndicate concerned, and that year of account has not been closed, sub-paragraphs (d) and (e) above shall not apply to the extent that the matters there specified are contained in the annual report of the syndicate made up to that date or in any managing agent's report, underwriter's report or combined report required by the Lloyd's syndicate accounting rules to be attached thereto.

(g) Declaration

A cash call statement shall contain a declaration by the managing agent that:-

- (i) the cash call statement includes the matters and is in the form currently required by the Council of Lloyd's under paragraph 7.1(b) of Schedule 3 (Managing Agent's Agreement in respect of individual members) and Schedule 4 (Managing Agent's Agreement (Corporate Member)) to the Byelaw and is accompanied by a report by the syndicate auditor of the managed syndicate; and
- (ii) the cash call statement has been approved by a resolution of the board of directors of or, as the case may be, of the partners in the managing agent.

6. A cash call statement prepared by a managing agent need not be confined to the matters specified in paragraph 5 above and a managing agent may include

such other terms not being inconsistent with those prescribed in paragraph 5 above, as it thinks fit.

Part B - Report by the Syndicate Auditor of the Managed Syndicate

7. Every syndicate auditor's report of the nature referred to in paragraph 4(f)(i) above shall comply with the provisions of this Part and shall be signed by the syndicate auditor of the managed syndicate.
8. A copy of the syndicate auditor's report shall be attached to the cash call statement referred to in Part A of these requirements.
9. Every syndicate auditor's report shall state whether in the opinion of the syndicate auditor the cash call statement complies with the current "Cash Call Statements (Contents and Form) Requirements" made by the Council of Lloyd's under paragraph 7.1(b) of Schedule 3 (Managing Agent's Agreement in respect of individual members) and Schedule 4 (Managing Agent's Agreement (Corporate Member)) to the Byelaw.

Part C - Supplemental

10. These requirements are made and shall come into force on 6 September 2000.