Mid-term Broker Change – Best Practice Market guidelines
November 2010

Introduction

There are occasions when the broker which administers an insurance contract, known as the Broker of Record (BOR), changes during the life of the contract. This Mid-Term Broker Change (MTBC) may be for a variety of reasons, such as a team relocating to a different broker, merger and acquisition, insolvency of a broker or at the request of the insured. The client will send the current BOR a letter of authorisation informing them they are no longer the BOR and giving the identity of the Incoming Broker. The incoming and outgoing broker will prepare and agree a transfer agreement specifying which contracts are affected and what responsibilities the outgoing and incoming broker have going forward. The incoming broker will prepare an endorsement for the subscribing insurer's agreement to the contracts impacted by the transfer. The agreed endorsement will then be submitted along with the BOR and the transfer agreement to Xchanging for processing.

The following points should be noted:

1. A transfer of files agreement is simply to document what is being transferred and when. There is no legal relationship or duty between the two brokers, except what may be created by the transfer agreement. Any specific agreement that the broker has with the client within their client service agreement, should be repeated in the transfer agreement, but only insofar as it affects the other broker, and not insofar as it is a matter only between broker and client (see principle 3 below).
2. The transfer agreement, and letter are also available for use where transfer occurs at renewal. Thus the agreement and letter are not specifically and solely for mid-term broker change use.
3. Brokers principally hold the cover files as the agent of the client and these should be released to them (or another agent) upon their request. However, not all the documents brokers keep in these files are client property and they are not entitled to certain broker intellectual properties
4. Conversely, outgoing brokers are not allowed to decide to keep back or retain original records or certain files or information unless they have a legitimate reason

The Insurers' Market Repository (IMR) is now used as the basis for the vast majority of premiums and claims processed with Lloyd's and Insurance companies, however current system restrictions mean that certain transactions must remain out of scope. The IMR Security Model Project has extended the scope of transactions that may be processed via the IMR to include amongst others any transactions where there has been a MTBC.

Objective
The objective of this document is to provide best practice guidance on how mid term broker changes should be managed and to provide brokers with model agreements to facilitate a consistent process.

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Principles

The principles which should be considered for a mid-term broker change are as follows:

1. The broker is the agent of the client and therefore the client owns all the placing and claims correspondence and contractual documents even though they are created by the broker, except for broker proprietary work product.

2. When a client advises that a new BOR exists the outgoing broker is obliged to release (as these are actually owned and paid for by virtue of premium and commission (or fee) payments) the following:

   - Original claims files – but only the claims documentation itself, reports commissioned by insurers, broker to client and 3rd party emails / correspondence etc. Proprietary broker work product such as internal correspondence, internal adjustment sheets, loss data runs etc, can be retained by the outgoing broker.
   - Original risk information – (both quote and firm order) and client to broker correspondence – including that relative to any endorsements for contract change. Proprietary broker work product such as internal correspondence, reports, etc, can be retained by the outgoing broker.
   - Copy cover note / evidence of cover, and any addenda
   - Original contracts, policies, schedules and endorsements where these are being held by the outgoing broker on behalf of the policyholder

3. Notwithstanding principles 1 and 2;

   - Where the parting of the ways is due to non-payment of premium or the client effectively breaches their duty to the broker or the market generally then in respect of Marine policies, the broker may have a lien over the policy.
   - Brokers will often have CSA or other agreements in place with the client that dictates the 'sunset' protocols when the relationship ceases. These protocols would then override these guidelines.

4. Both the Incoming and the Outgoing Broker must sign the transfer agreement, and it must be submitted to Xchanging in line with the procedures in this document by the incoming broker. Any transfer agreement which has not been prepared in accordance with these guidelines will not be adequate to ensure contracts subject to a MTBC are processed via the IMR and will be queried by Xchanging. N.B. In the situation where the Outgoing Broker refuses to sign the transfer agreement and the Incoming Broker has taken all reasonable measures to obtain this signature then the Incoming Broker should forward the transfer agreement to the client for the client to authorise the transfer in accordance with these guidelines. The Incoming Broker will then forward a copy of the agreement to the Outgoing Broker.

5. The transfer agreement must specify the Unique Market Reference (UMR) of any contracts which are transferring to the incoming broker.

6. The transfer agreement must specify what happens to any claims transactions which exist at the time of transfer. These may either remain with the outgoing broker, transfer to the incoming broker, or the outgoing broker may seek to keep certain contentious claims. Increasingly broker service agreements are stating that the broker will not handle claims post termination unless otherwise agreed, however who handles claims is a broker client issue not a broker issue.

7. The transfer agreement must specify what happens to any remaining premium transactions which are outstanding at the time of transfer, such as unpaid, deferred or delinked premiums which have not yet been settled.

8. The transfer agreement should be prepared with a future effective date and should be submitted to Xchanging in advance of this effective date so that any transactions which are in progress may be completed. Xchanging are unable to backdate the effective date of the MTBC. (N.B. the client written instruction simply instructs the outgoing broker to co-operate and furnish information to the new broker, the actual transfer date of files is a practical matter to then be determined between the brokers and is not determined by the client)

9. Once the transfer agreement has been completed the incoming broker will prepare an endorsement to inform subscribing insurers that the BOR has changed.

10. Wherever possible the incoming broker should use the existing UMR unless their computer system is unable to do so, If the incoming broker needs to allocate a new UMR for subsequent processing then the new UMR must also be specified in the endorsement. In such cases the broker will need to provide a copy of the agreed endorsement to any insurers which are not agreement parties to the endorsement so that they are aware of the new UMR and may update their records accordingly.

11. Once a MTBC has been processed by Xchanging a report of any outstanding premium, claims and policy transactions will be sent to both the incoming and the outgoing broker by Xchanging.

Summary of IMR Security Model Changes to support MTBC

The IMR is being enhanced in the following manner:
- An enhanced security model in the IMR to define the access users within the outgoing and incoming broker organisation have to premium, policy and claim documents before and after a MTBC.
- A reporting solution to show participant history on a given contract.
- A User Administration tool to facilitate the administration of a MTBC.
- The outgoing broker will have read access to all content loaded to the UMR and associated UCRs before the MTBC but no access to content loaded to the UMR and associated UCRs after the MTBC.

- The incoming broker will have full access to the UMR and UCR folders for both existing and future content.
- The MTBC will be actioned by Xchanging either through a User Administration function to be implemented in the IMR or through the import of a CSV file where multiple UMRs are impacted.

Transfer Agreement Content

A model transfer agreement is provided in Appendix A of this document. However brokers may use their own model agreements as long as they cover the following areas:

- Full name and address of the incoming and outgoing broker, and the producing broker client(s) where applicable
- Full name and address of the (re)insured
- The contract references and UMRs being transferred
- The documents being transferred
- Clarification of what entitlement the incoming and outgoing broker have to any commission and brokerage that may be payable
- Effective date of the transfer and of responsibilities N.B. Cannot be backdated
- Future entitlement to access
- Any other arrangements which brokers may consider necessary
- An authorised signatory from both the incoming and the outgoing broker or in the case of the outgoing broker refusing to sign then the signature of the incoming broker and the client.

Endorsement content

A model endorsement is provided in Appendix B of this document. However brokers may use their own model endorsement as long as it covers the following:

- Complies with published MRCE procedures
- Specifies which contracts are transferring from the outgoing to the incoming broker
- Specifies if the incoming broker will maintain the same UMR, or if it has changed, what the UMR is.

Letter of authorisation

A model letter of authorisation is provided in Appendix C of this document. The letter of authorisation from the client must specify the identity of the incoming broker and the effective date of the authorisation. The letter should make it clear whether it is all or just certain specified insurance contracts which are transferring to the incoming broker. The client may also specify in the letter any processing arrangements which they would like reflected in the transfer agreement.

Impact on the claims process of a new UMR

In CLASS and ECF a Unique Claim Reference (UCR) may only relate to a single UMR. If a broker has allocated a new UMR for any premium transactions which are processed after the MTBC then all insurers will be aware of this since the endorsement would make this clear. However to remind insurers of this it is recommended that the claims narrative field in CLASS is used to remind the insurers of the existence of a second UMR.

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Xchanging processing

On receipt of the endorsement, transfer agreement and letter of authorisation Xchanging will process the MTBC. In the event that the broker has allocated a new UMR then Xchanging will utilise the existing FDO functionality in POSH and LIDS to allow subsequent premium transactions to be processed under the new UMR.

If the number of contracts being transferred is large then brokers may choose to complete a CSV file which Xchanging will import into their processing systems. Details of the format of this file can be found in [XCHANGING TO PROVIDE LOCATION].

Benefits from new procedure

1. Allows brokers and insurers to process premiums and claims electronically via the IMR after a MTBC.
2. Ensures that all parties to the contract have the correct level of access before and after the MTBC.
3. Provides greater clarity as to role and responsibilities of the outgoing and incoming broker before and after the MTBC than before.

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Appendix A

1.	The specific contract(s) in respect of which this schedule and agreement relates and transfer is taking place: N.B. the purpose of the transfer agreement is to cover matters between the two brokers; it is not a substitute or replacement for a broker/client service agreement.	[Insert UMR No. (s), Period(s), Class of Business, etc.] (the "Contracts")
2.	Insured/Reinsured:	[Insert full name & location]
3.	Incoming Broker:	[Insert full name & location. If acting for another intermediary (i.e. on wholesale business), include reference e.g. "ABC Ltd, acting as agent for XYZ insurance brokers"]
4.	Outgoing Broker:	[Insert full name & location. If acting for another intermediary, include reference as above]
5.	Date of Broker of Record Letter:	[Insert date of the BOR letter to the Incoming Broker]
6.	Account handling responsibilities transferred:	The handling of all placing, claims and ancillary matters outstanding and run-off as at the transfer date or arising thereafter, including the collection and settlement of premiums and claims monies, except as provided for herein shall be the responsibility of the Incoming Broker.
7.	Account handling responsibilities not transferred:	Premiums and claims monies held by or in course of collection or settlement by Outgoing Broker as at the transfer date, which will be properly accounted by Outgoing Broker. [Amend as necessary or state 'None']
8.	Documents transferred:	The placing slips, risk information, bureau signing slips, premium closing documents, policies, claim files and other documents listed in Schedule 1 below or certified true copies of the same. [Amend as necessary]
9.	Commission Entitlement:	The Outgoing Broker shall be entitled to all commission in relation to the above Contracts irrespective of any cancellation or termination or avoidance (except if arising as a result of contract period extension or the inclusion of new risks on or after the transfer date). Accordingly, the Incoming Broker will account to the Outgoing

		Broker promptly for any such commission received by it on or after the transfer date on the Contracts referenced in section 1.
		For example the Outgoing Broker earns commission for the original placement and does not have to rebate a commission element for any subsequent cancellation or cover reduction that occurs after the appointment of the Incoming Broker. Similarly, the Outgoing Broker is not entitled to any additional premiums generated by any increase in cover after the appointment of the Incoming Broker. However, in respect of adjustable policies (i.e. where a deposit premium is taken at inception) all adjustments fall to the Outgoing Broker. The Outgoing Broker is entitled to any additional commission generated and is responsible for returning the commission element when a return premium is generated.
10.	Date(s) of transfer of documents and responsibilities:	[Insert the date that the documents in section 8, and any further documents referenced in Schedule 1, are to be transferred to Incoming Broker]
11	Notice of future disputes	The Incoming Broker agrees (with the clients prior consent) to notify Outgoing Broker of any allegations, claims or actions (or circumstances which may give rise to a clam) which may be made against Outgoing Broker
12	Future access to transferred files	The Incoming Broker agrees to make arrangements for reasonable access (including for making copies thereof) to the files should the Outgoing Broker] need to review them in the future for any reason whatsoever.
13.	Incoming Broker will make the necessary arrangements to have the relevant transfer details endorsed correctly onto all transferred slips as soon as is reasonably practicable following transfer of documents. A copy of said endorsement(s) will be provided to Outgoing Broker promptly upon its request.	

This schedule and agreement is governed by English law, and the parties submit to the exclusive jurisdiction of the English Courts to resolve any disputes arising hereunder.

SIGNED:

_____   Name: _____   Date: _____
Authorised Signatory
For and on behalf of [_____]

_____   Name: _____   Date: _____
Authorised Signatory
For and on behalf of [_____]

[Insert list of documents with reasonable particulars where necessary]

SCHEDULE 1 - Documents to be transferred

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APPENDIX B - CONTRACT ENDORSEMENT

Unique Market Reference: B123412345678

Endorsement Reference: 003

Reinsured: Acme Insurance Ltd

Original Insured: XYZ Ltd

CONTRACT CHANGES

This contract is amended as follows:

It is noted and agreed by Underwriters that, effective [enter date], [Incoming Broker] are appointed as exclusive London insurance broker, as per the attached Broker of Record Letter.

It is further noted and agreed by Underwriters that in consideration of the foregoing the UMR is amended from [Old UMR] to [New UMR].

All other terms and conditions remain unchanged.

Dated: [enter date]

AGREEMENT

GENERAL UNDERWRITERS AGREEMENT (GUA) Each Underwriter's proportion is several not joint		
Slip Leader Only *‹date›* Box 1	Slip Leader And Agreement Parties Box 2	All Underwriters Box3

‹date›	*‹date›*	*‹date›*		
XXX Insurance	*YYY Insurance*	*ZZZ Insurance*		

Note: Where more than one insurer participates in the contract, the contract terms may mean that it is not always necessary to obtain a record of agreement to the Contract Endorsement from all of those insurers.

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Appendix C

To whom it may concern

Broker's letter of authorisation

This letter confirms that as of [INSERT DATE] we have appointed [INSERT INCOMING BROKER NAME] as our exclusive Insurance Broker with respect to our general insurance programme. This appointment of [INSERT INCOMING BROKER NAME] rescinds all previous appointments and the authority contained herein shall remain in full force until cancelled in writing.

[INSERT INCOMING BROKER NAME] is hereby authorised to negotiate directly with any interested insurance companies as respects our insurance needs. This appointment shall not however impose on them the responsibility for collection of unpaid premium, nor for refund of commissions or fees collected by the previously appointed Broker (unless by prior agreement).

Accordingly, this letter constitutes your authority to furnish representatives of [INSERT INCOMING BROKER NAME] with all co-operation and information they may request as it pertains to our insurance contracts, rates, rating schedules, inspection, surveys, reserves, retentions and all other data they may wish to obtain. We request that you do not communicate such information to anyone else.

Yours sincerely

[NAME OF CLIENT]