

FROM: Steve Quiddington, Director, Operations EXTN: 6261

DATE: 13 December 2004 REF: Y3455

SUBJECT: **TRANSFER OF SPECIFIED FUND TO SUCCESSOR VEHICLE'S TOP LEVEL LLOYD'S DEPOSIT.**

SUBJECT AREA(S): **INDIVIDUAL MEMBER CONVERSION AND INTERAVAILABILITY ARRANGEMENTS.**

ATTACHMENTS: Appendix I - Transfer Procedure
Appendix II - Request To Transfer Specified Fund To Top Level Deposit
Appendix III - Transfer Of Specified Fund Documents

ACTION POINTS: **Members' Agents to note**

DEADLINE(S): Refer to Appendix I

The purpose of this bulletin is to advise members' agents on the method and the circumstances in which Lloyd's, as trustee, will consider the transfer of a Specified Fund (interavailable trust fund) to a Nameco's or SLP's top level Lloyd's deposit.

Introduction

With the passing of time more and more former and non-underwriting individual members find themselves in the following position:

- Upon conversion, the individual member made all or part of his Lloyd's deposit available to support the underwriting of the successor vehicle (Nameco or SLP) to which he transferred his underwriting capacity.
- Due to the fact that each year of account of each syndicate on which the individual member was a member has been closed by reinsurance to close, the individual member no longer requires the Specified Fund for the purpose of supporting his previous years' underwriting. If not all years of account of each syndicate have been closed by reinsurance to close, then it may be that the individual member can meet his funding obligations other than through utilisation of the Specified Fund e.g. by purchase of an Exeat policy.
- As a result, the Specified Fund remains in place for the sole purpose of supporting the successor vehicle's underwriting.

A Lloyd's deposit made available to a successor vehicle (the Specified Fund) cannot be repaid to an individual member, even once every year of every syndicate of which the individual member was a member has been closed by reinsurance to close, unless and until substitute security acceptable to Lloyd's has been provided in respect of the open years of the successor vehicle or the successor vehicle's own open and run-off years have themselves been closed by reinsurance to close.

In the case of a successor vehicle set up by the converting individual member, lack of alternative resources has meant that the successor vehicle has been unable to provide substitute security to facilitate the release of the Specified Fund.

Given the growing number of former and non-underwriting individual members who find themselves in this position, Lloyd's has undertaken an in-depth review of the options available to resolve this matter.

Consequently, a transfer procedure has been identified whereby the trustee in whom the Specified Fund assets are vested (Lloyd's) will exercise its discretion and may, if satisfied of certain conditions, transfer the Specified Fund assets to the top level Lloyd's deposit of the successor vehicle.

Appendix I of this bulletin sets out the transfer procedure in greater detail.

Action required

If a former or non-underwriting individual member wishes Lloyd's to consider the transfer of a Specified Fund, then his member's agent should submit a request to the Membership Arrangements Team, MSU using the attached request form (Appendix II) together with all documents duly completed but left undated. The documents will then be reviewed and Lloyd's will consider whether to exercise its powers to transfer the Specified Fund. If Lloyd's decides to make the transfer then the documents will be signed on behalf of Lloyd's to effect the requested transfer.

Readership and contact details

This bulletin is being sent to all underwriting agents and members' agents.

If you have any questions regarding the content of this bulletin please contact Karen Fox on 01634 392368 or Gill Mason on 01634 392385.

Director, Operations

TRANSFER PROCEDURE

Who may request that Lloyd's consider the transfer of a Specified Fund?

A former or non-underwriting individual member who either:-

- i) no longer has any funding obligations on account of his past underwriting as an individual member and is required to maintain cash and/or other assets in a Specified Fund supporting a successor vehicle; or
- ii) has funding obligations on account of his past underwriting as an individual member, but is able to meet such funding obligations without recourse to the Specified Fund and is required to maintain cash and/or other assets in a Specified Fund supporting a successor vehicle.

What type of Specified Fund does the transfer procedure apply to?

The transfer procedure will only be of relevance in relation to Specified Funds made up of cash and/or investments.

Where a Specified Fund made up of a bank guarantee or letter of credit is no longer required to support an individual member's past underwriting but is required to support the successor vehicle's continued or former underwriting, then a simultaneous release of the letter of credit or bank guarantee and substitution into the successor vehicle's own funds at Lloyd's of a new bank guarantee or letter of credit, can be facilitated. This procedure is outside the scope of this bulletin and interested parties should contact MSU for further details.

Does the whole of the Specified Fund have to be transferred?

It is expected that requests for consideration by Lloyd's of the transfer of the whole of the Specified Fund will be presented. However, requests for consideration by Lloyd's of the transfer of a Specified Fund in part will also be considered.

Taxation on transfer of funds at Lloyd's assets to Nameco

The withdrawal of assets from an individual member's Specified Fund does not, of itself, give rise to a UK capital gains tax (CGT) charge as the assets are not disposed of by the individual. However, the transfer of chargeable assets from the Specified Fund into a Nameco's own Lloyd's deposit is a disposal of those assets and so may give rise to a chargeable gain or allowable loss, subject to any CGT reliefs that are available. This applies only where assets are transferred into the Nameco's own Lloyd's deposit, and not to assets that are transferred into a third party deposit.

Legislation that was brought in for converting Lloyd's members by section 144 and Schedule 25 of Finance Act 2004 provides a CGT rollover relief on the transfer of assets from an individual's Funds at Lloyd's to a Nameco, provided certain conditions are met. This relief is elective, and an individual who claims it will not suffer any immediate CGT charge on the transfer of assets to the Nameco, as the chargeable gain is instead "rolled over" into the CGT acquisition cost of the shares that are issued in exchange. Details were given in Market Bulletin dated 14 April 2004 titled "Finance Bill 2004: Tax Relief for Converting Lloyd's Names (Reference TAX/DHC/Y3292)".

In this regard, the Inland Revenue has confirmed that in the case of a transfer to a Nameco's own top level Lloyd's deposit, the transfer procedure outlined in this Bulletin will meet the requirement in the tax legislation that the "assets forming some or all of the member's ancillary trust fund are (i) withdrawn from the fund and (ii) without unreasonable delay, disposed of by him to the successor company". This means that, provided all the other requirements for the tax relief are met, the individual will be able to claim that relief. It should also be noted that only the first transfer of funds at Lloyd's assets into a Nameco is capable of qualifying for tax relief, and that no relief can be claimed in respect of a second or subsequent transfer.

Individuals who are interested in the tax relief are recommended to take their own tax advice on the availability of the CGT relief in their own particular circumstances, and whether to claim it or not. Individuals who are not resident in the United Kingdom are recommended also to take advice on the tax position in their country of residence.

Prescribed documents

Appendix III of this bulletin is a schedule of Lloyd's prescribed documents which will need to be completed and signed by any of the individual member, the successor vehicle and Lloyd's as the document or circumstances dictate.

There are a number of variables which will dictate which documents and which versions of such documents need to be used. The variables are the type of successor vehicle and whether the Specified Fund is to be transferred to the successor vehicle's own Lloyd's deposit trust deed or to a Lloyd's third party deposit trust deed (where the assets formerly comprised in the Specified Fund become available to the successor vehicle in the form of a Name's third party Lloyd's deposit) or both. The final variable is whether or not the trust deeds support general or life business.

In all cases the following documents will be required:

- Deed of Advancement. The purpose of this deed is to document the exercise by Lloyd's, as trustee, of its discretionary power to transfer the cash and/or other assets making up the Specified Fund to the successor vehicle's Lloyd's deposit (whether on a direct or third party basis).
- A new Lloyd's deposit trust deed. The reason for requiring a new Lloyd's deposit trust deed rather than to simply transfer the Specified Fund to an existing Lloyd's deposit trust deed supporting the successor vehicle, is that under trust law, a different perpetuity period (Termination Date) will need to apply in relation to the transferred assets than would apply in the case of any other trust assets making up the successor vehicle's other Lloyd's deposits. Therefore in order to maintain transparency and ease future administration, it has been decided to ensure that the Specified Fund assets will be held under a separate Lloyd's deposit trust deed, and the Deed of Advancement provides that a shorter perpetuity period applies in relation to it.

The following additional documents will be required where the successor vehicle is a Nameco if the Specified Fund assets are to be transferred to the Nameco's own Lloyd's deposit:

- Name's confirmation of financial position.
- Nameco's confirmation of financial position.

These are needed in order for Lloyd's to be satisfied that the individual member and the successor vehicle are at present solvent, a fact which is pertinent to Lloyd's considerations as trustee whether to exercise its powers to transfer the cash and/or other assets making up the Specified Fund.

- Tripartite Agreement. This is an agreement between the individual member, the Nameco and Lloyd's whereby the Nameco agrees to issue shares in consideration of the transfer of the assets comprising the Specified Fund. This is required in order to help satisfy Lloyd's that the exercise of its discretionary powers as trustee to transfer the cash and/or other assets comprising the Specified Fund is for the benefit of the individual member (which is a prerequisite to the exercise of such powers).

In respect of all cases, it should be noted that by signing the Deed of Advancement, the individual member confirms that, should Lloyd's as trustee exercise its discretionary power to transfer the Specified Fund, then in the individual member's view such an exercise would be for his benefit.

Timescales

It should be noted that Lloyd's will consider any requests to consider the transfer of Specified Fund assets at any time where the individual member has no open syndicates or has purchased an Exeat policy to cover any open years. Where a member has remaining liabilities in respect of his unlimited liability underwriting, requests to consider the transfer of Specified Fund assets cannot be considered after the 31 December until the solvency test has been concluded.

APPLICATION FOR THE TRANSFER OF THE SPECIFIED FUND TO TOP LEVEL DEPOSIT

Individual Member Name : Individual Member Code.....

Corporate Member Name : Corporate Member Code.....

NON-LIFE TRANSFER LIFE TRANSFER
 BOTH

Amount of Specified Fund to be Transferred

	Non-life ✓	Life ✓
a) ALL	<input type="checkbox"/>	<input type="checkbox"/>
b) PART*	<input type="checkbox"/>	<input type="checkbox"/>
c) AMOUNT £	<input type="checkbox"/>	£ <input type="checkbox"/>

*If only part of either specified fund is being transferred, please complete the asset form overleaf.

Please indicate whether the assets transferred to the Top Level FAL should be held as 'Corporate' FAL, Third Party FAL or Both

	Non-life ✓	Third Party Life ✓
Assets to be held in the Top Level deposit as 'Corporate' FAL	<input type="checkbox"/>	<input type="checkbox"/>
Assets to be held in the Top Level deposit as Third Party FAL	<input type="checkbox"/>	<input type="checkbox"/>
Assets to be held as Part Corporate FAL and Part Third Party FAL*	<input type="checkbox"/>	<input type="checkbox"/>

*please complete the asset form overleaf detailing which assets should be Corporate FAL and which assets should be Third Party FAL for each fund involved

Documents Provided;

Please tick the relevant boxes below to confirm which documents are being submitted with this request;

Deed of Advancement	<input checked="" type="checkbox"/>	<i>Mandatory</i>
Name's Confirmation of Financial Position	<input type="checkbox"/>	<i>Mandatory</i>
Tripartite Agreement	<input type="checkbox"/>	<i>Only required if Tax Relief being sought & transfer being made to the Nameco DTD</i>
Corporate Member's Confirmation of Financial Position	<input type="checkbox"/>	<i>Only required if Tax Relief being sought & transfer being made to the Nameco DTD</i>

TRUST DEEDS

DTD - CM 121	<input checked="" type="checkbox"/>	DTD LIFE - CM 122	<input checked="" type="checkbox"/>
DTD - Third Party Deposit - CM125	<input type="checkbox"/>	DTD - Third Party Deposit LIFE - CM 126	<input type="checkbox"/>
DTD - Third Party Deposit SLP CM125 (SLP)	<input type="checkbox"/>	DTD - Third Party Deposit LIFE SLP CM126 (SLP)	<input type="checkbox"/>

APPENDIX III

TRANSFER OF SPECIFIED FUND DOCUMENTS

	Recipient Corporate Member	Third Party Deposit	General Business/ Life Business	Required Documents	Executing Parties
1	Nameco	No	General Business	Deed of Advancement Tripartite Agreement Lloyd's Deposit Trust Deed (DTD(CM)G93) Form 395 Name's Confirmation of Financial Position Corporate Member's Confirmation of Financial Position or Corporate Member's Confirmation of Financial Position (incl. fair consideration confirmation)	Name and Lloyd's Lloyd's, Nameco, Name Nameco and Lloyd's MSU to sign and lodge at Companies House Name and member's agent Directors of the Nameco and Corporate Member's Auditor
2	Nameco	No	Life Business	Deed of Advancement Tripartite Agreement Lloyd's Deposit Trust Deed (DTD(CM)L93)	Name and Lloyd's Lloyd's, Nameco, Name Nameco and Lloyd's

2	Nameco	No	Life Business Cont/d	<p>Form 395</p> <p>Name's Confirmation of Financial Position</p> <p>Corporate Member's Confirmation of Financial Position or Corporate Member's Confirmation of Financial Position (incl. fair consideration confirmation)</p>	<p>MSU to sign and lodge at Companies House</p> <p>Name and member's agent</p> <p>Directors of the Nameco and Corporate Member's Auditor</p>
3	Nameco	Yes	General Business	<p>Deed of Advancement</p> <p>Lloyd's Deposit Trust Deed (Third Party Deposit) (DTD(CM)(TP)G93)</p> <p>Form 395</p>	<p>Name and Lloyd's</p> <p>Name, Nameco and Lloyd's</p> <p>MSU to sign and lodge at Companies House</p>
4	Nameco	Yes	Life Business	<p>Deed of Advancement</p> <p>Lloyd's Deposit Trust Deed (Third Party Deposit) (Long Term Business - Life) (DTD(CM)(TP)L93)</p> <p>Form 395</p>	<p>Name and Lloyd's</p> <p>Name, Nameco and Lloyd's</p> <p>MSU to sign and lodge at Companies House</p>

5	SLP	Yes	General Business	Deed of Advancement Lloyd's Third Party Deposit Trust Deed (DTD(CM)(SLP)(TPI)G97)	Name and Lloyd's SLP, Name and Lloyd's
6	SLP	Yes	Life Business	Deed of Advancement Lloyd's Third Party Deposit Trust Deed (DTD(CM)(SLP)(TPI)L96)	Name and Lloyd's SLP, Name and Lloyd's

November 2004
Lloyd's
Legal Services Department (SMS)