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SUBJECT: AUSTRALIA: FINANCIAL SERVICES REFORM ACT 2001
SUBJECT AREA(S): Changes in Lloyd's trading rights in Australia
ATTACHMENTS: Appendix 1: Lloyd's Licensing position
ACTION POINTS: **Immediate Action**
DEADLINE: **Immediate**

With effect from 11 March 2002, the Financial Services Reform Act 2001 (FSRA) became effective in Australia. Market Bulletin Y2795 provided details of the obligations ('Day One' obligations) which were brought into law. In brief, these 'Day One' obligations related to requirements and standards for: receipt of monies from the insured; prohibitions on solicitation; consumer information requirements; "cooling-off periods" and new products.

Other aspects of the FSR, including the new licensing regime for Lloyd's, will come into force at the expiry of a two-year transitional period, in March 2004 and this Market Bulletin provides further information on this.

Lloyd's has been in discussions with the Australian Treasury and Australian regulators, and this dialogue has clarified the impact on Lloyd's trading rights in Australia of the new licensing regime. The revised procedures for writing Australian business are set out at Appendix 1. In brief, these changes affect retail business only and require underwriters to accept business only via intermediaries properly licensed under the FSRA.

The Australian Securities & Investments Commission (ASIC) have issued further updates on the FSRA and has released a Policy Proposal Paper on cross border business for public comment. These can be viewed on the ASIC web site at www.asic.gov.au in the 'FSR' section.

In addition, the Australian Treasury has issued further Draft Regulations for public comment. The full Draft Regulations and Commentary can be found on the Australian Treasury web site – www.treasury.gov.au/documents/488/PDF/regs.pdf Underwriters should ensure that their coverholders are complying with the detailed requirements.

Please note this Bulletin and its attachment are summaries only and do not cover all of the requirements of the FSRA (which is complex). Managing Agents, syndicates and underwriters are encouraged to consider taking professional advice on the specific application of this legislation to their respective business(es).

Further information on the FSRA can be obtained by viewing the Australian Treasury and ASIC websites, detailed above. However, if you have any general queries with regard to this bulletin, please contact any of the following:

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This bulletin has been sent to compliance officers, active underwriters, Lloyd's brokers and managing agents.

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LLOYD'S LICENSING POSITION

WHO WILL REQUIRE A LICENCE?

From 11 March 2004, Lloyd's underwriters need to ensure that business procedures for their retail and wholesale client business are amended to fall within the relevant licensing exemptions.

➤ **Wholesale client business**

Lloyd's underwriters do not need a licence to conduct business directly or through a coverholder or insurance broker, with "wholesale clients".

➤ **Retail client business**

The position is different for "retail client" type business (see Market Bulletin Y2795 for the definition of a retail client).

Lloyd's underwriters can only trade with retail clients through a licensed coverholder, licensed insurance broker or other licensed entity in Australia. By following these rules the Lloyd's underwriter is exempt from the requirement to obtain a licence.

Where Lloyd's underwriters conduct retail client business in Australia, they should confirm that there will be a licensee involved in the arrangement of the insurance between them and the client, be it their coverholder or an insurance broker. It doesn't matter if the broker is acting on behalf of the client and not the underwriter as long as the broker is a licensee.

Lloyd's underwriters who are currently selling insurance to *retail clients* directly (i.e. with no locally licensed intermediary (such as a licensed insurance broker or licensed coverholder) will have to restructure their distribution chain to ensure a licensee is placed between them and the client to ensure the exemption will apply. Internet sales operations and in some cases master policy type arrangements need to be aware of this matter and restructure their agreements accordingly.

➤ **Lloyd's Coverholders**

The new legislation appears to permit a licensing exemption to representatives when acting on behalf of exempt entities. This could, depending on interpretation, exempt coverholders who only deal with Lloyd's. Whilst ASIC is still finalising its view on this important issue, initial indications are that they expect all insurance agents who arrange and/or advise in relation to insurance on behalf of an insurer in Australia, to obtain a licence.

For the time being it would therefore be prudent to assume that all coverholders will need to be licensed. Coverholders will need to seek their own advice about whether they need to obtain a licence, the type of licence and when.

If ASIC subsequently determines that certain coverholders will be exempt from the licensing requirement when acting for an exempt entity such as Lloyd's, that interpretation will be made known both to the market and to Australian coverholders alike.

In summary

- Lloyd's underwriters who transact business through a coverholder that deals directly with retail clients must ensure that the coverholder obtains a licence before 11 March 2004. If not, the Lloyd's underwriter would not fall under the relevant licensing exemption.
- All coverholders dealing:
 - through licensed insurance brokers - with retail clients: or
 - either directly or through brokers - with wholesale clients;

must be licensed or establish that they are exempt (if ASIC allows them to have the benefit of the exemption that applies where a person acts on behalf of an exempt entity, as described above).

WHAT FSRA REQUIREMENTS APPLY TO LLOYD'S UNDERWRITERS?

Although a licence isn't needed, certain requirements of the FSRA still apply to Lloyd's underwriters.

The current position can be summarised as follows:

➤ **Wholesale client business**

Whilst Lloyd's underwriters are exempt from the licensing requirements, the following requirements still apply when Lloyd's underwriters conduct wholesale client business:

- Trust account requirement for money received before the policy is issued (see Appendix 2 of Market Bulletin Y2795 for further details).
- The general prohibitions relating to false or misleading statements and dishonest conduct (s 1041E-H).
- The Insurance Contracts Act 1984 (Cth) continues to apply despite the FSRA.
- The Insurance (Agents & Brokers) Act 1984 (Cth) (IABA) still applies to Lloyd's in its dealings with registered insurance brokers, coverholders and other agents, until these distributors obtain their licence (no later than 11 March 2004). After that the IABA no longer applies.

➤ **Retail client business**

For retail client business where a Lloyd's underwriter is exempt from licensing because it is issuing through a licensee, a number of obligations can still apply.

- The Part 7.9 Product Disclosure Statement Requirements (see Appendix 2 of Market Bulletin Y2795) will usually only apply from 11 March 2004 unless:
 - ◆ The relevant syndicate chooses to opt in earlier; or
 - ◆ It has not issued a product that provides the same kind of cover, or cover in relation to the same kind of asset, before 11 March 2002.
 - ◆ New requirements apply immediately to:
 - ◆ New syndicates
 - ◆ Syndicates offering a product of a class not previously issued by them

Managing Agents need to determine if any of their syndicates supporting coverholder business fall within these categories. In certain cases ASIC may be prepared to provide exemptions during the transition period, on application, given the unique nature of Lloyd's arrangements. If you have any queries please contact the Lloyd's Australia office.

Up until 11 March 2004 when the Part 7.9 requirements will apply in full, only the 'Day One' obligations apply and a Lloyd's Underwriter will need to ensure these are currently being met.

- Any licensee (coverholder, insurance broker or other agent) that the Lloyd's underwriter is relying on to arrange its retail client product needs to fall into one of the following:
 - ◆ If they are subject to the transition period, the IABA continues to apply as well as the FSRA 'Day One' obligations until they get a licence, at which time the FSRA licensee requirements apply;
 - ◆ If they are not subject to the transition period, they will be subject to the obligations of a FRSA licensee. All of the FSRA licensing and retail client obligations under Part 7.6, 7.7 and 7.8 apply to that licensee.

Lloyd's underwriters and their representatives need to determine what changes are required to existing practices and documentation to ensure they meet the above obligations.