

**FROM:** Head of Capacity Markets  
**LOCATION:** 86/G3  
**EXTENSION:** 5897  
**DATE:** 8 March 2004  
**REFERENCE:** Y3261  
**SUBJECT:** **PROPOSED AMENDMENTS TO CAPACITY  
TRANSFER RULES**  
**SUBJECT AREA(S):** Capacity auctions, offers and minority buy-outs  
**ATTACHMENTS:** None  
**ACTION POINTS:** **For consultation**  
**DEADLINE:** **16 April 2004**

## **1 Summary**

1.1 The purpose of this bulletin is to obtain views from the market and membership on proposed amendments to the rules relating to transfers of capacity. Market participants and other interested parties are invited to give comments on the proposals by 16 April 2004. Resulting rule changes are expected to be approved and published in May 2004.

## **2 Background**

2.1 In general, the approach adopted in 2004 has been, as in previous years, to make as few changes as necessary to the rules governing capacity transfer on the basis that the arrangements now in place since 1999 are both effective and well understood by market participants. However, two recommendations for change are now made based on a review conducted over recent months of the rules governing the various methods of capacity transfer.

2.2 This bulletin does not deal with minor administrative and technical changes to the rules governing capacity transfer or conversion.

### **3 Capacity offers**

- 3.1 Rule 35 of the City Code on Takeovers and Mergers (the Code) deals with restrictions following offers and possible offers. Rules 35.1 and 35.2 generally require a delay of 12 months before an offeror can make a further offer. Lloyd's Capacity Offer Rules (in particular paragraph 1(7), dealing with equality of treatment) contain a similar provision whereby an offeror can only make one offer on a syndicate in any one year of account.
- 3.2 Lloyd's offer rules, however, currently have no equivalent to Rule 35.3 of the Code. This effectively prevents an offeror and associates who have voting control of a company following an offer from acquiring further shares in the target company for six months after the offer has closed on better terms than those available under the preceding offer. In addition, special deals with individual shareholders or groups of shareholders with favourable conditions may not normally be entered into in the same six month period. The Takeover Panel may consent to a waiver of Rule 35.3 if requested but it is understood that such consent is only normally given where the offeror agrees to compensate those who have accepted the earlier, lower offer. The underlying principle is equality of treatment.
- 3.3 Lloyd's rules do already contain certain protections for minorities in this respect. The Major Syndicate Transactions Byelaw contains (at Schedule 5) statements of principle which apply to all transactions effecting any change of participation in syndicates. One of these is the principle (similar to one contained in the Takeover Code) that "all members of the same syndicate for the same year of account must be treated similarly". The Capacity Offer Rules also contain a specific requirement for offers to be made to all members in identical terms. While an offer is open for acceptance, any purchase of capacity at a better price than the offer price will require the higher price to be made available to all offerees, including any who have already accepted the offer.
- 3.4 However, given the importance of the principle of equality of treatment, it is now proposed to introduce a new rule, based on Rule 35.3, for the 2004 capacity transfer season. This rule will preclude offerors, absent Lloyd's prior consent, from acquiring capacity once an offer has closed at a price in excess of the offer price during the same year of account. It is intended that Lloyd's consent to a departure from this constraint will normally only be forthcoming where the higher price is to be paid to those who have already accepted the relevant offer.

### **4 Minority buy-outs**

- 4.1 A change is also proposed to the procedures for conducting capacity offers and buy-outs which will require agents wishing to effect minority buy-outs to ensure that in future their applications are submitted in a timely way and can be determined by the Capacity Transfer Panel in advance of the auctions (or, at very least, in advance of the final auction in the main auction season). If this proposal is implemented, potential offerors will need to make due allowance in their offer timetables for the preparation

and approval of the offer document, for the minimum period during which the offer must be open for acceptance and for the period of notice (usually 21 days) required to be given to syndicate members of any actual buy-out application submitted to Lloyd's after the offer has closed.

- 4.2 This change is intended to address the concerns of members and their representatives that members subject to a minority buy-out should at least have an opportunity to acquire replacement capacity in the auctions.

## **5 Conclusion**

- 5.1 Any queries on the proposals set out in this bulletin should be addressed to Jonathan Rees (extension 6225, e-mail [jonathan.rees@lloyds.com](mailto:jonathan.rees@lloyds.com)) or Richard Miller (extension 5897, e-mail [richard.a.miller@lloyds.com](mailto:richard.a.miller@lloyds.com)) in Capacity Markets. Comments on the recommendations in the bulletin should be submitted in writing by 16 April 2004 and should be addressed to Richard Miller, Capacity Markets, Lloyd's, One Lime Street, London, EC3M 7HA (fax 020 7327 5510).
- 5.2 This bulletin is being sent to all underwriting agents, corporate members, members' agents, recognised accountants and market associations, including the ALM.

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