

FROM: Head of Admissions
LOCATION: 86/G5
EXTENSION: 5743
DATE: 23 March 2004
REFERENCE: Y3271
SUBJECT: **AGENCY AGREEMENT TERMINATIONS**
SUBJECT AREA(S): Procedures for making applications to increase fees and/or profit commission, merge syndicates or undertake a minority buy-out for the 2005 year of account.
ATTACHMENTS: No
ACTION POINTS: **Underwriting agents to note**
DEADLINE: **30 April 2004 for applications**

This bulletin sets out the procedures to be followed by underwriting agents when making an application to:

- increase its fees and/or profit commission (see Appendix 1); or
- effect a syndicate merger (See Appendix 2); or
- effect a minority buy-out (see Appendix 3).

All of these applications require managing agents to apply to the Admissions Department by no later than 30 April 2004 for conditional consent to terminate the agency agreements.

Core information

All the above applications must include the following core information:

- rationale behind the proposed transaction giving rise to the agency agreement termination;
- details of the syndicate(s) concerned and the members' syndicate premium limits;
- details of the underwriting members to whom the notice is proposed to be given;
- the name of members' agent(s) through whom notice is to be given; and
- details of discussions held with capital providers.

This Bulletin replaces the Agency Agreement terminations bulletin dated 23 March 2003, reference number Y3040.

Aligned Syndicates

Where a managing agent of an aligned syndicate wishes to obtain conditional consent to terminate agency agreements under the Advanced Consent Regime (bulletin dated 14 August 2003, reference number Y3116), it should write to Lloyd's with brief details of the proposals, including written evidence that the proposals have been agreed by the board of the corporate members participating on the relevant syndicate. Lloyd's will then acknowledge and comment if necessary.

Queries

Any queries relating to this bulletin relating to fee and profit commission increases or mergers should be referred to the Admissions Department:-

- Reshma Handa on 0207-327-5625 or reshma.handa@lloyds.com
- Nigel Williamson on 0207-327-6415
nigel.williamson@lloyds.com

Any queries relating to minority buy-outs should be referred to Capacity Markets either

- Jonathan Rees on 0207-327- 6225
jonathan.rees@lloyds.com
- Richard Miller on 0207-327-5897)
richard.miller@lloyds.com

This bulletin has been sent to all underwriting agents, approved run-off companies, Lloyd's brokers, Lloyd's market associations and recognised accountants.

Matthew Chandler
Head of Admissions
Risk Management

Fee and profit commission increases

1. Managing Agents

Managing agents should make applications in accordance with paragraph 11B of the Agency Agreements Byelaw (No. 8 of 1988) (the “Byelaw”). In the interest of transparency the terms of reference that will be used to determine applications for the 2005 year of account are set out at Schedule 1 to this Appendix. The detailed requirements for applications are set out at Schedule 2 to this Appendix.

Managing agents should provide members’ agents and direct corporate participants with a copy of their application and give them 21 days from the point of despatch to make representations to the Admissions Department. Where further information is required to be submitted to the Admissions Department, this must also be sent to the members’ agents and direct corporate participants, and should allow them a further 7 days from the point of despatch to consider the information and to make further representations.

It is in the best of interests of managing agents, members and Lloyd’s if agreement in respect of terminations of managing agency agreements can be reached. Managing agents should therefore hold discussions with members regarding their fee proposals before submitting their application to the Admissions Department. It is incumbent upon managing agents and members to use their best endeavours to ensure that this process has been followed as part of their application.

2. Members’ Agents

Members’ agents should make applications in accordance with paragraph 11A of the Byelaw. Applications should include details of the fees and/or profit commission currently charged by the members’ agent and the amount by which it is proposed to increase them. Members’ agents should also include in their application the items of information listed in Schedule 2 to this Appendix which are asterisked.

Members’ agents should provide members and direct corporate participants with a copy of their application and give them 21 days from the point of despatch to make representations to the Admissions Department. Where further information is required to be submitted to the Admissions Department, this must also be sent to the members and direct corporate participants and should allow them a further 7 days from the point of despatch to consider the information and to make further representations.

It is also advised that members’ agents consult with their members prior to submitting any application to terminate the members’ agency agreement.

Schedule 1 – Terms of Reference

Terms of reference for the consideration of applications made by managing agents under paragraph 11B of the Byelaw for permission to give notice to terminate standard managing agent’s agreements in respect of proposed increases in fees and/or profit commission.

1. In determining whether an application for consent to terminate the standard managing agent’s agreement in respect of a proposed increase in fee and/or profit commission should be granted, the Franchise Board must be satisfied that the increase is reasonable in that it will not materially adversely affect the rights of members who participate on the syndicate in question (or the value of those rights) or, if it does, that such effect is objectively and reasonably justified.
2. The burden of satisfying the Franchise Board of the above matters falls on the managing agent.
3. Every application will be determined on its merits in a consistent manner having regard to all relevant matters including:
 - a) the rights of the members to participate on the syndicate in question;
 - b) the fees previously charged by the managing agent; and
 - c) the information submitted by the managing agent in support of the application.
4. Each application must be approved by the managing agent’s board of directors and must include supporting information in accordance with the “Requirements in Respect of Applications for Permission to Give Notice to Terminate Standard Managing Agents Agreements Relating to Fee and/or Profit Commission Increases” attached at Schedule 2 to this Appendix.

Schedule 2 - Requirements in respect of applications for Permission to Give Notice to Terminate Standard Managing Agents Agreements Relating to Fee and/or Profit Commission Increases

The application shall include the following additional information:

- *Details of the proposed increase in fees (expressed as a monetary amount and as a percentage increase).
- *Identification of the impact of the proposal on members stating their current position and their position following the proposal in monetary and percentage terms.
- The reason why the increase in expenditure should not be treated as a syndicate expense.
- * Certified copy extracts of all board minutes which refer to the proposed increase in the fee or which record discussion of it.
- * A statement of the commercial or business case for the proposed fee increase, including and cross referring where necessary to supporting budgets and estimates, in respect of any proposed increased expenditure. The information shall be presented in such a way as to clearly show to which managed syndicates and to which years of account any proposed increase in expenditure will relate, and shall include an explanation of the benefit that will accrue from the proposed increase in expenditure in respect of each managed syndicate.
- *Details of the annual fee and/or profit commission (expressed both as a percentage and as a monetary amount) charged or to be charged by the agent for all managed syndicates for the current year of account and for each of the three preceding years of account (estimated figures may be provided where actual figures are not yet available).
- Details of the expenditure incurred or to be incurred and not recharged to the syndicate by the managing agent for all managed syndicates for the current year of account and for each of the three preceding years of account, together with details of the period over which any material or exceptional items of expenditure are to be amortised (estimated figures may be provided where actual figures are not yet available).
- Details of the budget for the managing agency and for each of the syndicates managed by the managing agent for the current year of account and the estimated budgets for future years of account, up to and including the first year of account in which it is considered by the managing agent that members of the relevant syndicate will begin to derive benefit from the proposed expenditure. This information must also include a statement of the period over which any material and/or exceptional items are to be amortised.

* Requirements also relevant to members' agent increase in fee application.

Appendix 1

- Details of any changes in the syndicate allocated capacity of the relevant syndicate for the current year of account, for each of the three preceding years of account and any proposed changes.
- A copy of the agent's policy for the allocation of syndicate expenses which should include an explanation of the basis on which expenses arising from profit related remuneration payable to directors and consultants are allocated. This should highlight any changes made to the policy over the last three years and any proposed changes to be made to the policy.
- Particulars of any proposed acquisition or disposal by the agent - or any connected company or any connected person - of rights to participate in the relevant syndicate (whether through the auction or under any other scheme or arrangement as may be permitted from time to time by Lloyd's for that purpose).
- Particulars of any proposed transactions by the agent or any connected company or connected person for the purpose of effecting any change in participation in syndicates not included in the above paragraph, including but not limited to any transaction falling within the scope of the Major Syndicate Transactions Byelaw (No 18 of 1997).
- *Any additional information that the agent considers relevant to the application

Merger applications

Managing agents should make applications in accordance with paragraph 11B of the Byelaw. Lloyd's consent to an application to terminate the managing agent's agreement as a result of a syndicate merger will be conditional upon completion of the syndicate merger. Detailed requirements for the provision of additional information in respect of applications relating to syndicate mergers is attached at schedule 1 of this Appendix.

Managing agents should provide members' agents and direct corporate participants with a copy of their application and give them 21 days from the point of despatch to make representations to the Admissions Department. Where further information is required to be submitted to the Admissions Department, this must also be sent to the members' agents and direct corporate participants and agents should allow them a further 7 days from the point of despatch to consider the information and to make further representations.

Provided that Lloyd's has granted conditional permission to terminate, managing agents shall, no later than 31 May 2004, send to the Admissions Department, members' agents and direct corporate participants the additional detailed information set out in the attached schedule. Members' agents must pass the information and documents received from the managing agent to their members within 7 days of receipt and advise them that they may attend a syndicate meeting convened for the purpose of discussing and voting on the proposed merger. Votes may be cast by proxy or post.

Schedule 1 - Detailed requirements for the provision of additional information in respect of applications relating to syndicate mergers

The managing agent should supply the following additional information, together with any other information necessary to enable members to make a properly informed assessment of the proposed merger and its effect on the members concerned:

- An explanation of the basis on which, and the amounts in which, rights to participate in the successor syndicate for the next following year of account are to be allocated among the members of the ceasing syndicate and the members of the successor syndicate for the current year of account and any other persons.
- Particulars of plans for participation in the successor syndicate, by members who are associates of the managing agent of the successor syndicate.
- Confirmation by the managing agent of the successor syndicate that it intends to effect a reinsurance to close of the ceasing syndicate by the successor syndicate.
- A copy of the syndicate annual report required to be prepared in the current year for each syndicate concerned in respect of 2003.
- A copy of the proposed business plan for the successor syndicate for the 2005 year of account including details of the economies of scale anticipated by the merger with specific regard to the reinsurance programme and investment income (or a summary thereof, specifying the person from whom copies of the proposed business plan can be obtained free of charge).
- The identity of the active underwriter of the merged syndicate, particulars of his or her experience, demonstrating his or her competence to manage the merged syndicates and particulars of his contract of employment.
- Organisation charts for the merged syndicates.
- The manner in which the operations of the separate syndicates will be combined following the merger, identifying changes in resources, procedures, management and its reporting and allocations of responsibilities.
- Details of how the independent and peer review process will operate in the merged syndicate.
- Details of the IT systems used by each of the merging syndicates and how these systems will operate post merger, or how the information will be migrated onto a single IT system post the merger, including timeframes.
- Composition of the combined syndicate following the merger in terms of aligned/unaligned capacity and any intentions to make a minority buy-out.
- Particulars of the managing agent's plan in the event that the merger proposal is unsuccessful.
- A declaration from the directors of the managing agent as to the accuracy of information provided in the form prescribed in Schedule 1, paragraph 2(8) of the Major Syndicate Transactions Byelaw.

- Any additional information that the agent considers to be relevant to the application.
- Changes to individual registrations as a result of the merger and revised terms of reference if required for key personnel.
- Applications for multiple syndicates permissions for underwriters

Minority Buyouts

Any underwriting agent that wishes to effect a minority buy-out for the 2005 year of account must apply to Lloyd's Admissions Department by 30 April 2004 for conditional consent to give conditional notice of termination under the managing agents' agreement in order to effect a minority buy-out.

Managing agents should make applications in accordance with paragraph 11B of the Byelaw and Schedule 2, paragraph 2 of the Major Syndicate Transactions Byelaw (No. 18 of 1997). Permission to terminate the managing agent's agreement will be conditional upon completion of the minority buy-out. The application should include details of the proposed surrender arrangement or share swap arrangements.

Managing agents should provide members' agents and direct corporate participants with a copy of their application and give them 21 days from the point of despatch to make representations to the Admissions Department. Where further information is required to be submitted to the Admissions Department, this must also be sent to the members' agents and direct corporate participants and agents should allow them a further 7 days from the point of despatch to consider the information and to make further representations.

Requests for minority buy-outs are considered by the Capacity Transfer Panel. Guidance on minority buy-outs is set out in Regulatory Bulletin 041/2000 "Guidance on Minority Buy-outs" issued on 18 April 2000. If you have further queries on minority buy-outs, please contact either Jonathan Rees (jonathan.rees@lloyds.com on 0207-327- 6225) or Richard Miller (richard.miller@lloyds.com on 0207-327-5897) in Capacity Markets.