

**FROM:** Matthew Chandler, Head of Admissions **EXTN:** 5743  
**DATE:** 1 December 2004 **REF:** Y3439  
**SUBJECT:** **Agency Circumstances Procedure**  
**SUBJECT AREA(S):**  
**ATTACHMENTS:** Guidance Note on the application of circumstances prescribed by the Council under paragraph 3(4) of the Agency Agreements Byelaw and a Timetable and Action Plan for the implementation of transactions that fall within the circumstances  
**ACTION POINTS:** **For information**  
**DEADLINE(S):** **None**

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On 18 November 1999, following consultation with the market, Lloyd's issued Regulatory Bulletin 090/99 which set out the circumstances in which the managing agent's agreement may be modified. This provided a practical mechanism for the resolution of conflicts of interest and ensures that members' interests in an ongoing business of a syndicate are protected while still allowing a managing agent to proceed with business opportunities as they arise. Information on the application of the circumstances was set out in a guidance note that was issued with the bulletin.

Following recent discussions with members' agents, managing agents and the LMA, Lloyd's has decided to issue a revised Guidance Note (Appendix 1) which includes a Timetable and Action Plan (Annex A and B to the Guidance Note). The revised guidance and timetable have been drawn together based on the experience of managing agents, members' agents and Lloyd's in operating the agency circumstances regime. The Timetable and Action Plan sets out the various steps that need to be taken by managing agents, members' agents and Lloyd's at the various stages of the agency circumstances procedure. The purpose of this Timetable and Action Plan is to improve the agency circumstances process so that proposed transactions that fall within the agency circumstances regime operate smoothly and efficiently to a clear and structured timetable. Lloyd's considers that the timetable represents good practice which should ordinarily be followed unless the relevant parties agree that an alternative procedure should be followed instead.

If you have any questions about with regard to the timetable or guidance note, please contact Matthew Chandler on 0207 327 5743.

This bulletin has been sent to all underwriting agents and market associations.

Matthew Chandler  
 Head of Admissions  
 Risk Management

## Guidance Note - Circumstances Specified By the Council under Paragraph 3(4) of the Agency Agreements Byelaw (No.8 of 1999)

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Application of this note	<p>Managing agents and members should have regard to the guidance set out below when acting in accordance with the circumstances and the conditions specified by the Council under paragraph 3(4) of the Agency Agreements Byelaw (the “Circumstances”). Managing agents should discuss any Proposal (as defined in the Circumstances) with the Admissions Department at the earliest opportunity.</p>
General - Managing agents, members’ agents and members	<p><b>It is incumbent upon managing agents, members’ agents and members to proceed under the Circumstances in a fair, reasonable and constructive way.</b></p> <p>To assist them, Lloyd’s has prepared a timetable and action plan which is set out in Annex A to this Guidance Note. A flowchart version of this timetable showing key events is also included in Annex B. The timetable and action plan sets out the various steps that need to be taken by managing agents, members’ agents and Lloyd’s at the various stages of the Circumstances process.</p> <p>Lloyd’s considers that this timetable and action plan represents good practice which should ordinarily be followed unless all the relevant parties agree that an alternative procedure should be followed instead.</p> <p>Managing agents and members’ agents should be able to demonstrate to members<sup>1</sup> and to Lloyd’s that they have taken steps to comply with the spirit and the intention of this guidance note and with the timetable and action plan.</p> <p>In all cases, members’ agents should also promptly and diligently consider all documents forwarded to them by managing agents and members should respond in a considered and reasonable manner conducive to the ongoing relationship with their managing agents.</p>
Disclosure – general	<p>Any disclosure given by a managing agent must provide members with all of the information that would materially assist an ordinary member to make an informed assessment of the matter in question. In particular:</p> <ul style="list-style-type: none"> <li>• the information should be presented in a clear, balanced and straightforward manner;</li> <li>• the information should be presented as succinctly as possible;</li> <li>• key information should receive greater prominence; and</li> <li>• technical terms should be avoided or clearly explained.</li> </ul>
Disclosure - the Proposal	<p>In giving disclosure of the terms of a Proposal, the following information should be provided in respect of the underwriting business in question:</p> <ul style="list-style-type: none"> <li>• a general description of the underwriting business;</li> <li>• an explanation of whether the underwriting business differs in any material way from the underwriting business of the Syndicate; and</li> <li>• the amount of premium income and profit derived and/or anticipated to be derived from the business over a representative period.</li> </ul> <p>The disclosure should also include:</p>

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<sup>1</sup> In this note, members means members of the syndicate who are not Related Persons.

- a summary of the business case underlying the Proposal; and
- the terms of any compensation (financial or otherwise) to be offered to members of the Syndicate. Any offer of compensation must be made to all members of the Syndicate.

Disclosure – the conflict                      Managing agents must fully describe the nature of the conflict or potential conflict of duty or interest and explain why the interests of any Related Person are or could be taken as being also interests of the managing agent. The description should include information on any additional benefits that will accrue to any Related Party and any loss that will accrue to members under the Proposal.

Disclosure - timing                      Managing agents must carefully consider the appropriate timing of any disclosure. Disclosure should generally be made as soon as the managing agent has formed a firm intention to proceed with the Proposal. However, managing agents must consider whether there are any specific matters such that the timing of the disclosure might unfairly prejudice the rights of members and whether, as a consequence, disclosure should be deferred. Managing agents must also have regard to their other legal obligations, for example with regard to insider dealing.

Related Person                      “Related Person” means in relation to a managing agent, a person who is related to that managing agent in any manner other than by merely participating in the underwriting business of a syndicate managed by that managing agent (but including without limitation through the possession by either of them of an interest in the other or by a third party of interests in both, or through the possession or common directors or employees) which would or might indicate that interests of that person are to be taken as being also interests of that managing agent or that that managing agent is to be taken to be interested in any matter in which that person is interested; and

This definition is widely drawn by reference to the identity of interests between that person and the managing agent in question. The burden of determining who is and who is not a Related Person is on the managing agent. Managing agents should record in each case how the determination was made.

In determining whether a managing agent is able to certify the matters set out in paragraphs 2(c) and 3(b) of the circumstances the definition of a Related Person:

- excludes any member of the Syndicate who is related to the managing agent merely by virtue of his participation in the underwriting business of the Syndicate;
- includes any member of the Syndicate who is a director or an employee of the managing agent.

Ballot – general                      Managing agents must take all reasonable steps to conduct ballots in a fair manner, and in particular, the meaning of any resolution must be clear and present the issue on which the vote will be taken in a balanced way.

Failure to properly comply with conditions and requirements                      Managing agents should note that failure to properly comply with the conditions and requirements set out in the circumstances may invalidate any regulatory or legal protection conferred by virtue of paragraph 3(4) of the Agency Agreements Byelaw (No.8 of 1988).

## Agency Circumstances Regime – Timetable and Action Plan

STEP	TIMELINE	ACTIONS	COMMENTS
1. Preparatory Work		<p><b>MANAGING AGENT</b> The managing agent will usually wish to carry out preliminary work to consider whether it wishes to put forward a proposal to enter into a potential transaction (“Proposal”). This work may include preliminary discussions with members’ agents and direct corporate members in order to determine what their initial views are.</p>	Lloyd’s recognises that a great deal of preparation is required before the board of a managing agent will be asked to proceed with the Proposal. This plan is in no way intended to affect the managing agent’s ability to carry out that work.
2. Board meeting	10 working days	<p><b>MANAGING AGENT</b> Following the preparatory work carried out by the managing agent, the board of the managing agent should decide whether to proceed with the Proposal and whether the managing agent should follow the agency circumstances regime for the Proposal</p> <p>If the board decides to proceed with the Proposal, the managing agent shall notify Lloyd’s immediately, start to prepare a presentation for members’ agents and direct corporate participants (“DCPs”) and within 10 working days, meet with Lloyd’s</p>	
3. Meeting with Lloyd’s	5 working days (Total days = 15)	<p><b>MANAGING AGENT</b> At the meeting, the managing agent shall provide Lloyd’s with details of the Proposal and provide a draft of the presentation that will be given to the members’ agents and DCPs</p> <p><b>LLOYD’S</b> Within 5 working days of the meeting, Lloyd’s shall issue instructions for the handling of the Proposal.</p>	The requirements are likely to cover the following matters –

STEP	TIMELINE	ACTIONS	COMMENTS
			<ul style="list-style-type: none"> <li>➤ The giving of a presentation about the Proposal to all members' agents and direct corporate participants and notification to the members' agents and DCP's of the presentation</li> <li>➤ Guidance on the content of that presentation</li> <li>➤ The members of the team fielded by the managing agent to handle the Proposal (taking account of any proposed absences by members of the proposed team so as to ensure a level of continuity for the duration of the handling of the Proposal)</li> <li>➤ The use of professional advisers, including legal advisers and investment advisers and whether the managing agent will meet the costs of those advisers on behalf of members</li> <li>➤ Impact on the auctions</li> <li>➤ Confidentiality arrangements with members' agents and DCPs</li> <li>➤ Impact on business plans</li> <li>➤ Disclosure or conflicts of interest</li> <li>➤ Any contingency plans</li> <li>➤ If appropriate, the identity of any mediator</li> </ul>
4. Presentation		<p><b>MANAGING AGENT</b>  After notice of the instructions that have been issued by Lloyd's, the managing agent shall immediately write to members' agents and DCPs to notify them that a presentation will be given on the Proposal. The managing agent shall include details of its Project Team for the Proposal.</p>	<p>When planning the Project Team, the managing agent should ensure they take account of any planned absences so as to ensure a level of continuity while the Proposal is ongoing.</p>

STEP	TIMELINE	ACTIONS	COMMENTS
	<p>5 working days (Total days = 20)</p> <p>10 working days (Total days = 30)</p>	<p><b>MEMBERS' AGENTS/DCPS</b> After notification of the presentation by the managing agent, members' agents and DCPs shall notify the managing agent in writing of the names of those persons who will form part of the designated Project Team</p> <p><b>MANAGING AND MEMBERS' AGENTS/DCPS</b> The managing agent, members' agents and DCPs shall then liaise to establish a Communication Forum that will meet on a weekly basis while the Proposal is ongoing. This forum should be established by no later than the date of the presentation.</p> <p><b>MANAGING AGENT</b> Within 5 working days of the instructions being issued by Lloyd's, the agent shall give the presentation to members' agents and DCPs together</p> <p><b>MEMBERS' AGENTS/DCPS</b> Members' agents – to respond in writing to the presentation</p>	<p>When planning the Project Team, the parties should ensure they take account of any planned absences so as to ensure a level of continuity while the Proposal is ongoing.</p> <p>All members of the Communication Forum shall ensure that they update the members of their respective project teams regularly.</p> <p>Copies of the presentation should be available in hard copy</p> <p>Where possible, members' agents should aim to respond collectively to the managing agent. They should also include in their responses details of any conflicts of interest</p>
5. Review of responses	5 working days (Total days = 35)	<p><b>MANAGING AGENT</b> Within 5 working days from receipt of responses from members' agents, the managing agent shall -</p> <p>(i) notify the members' agents and DCPs that it will not proceed with the Proposal; or  (ii) notify the members' agents and DCPs that it will proceed with the Proposal as initially presented; or  (iii) give a revised presentation to the members' agents and DCPs setting out the terms of modified proposals.</p>	

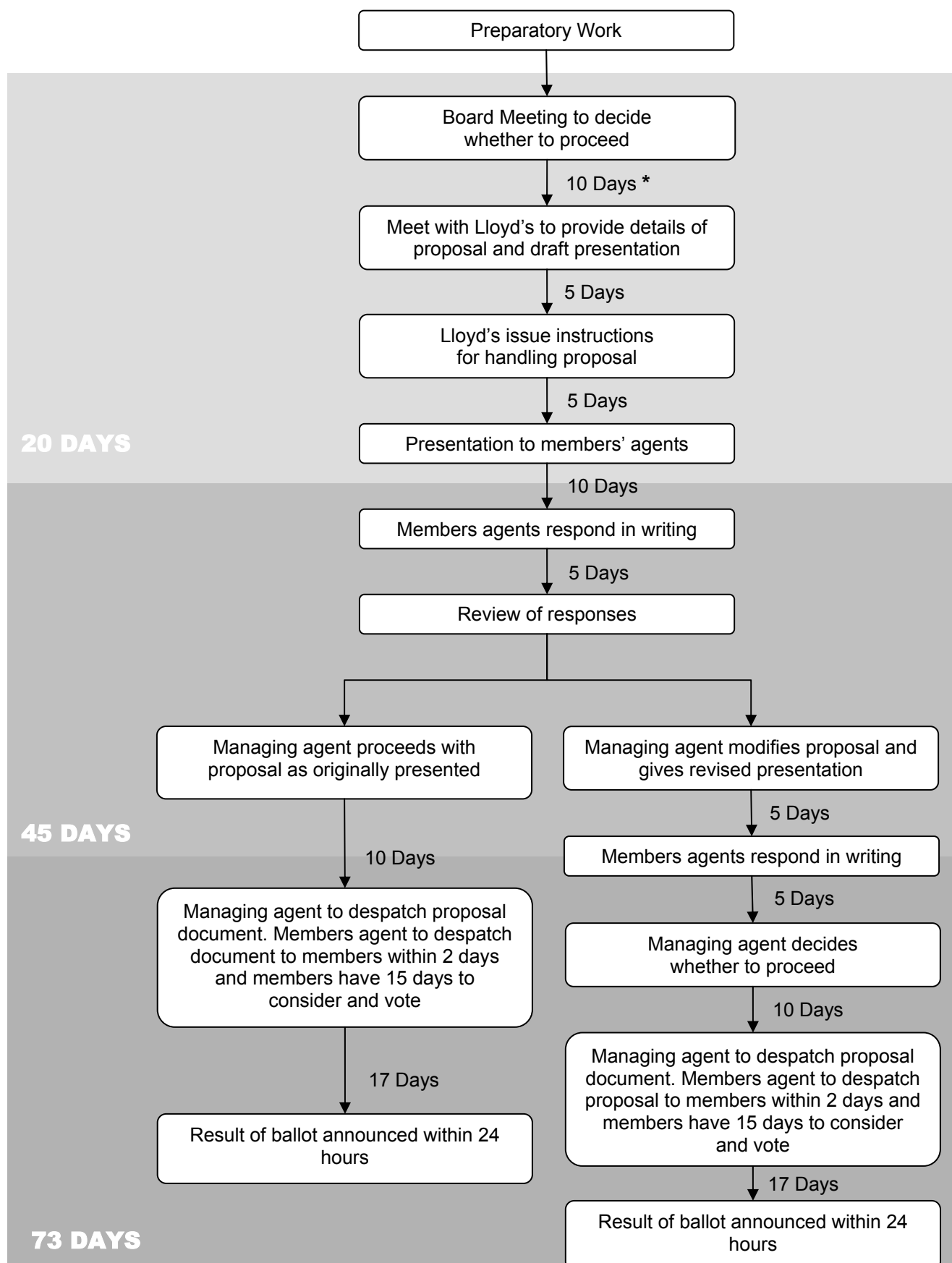
STEP	TIMELINE	ACTIONS	COMMENTS
6A. Managing agent proceeds under (ii)	10 working days (Total days = 45)	<p><b>MANAGING AGENT</b> The managing agent shall have a further 10 working days to finalise the proposal document.</p>	
<b>OR</b>			
6B. Managing agent proceeds under (iii)	<p>5 working days (Total days = 40)</p> <p>5 working days (Total = 45 days)</p> <p>10 working days (Total = 55 days)</p>	<p><b>MEMBERS' AGENTS/DCPS</b> Following the revised presentation from the managing agent, the members' agents and DCPs have 5 working days to make further written representations to the agent about the revised proposals.</p> <p><b>MANAGING AGENT</b> The managing agent then has 5 working days from receipt of the representations to decide whether to proceed with the Proposal.</p> <p>If it decides to proceed, it has a further 10 working days to finalise the proposal document.</p>	
7. Despatch of Proposal Document	<p>2 working days</p> <p>15 working days (Total days = 62 (6A) or 72 (6B))</p>	<p>Managing agent despatches the proposal document with ballot papers to the members' agents and DCPs.</p> <p><b>MEMBERS' AGENTS</b> Members' agents shall send the proposal document and ballot papers on to their members within 2 working days.</p> <p>Members have a minimum of 15 working days from the date of despatch by the members' agents to consider the proposals and vote in the ballot.</p>	Members' agents and the managing agent should liaise closely to ensure the timely despatch of the document to the members.
8. Result of the ballot of members	1 working day (Total days = 63 (6A) or 73 (6B))	<p><b>MANAGING AGENT</b> The managing agent reviews the results of the ballot and within 24 hours of the expiry of the 15 working day period, the managing agent and its auditors certify whether a</p>	

STEP	TIMELINE	ACTIONS	COMMENTS
		majority by Value* of the members voting in the ballot approved the Proposal	

- “Value” in relation to any ballot, shall be determined by reference to the respective members’ syndicate premium limits of the members of the relevant syndicate for the year of account corresponding to the year in which the ballot is held.



## Agency Circumstances Regime - flowchart of key events and timetable



\* All references to days are to working days