

FROM: Stuart Simpson, Treasurer EXTN: 5760
DATE: 20 December 2004 REF: Y3465
SUBJECT: TERMS AND CONDITIONS GOVERNING THE SOCIETY OF
LLOYD'S CURRENCY CONVERSION SERVICE

SUBJECT AREA(S):

ATTACHMENTS: 1) Draft Terms & Conditions

ACTION POINTS: **Agents to review attached draft Terms and Conditions and provide comments by 21 January 2005**

DEADLINE(S): 21 January 2005

The Lloyd's Currency Conversion Service (CCS) has operated since 1999, converting premiums and claims settlement amounts between sterling and other currencies, on behalf of syndicates, within Lloyd's standard settlement processes. The foreign exchange activity to facilitate the operation of the CCS is carried out by the Treasury Department. All agents utilising the CCS are required to confirm, on an annual basis, their acceptance of the Terms and Conditions under which it operates.

In general, agents are free to select whether, and in which currencies, syndicates will participate in the CCS. However, in the event that existing claims are redenominated in a CCS currency, all such amounts are processed via the CCS. Consequently, nearly all syndicates could potentially utilise the CCS, if only occasionally, and agents will therefore be asked to complete an Acceptance Letter agreeing to the CCS Terms and Conditions in respect of all syndicates having open years of account in 2005. The only syndicates expected to be outside the CCS are those which operate solely in sterling.

A draft of the Terms and Conditions to be applied to the CCS in 2005 is attached to this bulletin. This contains a number of amendments to the existing terms, reflecting comments received from agents during 2004. These amendments have been highlighted in the draft. Agents are asked to review the draft Terms and Conditions and to forward questions or comments to Helen Foster, using the contact details below, by 21 January 2005. Following

this consultation period Lloyd's will consider the comments received, and the finalised Terms and Conditions will be distributed in January, together with an Acceptance Letter for completion by agents.

Any queries concerning this bulletin should be addressed to Helen Foster, Lloyd's extension 5759 or by e-mail: helen.foster@lloyds.com

**TERMS AND CONDITIONS GOVERNING THE SOCIETY OF LLOYD'S CURRENCY
CONVERSION SERVICE (the "Terms") - JANUARY 2005**

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These Terms set out the terms and conditions under which Lloyd's agrees to enter into foreign exchange transactions with Agents on behalf of Syndicates in order to enable Agents to purchase or sell amounts of currencies to settle insurance transactions where such transactions are denominated in currencies other than sterling. These Terms set out the terms and conditions that will apply to such foreign exchange transactions.

1.1 Definitions

In these Terms, unless otherwise required by the context, the following words and expressions shall have the following meanings:

Acceptance Letter means a letter in form and substance prescribed by and submitted to Lloyd's from time to time by an Agent, under which the Agent accepts and agrees to be bound in all respects by these Terms;

Agent means a Managing Agent (as defined in the Definitions Byelaw (No.3 of 2004)) that has submitted an Acceptance Letter to Lloyd's which letter has itself been accepted by Lloyd's;

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Agent Claim means any payment to be made by the Agent under a CCS Transaction;

Agent Payment means any payment to be made to the Agent under a CCS Transaction;

Business Day means any day on which Lloyd's is providing the currency conversion services;

Central Accounting Byelaw means the Central Accounting Byelaw (No. 20 of 1998) as amended from time to time;

Central Accounting System means the service for the accounting, netting and settlement of insurance transactions and related transactions provided by Lloyd's;

CCS Currency means any currency for which Lloyd's is offering a sterling conversion service and in respect of which the Agent has requested Lloyd's in writing to provide such sterling conversion service;

CCS Currency/Sterling Bid Rate means the rate on any Business Day at which Lloyd's will purchase the relevant CCS Currency and sell sterling for delivery on the relevant Value Date;

CCS Currency/ Sterling Offer Rate means the rate on any Business Day at which Lloyd's will sell the relevant CCS Currency and purchase sterling for delivery on the relevant Value Date;

CCS Transaction means any insurance or related transaction entered into by the Agent on behalf of a relevant Syndicate, payment in respect of which is to be processed through the Lloyd's Central Accounting System and which payment is denominated in a CCS Currency;

Close-Out Amount has the meaning given to it in clause 5;

Close-Out Date means a day on which, pursuant to the provisions of clause 3, Lloyd's closes out and liquidates a Currency Obligation;

Currency Obligation means any obligation of a Party to deliver a currency pursuant to an FX Transaction governed by these Terms or pursuant to the application of clause 5;

Effective Date means in respect of any Agent, the date upon which Lloyd's has received an Acceptance Letter from such Agent and any other documentation Lloyd's may reasonably require in connection therewith;

Event of Default means the occurrence of any of the following:

- (a) the Agent defaults in any payment to Lloyd's with respect to any sum when due under these Terms and such failure shall continue for ~~three (3)~~ Business Days;
- (b) any Insolvency Event occurs in respect of the Agent or any Syndicate Member;
- (c) Lloyd's believes (acting reasonably) that either (a) or (b) above may occur;
- (d) any representation or warranty made or deemed made by the Agent pursuant to an Acceptance Letter and these Terms shall prove to have been false or misleading;

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Event of Default (Lloyd's) means the occurrence of either of the following:

- ~~(a) Lloyd's defaults in any payment to the Agent with respect to any sum when due under these Terms and such failure shall continue for three (3) Business Days;~~
- ~~(b) any Insolvency Event occurs in respect of Lloyd's;~~

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FX Transaction means a foreign exchange transaction entered into pursuant to clause 2.3 or 2.4;

Insolvency Event means:

- (a) in relation to any individual or partnership, the making of a receiving order in bankruptcy against such individual or any partner in such partnership by the due process of law of any country, such individual or partner in such partnership making or proposing any composition with his creditors or otherwise acknowledging his insolvency, or being adjudicated bankrupt or adjudicated or declared insolvent by the due process of law of any country;
- (b) in relation to any body corporate, its making or proposing any composition with its creditors or otherwise acknowledging its insolvency, a proposal being made in respect of it under section 2 of the Insolvency Act 1986, a bankruptcy order being made against it by the due process of law of any country, its being adjudicated or declared insolvent by the due process of law of any country, an order being made or resolution being passed for its winding up or dissolution, an administration order being made in respect of it under section 9 of the Insolvency Act 1986, a receiver, trustee or analogous officer being appointed in respect of the whole or any material part of its property or assets, its directors presenting or filing in any court a petition in respect of its bankruptcy, winding up or other insolvency or which seeks any reorganisation, dissolution or similar relief or there occurring an event in any jurisdiction which is analogous to any of the foregoing events;

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(c) in relation to any partnership, any event occurring which is contemplated and governed by the Insolvent Partnerships Order 1994 and which is in Lloyd's opinion analogous to any of the events set out at paragraph (b) above in relation to a body corporate; and

(d) in relation to Lloyd's, legal proceedings are started for its winding-up or dissolution (other than where such proceedings are frivolous or vexatious and are dismissed, stayed, vacated or cease to remain in force within a period of 28 days after commencement thereof), an order being made or resolution passed for its administration or for the appointment of a liquidator, receiver, administrator, administrative receiver, conservator, custodian, trustee or similar officer of it or all of its revenues and assets, or any arrest is made by the English courts upon application of any regulator of all of its revenues or assets or any analogous event of the foregoing occurs;

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Lloyd's means the Society incorporated by Lloyd's Act 1871 by the name of Lloyd's;

LPSO means LPSO Limited (registered number 3987375) whose registered office is at Gun Wharf, Dock Road, Chatham, Kent ME4 4TU;

person shall be construed as a reference to any person, firm, company, corporation, body corporate, government, state or agency of a state or any association or partnership (whether or not having a separate legal personality) or two or more of the foregoing;

Parties means Lloyd's and the relevant Agent (and **Party** shall be construed accordingly);

Purchase Date means the date on which the Parties enter into a FX Transaction;

Sterling Bid Equivalent Amount means the amount of sterling which is equivalent to any relevant CCS Currency amount, determined by calculating the amount of sterling which could be sold by the Agent in exchange for the relevant CCS Currency amount at the relevant CCS Currency/Sterling Bid Rate, both such amounts being deliverable on the relevant Value Date;

Sterling Offer Equivalent Amount means the amount of sterling which is equivalent to any relevant CCS Currency amount, determined by calculating the amount of sterling which could be purchased by the Agent with the relevant CCS Currency amount at the relevant CCS Currency/Sterling Offer Rate, both such amounts being deliverable on the relevant Value Date;

Syndicates means, in relation to any Agent, the managed syndicate(s) specified by the Agent in the Acceptance Letter submitted by such Agent and subject to clause 2.1, **Syndicate** means any one of them;

Syndicate Members means, in relation to any FX Transaction entered into by the Agent on behalf of a particular Syndicate and referable to a particular year of account, all the members of that Syndicate in respect of that year of account;

Value Date means, with respect to any FX Transaction, the day on which the corresponding Agent Payment or Agent Claim is due to be paid.

1.2 Interpretation

Words herein importing one gender shall include the other genders.

Words herein denoting the singular number only shall include the plural number also and vice versa.

2. **FX Transactions**

Scope and Nature of these Terms

- 2.1 Unless otherwise agreed in writing by the Parties, each FX Transaction entered into between the Parties on or after the Effective Date shall be governed by these Terms. These Terms shall take effect and be construed as if they were a series of separate and identical terms, agreed to between Lloyd's and the Agent, acting as agent for one of the Syndicates, there being one such agreement for each of the Syndicates. However, any Event of Default falling within paragraph (a) of the definition of "Event of Default" which occurs in relation to one Syndicate shall entitle Lloyd's to terminate all the separate agreements with the Agent. References to the Agent shall, where the context so admits, be construed as references to the Agent in its capacity as agent of the Syndicate with which the particular FX Transaction or other circumstance is associated.

Terms cumulative

- 2.2 Subject to clause 2.1, these Terms, the terms of each Acceptance Letter and the terms of each FX Transaction and all amendments to any of such items shall together form the terms and conditions agreed between the Parties. The Parties acknowledge that all FX Transactions governed by these Terms are entered into in reliance upon the fact that all such items constitute a single agreement between the Parties.

Sterling Sale Transactions

- 2.3 At the time at which an Agent Payment is processed by Lloyd's, the Parties shall, subject to clause 5, and whether or not such Agent Payment is due or subsequently paid, enter into a foreign exchange transaction for the purchase by Lloyd's of an amount of such CCS Currency equal to the Agent Payment and the sale by Lloyd's of the Sterling Offer Equivalent Amount of such Agent Payment, the delivery of each Currency Obligation of the Parties to be made on the relevant Value Date.

Sterling Purchase Transactions

- 2.4 At the time at which an Agent Claim is processed by Lloyd's, the Parties shall, subject to clause 5, and whether or not such Agent Claim is due or subsequently paid, enter into a foreign exchange transaction for the sale by Lloyd's of an amount of such CCS Currency equal to the Agent Claim and the purchase by Lloyd's of the Sterling Bid Equivalent Amount of such Agent Claim, the delivery of each Currency Obligation of the Parties to be made on the relevant Value Date.

3. **Settlement and netting**

Settlement

- 3.1 Each Party shall deliver to the other Party the amount of the currency to be delivered by it under each Currency Obligation on the Value Date for such Currency Obligation. No provision of these Terms is intended to, nor shall alter in any respect the obligations of the Agent or the broker to make payments under any CCS Transaction.

Netting

- 3.2 For so long as both Parties remain participants in the Central Accounting System the Currency Obligations of each of them will be netted and settled in accordance with the terms of the Central Accounting Byelaw.

General

- 3.3 The provisions of clauses 2.2, 2.3, 2.4 and 3.1 shall not apply if a Close-Out Date has occurred.

4. Representations, warranties and covenants

Representations and Warranties

- 4.1 By its submission of an Acceptance Letter, the Agent is deemed as of the date of such submission and as of the date of each FX Transaction, expressly to represent and warrant to Lloyd's that:
- (a) it has authority to accept and enter into these Terms and all FX Transactions, being authorised by its Syndicate Members to enter into financing transactions which may be expedient in connection with the underwriting business of the Syndicate on behalf of the Syndicate Members;
 - (b) the person executing the Acceptance Letter and entering into these Terms on its behalf has been duly authorised to do so;
 - (c) these Terms, and the Currency Obligations created hereunder and the terms of the Acceptance Letter are legal, valid, binding upon it and enforceable against it in accordance with their terms; and
 - (d) no Event of Default with respect to the Agent has occurred and is continuing.

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Covenant: Notification of Events of Default

- 4.2 (a) The Agent covenants to Lloyd's that it will promptly notify Lloyd's of the occurrence of any Event of Default (or where that Event of Default is an Insolvency Event in respect of a Syndicate Member, when it becomes aware of the occurrence of that Event of Default).
- (b) Lloyd's covenants to the Agent that it will promptly notify the Agent of any Event of Default (Lloyd's).

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5. Mandatory Close-Out

- 5.1 Immediately on the occurrence of an Event of Default or at any time thereafter, Lloyd's may notify the Agent that a Close-Out Date has occurred and all outstanding FX Transactions shall forthwith be settled on the Close-Out Date in the following manner:
- (a) Each amount payable by the Agent under each FX Transaction whose Value Date falls on or after the Close-Out Date shall be discounted to present day value by Lloyd's to take account of the period between the Close-Out Date and the Value Date of the FX Transaction by discounting at LIBOR for the relevant period on a

daily basis and assuming a year of 365 days (in the case of sterling) or 360 days or such other period as market convention dictates (in the case of any CCS Currency) and if denominated in any CCS Currency, shall be converted into sterling at Lloyd's applicable spot rate of exchange at close of business on the Close-Out Date;

- (b) Each amount payable by Lloyd's under each FX Transaction whose Value Date falls on or after the Close-Out Date shall be discounted to present day value to take account of the period between the Close-Out Date and the Value Date of the FX Transaction by discounting at LIBOR for the relevant period on a daily basis and assuming a year of 365 days (in the case of sterling) or 360 days or such other period as market convention dictates (in the case of any CCS Currency) and if denominated in any CCS currency, shall be converted into sterling at Lloyd's applicable spot rate of exchange at close of business on the Close-Out Date;
- (c) Lloyd's shall determine the difference between the aggregate of each such discounted amount payable in sterling by the Agent under paragraph (a) and the aggregate of each such discounted amount payable in sterling by Lloyd's under paragraph (b) above;
- (d) If the amount calculated in paragraph (a) exceeds that calculated in paragraph (b) the Agent shall be obliged to pay to Lloyd's the amount of the excess and if the amount calculated in paragraph (b) exceeds paragraph (a) Lloyd's shall be obliged to pay the Agent the amount of the excess.

5.2 The amount payable under clause 5.1 shall constitute a reasonable pre-estimate of the loss which would otherwise be suffered as a result of an Event of Default and is not a penalty. No proof or evidence of actual loss shall be required in respect of such amount. Such amount represents the amount which will be payable as damages for loss of bargain and loss of protection against future risks and, except as otherwise provided in these Terms, neither Party will be entitled to recover any additional damages as a consequence of such losses.

6. **Payments and Default Interest**

6.1 The amount payable by one Party to the other Party pursuant to the provisions of clause 5 shall be paid by the close of business on the Business Day following such close-out and liquidation of the position. Payments made by the Agent to Lloyd's under these Terms shall be made without set-off, deduction or counterclaim. To the extent permitted by applicable law, any amounts required to be paid under clause 5 and not paid on the due date therefor shall bear interest at 1% over National Westminster Bank's base rate from time to time in force.

6.2 The Agent irrevocably directs that any payment to Lloyd's pursuant to these Terms shall be made out of the Premiums Trust Funds of the Syndicate Members and confirms the authority of Lloyd's (including as operator of the Central Accounting System) to debit accounts holding such funds.

7. **Service Charges**

7.1 Lloyd's will not make a direct charge for the operation of the foreign exchange element of the currency conversion service. However, Lloyd's will seek to recover the costs of providing the service by varying CCS bid/offer rates relative to prevailing exchange rates. Such variation of the CCS bid/offer rates will be up to 0.05% of prevailing foreign exchange

rates quoted by such foreign exchange market participants as Lloyd's shall select in relation to direct costs incurred by Lloyd's in operating the foreign exchange element of the service, and up to a further 0.2% of the prevailing foreign exchange rates quoted by such foreign exchange market participants as Lloyd's shall select in relation to all other costs associated with operating the service. All amounts payable by it hereunder shall be treated for all purposes as an expense of the underwriting business of the Syndicate Members. The Agent shall pay all charges, interest and other amounts due or incurred by Lloyd's in respect of the services provided hereunder free from any deductions or withholdings, set-off or counterclaim, exclusive of Value Added Tax or other form of sales or supply tax, or duty from time to time in force. At the same time as payment of charges and expenses the Agent shall pay to and reimburse Lloyd's for any VAT or other form of sales or supply tax or duty levied thereon.

8. Indemnification and Liability

- 8.1 The Agent shall indemnify and hold harmless Lloyd's, on an after-tax basis on demand, from and against any and all claims, penalties, damages, losses, liabilities, obligations, costs, taxes, expenses and disbursements (together **Indemnified Risks**) joint or several, of any kind or nature whatsoever (including, without limitation, fees and disbursements of counsel) that may be suffered, imposed upon, incurred by or asserted or awarded against Lloyd's in any way relating to, arising out of or in connection with these Terms or the services provided hereunder, except to the extent such Indemnified Risks have resulted directly and primarily from the gross negligence or wilful misconduct of Lloyd's.
- 8.2 Lloyd's shall have no liability (whether direct or indirect, in contract, tort or otherwise) to the Agent, its Syndicate Members or any of their respective shareholders or affiliates for or in connection with these Terms, or otherwise in connection with the provision of the services hereunder except for direct (as opposed to indirect or consequential) damages to the extent such liability has resulted directly and primarily from Lloyd's gross negligence or wilful misconduct.
- 8.3 The Agent shall indemnify Lloyd's on demand if prevailing market rates move between any Purchase Date and any Value Date (inclusive) in respect of any FX Transaction and Lloyd's suffers any loss as a result which is reasonably attributable to its participation in that FX Transaction and which is in excess of the amounts which may be recovered under clause 7, within a reasonable time period (as determined by Lloyd's in its sole discretion). Without prejudice to the above, Lloyd's will enter into such foreign exchange transactions with market counterparties as it deems reasonable in its sole discretion to manage its aggregate foreign exchange exposure under these Terms and any foreign exchange transactions carried out pursuant hereto.
- 8.4 The Agent acknowledges and agrees that in providing its services hereunder Lloyd's will from time to time make use of systems and equipment owned, maintained, controlled and/or operated by third persons and the Agent irrevocably authorises the disclosure to such third persons and the transmission to and storage within such systems and equipment of all financial and other information relating to the Agent or any of its Syndicate Members as required in the provision of services hereunder.
- 8.5 The Agent acknowledges and agrees that in providing its services hereunder Lloyd's will from time to time make use of, or rely on, information provided by a person acting on the Agent's behalf (such as LPSO) or provided by any other third person, and Lloyd's shall not be responsible for the accuracy of (nor be under a duty to verify the accuracy of) any such information.

9. **Records/Determinations**

9.1 In the absence of manifest error, the records of Lloyd's relating to any FX Transaction shall constitute conclusive evidence with respect to such matter. Any determination or notification by Lloyd's concerning any rate or amount under any FX transaction or otherwise in connection with the services provided hereunder shall, in the absence of manifest error, be conclusive evidence as to that matter.

10. **Notices**

10.1 Any notice to be given by a Party under, or in connection with, these Terms shall be in writing and signed by or on behalf of the Party giving it. It shall be served by sending it by fax (i) if sent to the Agent to it at the number set out in the Acceptance Letter submitted by such Agent (ii) if sent to Lloyd's to it at the number set out in clause 10.2; or delivering it by hand, or sending it by pre-paid recorded delivery or registered post, to the address set out in the relative Acceptance Letter (in the case of an Agent) or the address set out in clause 10.2 (in the case of Lloyd's) and in each case marked for the attention of the person specified in the Acceptance Letter or clause 10.2 as appropriate or such other person as may be notified in writing from time to time by the receiving Party to the sending Party. Any notice so served by hand, fax or post shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of receipt;
- (c) in the case of prepaid recorded delivery or registered post, at 10am on the second Business Day following the date of posting

provided that in each case where delivery by hand or by fax occurs after 6pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9am on the next following Business Day.

10.2 The address and fax number of Lloyd's for the purpose of clause 10.1 is:

Address: One Lime Street
London
EC3M 7HA

Fax: 020 7327 5761

For the attention of: Stuart Simpson, Treasurer

11. **Scope of Role**

11.1 **Nature of Service:** Lloyd's will have no liability or responsibility, except as expressly provided in the Terms, for any loss arising from changes in exchange rates or for the good faith or acts and/or omissions, creditworthiness, performance or standing of any person, any clearance system or clearing agent or any other person whomsoever and the Agent accepts and enters into these Terms in reliance only upon its own judgement.

11.2 **Force Majeure:** Lloyd's shall have no responsibility or liability for or regarding any non-performance, improper performance, suspension of performance or delay in performance,

of Lloyd's obligations under or in connection with the currency conversion service by reason of any circumstances beyond Lloyd's reasonable control.

11.3 **Principal:** Lloyd's shall act as principal in entering into all FX Transactions pursuant hereto.

12. **Governing Law and Jurisdiction**

12.1 These Terms and the relationship between the Parties shall be governed by, and interpreted in accordance with, English law.

12.2 The English courts shall have jurisdiction to settle any disputes which may arise in connection with these Terms and the Parties shall irrevocably submit to the jurisdiction of the English courts.

**THE SOCIETY INCORPORATED BY
LLOYD'S ACT 1871
BY THE NAME OF LLOYD'S
(REGULATED BY THE FSA)**