



Within the category of new corporate members the increased charges do not apply to:

- Conversion vehicles which meet the current definition of a “successor corporate member” in the Membership (Entrance Fees and Annual Subscriptions) Byelaw – i.e. in broad terms, any vehicle which is 85% owned by converting Names
- New corporate members which only participate on *existing syndicates*.

### Syndicate loans

Market Bulletin Y3394 dated 17 September 2004 set out the requirements pursuant to which members will be required to make the syndicate loans. At its meeting on 2 March 2005 the Council amended these requirements. The amendments were made to ensure that Lloyd's fully complies with the FSA's Integrated Prudential Sourcebook requirements and to ensure that the subordination provisions track the subordination provisions in the Lloyd's subordinated notes issued in November. The revised requirements for the syndicate loans are set out at Appendix 1 with amendments shown in tracking.

The rate for the syndicate loans has been set at 0.75% of a member's syndicate premium limit in respect of each syndicate of which he is a member for 2005.

Interest on the syndicate loans is payable annually but may be deferred at Lloyd's discretion. Interest will be paid at a rate equal to the total return recorded during the interest period by the Merrill Lynch 1-3 Year Government Bond Index relevant to the currency of account of the loan, less an administrative charge of 0.07% per annum of loan values. If the annual interest calculation generates a negative amount then the interest amount will be zero. Statements of 'accrued' interest amounts will be provided to agents quarterly. Interest payments will be made within 5 business days of the anniversary of the loan.

For advice on solvency, capital, and accounting treatment please refer to Market Bulletin Y3394.

### Settlement Arrangements

As advised in Market Bulletin Y3394, syndicates have the option to settle their New Central Fund contributions and syndicate loans in sterling or US dollars.

Please notify Carolyn Smith **by 18 March 2005** if the New Central Fund contribution and / or any proportion of the syndicate loan are to be paid in US dollars. It should be noted that all settlements for the 2005 year will be made in the currencies selected now. This arrangement can be changed for 2006.

For those wishing to pay in US dollars the amount to be collected will be calculated by reference to the middle closing exchange rate published in the FT on 16 March 2005.

Advices detailing amounts due will be issued on 24 March 2005 for settlement via Central Accounting on 1 April 2005.

Any queries or feedback in relation to this market bulletin should be addressed to Carolyn Smith on ext 2922 or by e-mail to [Carolyn.m.smith@loyds.com](mailto:Carolyn.m.smith@loyds.com) or Mat Stone on ext 2202 or by e-mail to [Mat.stone@loyds.com](mailto:Mat.stone@loyds.com)

This bulletin has been sent to all managing agents.

Alison Mings  
Manager, Financial Processing  
Financial Control

**NEW CENTRAL FUND SYNDICATE LOAN REQUIREMENTS**

The Council of Lloyd's, in exercise of its powers under paragraph 20 of the Membership Byelaw (No. 17 of 1993) and paragraphs 6 and 8 of the New Central Fund Byelaw (No. 23 of 1996) and all other powers enabling, hereby prescribes the following conditions and requirements and resolves as follows

**1. Interpretation and citation**

- (1) The provisions of the Schedule hereto (interpretation) shall have effect
- (2) These conditions and requirements may be cited as the New Central Fund Syndicate Loan Requirements.

**2. Requirement to make New Central Fund Syndicate Loans**

- (1) It shall be condition of a member's permission to underwrite insurance business for the 2005 year of account or any subsequent year of account that, for each syndicate of which he is a member for that year of account, an amount equal to 0.75% (or such other rate as the Council may prescribe) of his member's syndicate premium limit for that syndicate be lent to the Society in accordance with and on the terms specified in these conditions and requirements (an "NCF syndicate loan").

- (2) An NCF syndicate loan shall be made at the direction of the managing agent of the syndicate concerned out of the Managing Agent's Sub-Fund of the member.
- (3) Any NCF syndicate loan shall be made in full on 1 April (or such other date as the Council may specify) of the year of account for which it is required to be made.
- (4) Every NCF syndicate loan required by these conditions and requirements shall be made without set-off, counterclaim, or deduction on any account whatsoever.
- (5) The Council may from time to time specify arrangements for the making of NCF syndicate loans, including the establishment of direct debit arrangements to be entered into between managing agents, or Managing Agent's Trustees, and the Society.

### **3. Currency of account**

- (1) The currency of account of an NCF syndicate loan shall be sterling or, if the managing agent concerned so elects, US dollars or both currencies in such proportions as the managing agent may specify.
- (2) Any NCF syndicate loan shall be made, any repayment thereof shall be made, and any interest payable thereon shall be paid, in the currency of

account.

- (3) A managing agent shall, no later than fifteen business days before the date on which an NCF syndicate loan is required to be made, inform the Society –
  - (a) whether any proportion of the NCF syndicate loan is to be made in US dollars; and
  - (b) the proportion, expressed in sterling, of the NCF syndicate loan which is to be made in US dollars.
- (4) Any proportion of an NCF syndicate loan to be denominated in US dollars shall be translated by the Society into US dollars at the middle closing foreign exchange rate published in the Financial Times (or such other rate as the Council may from time to time specify) ten business days before the date on which the NCF syndicate loan is required to be made.

#### **4. Management of New Central Fund**

The proceeds of all NCF syndicate loans shall be held, managed, invested and applied as assets of the New Central Fund.

#### **5. Interest**

- (1) Interest shall be paid by the Society on any NCF syndicate loan at such rate or rates and on such dates (each an “interest payment date”) as the Council

shall specify. The Council may elect in its absolute discretion to defer payment of all or any interest which the Society is required to pay on any interest payment date (including any Arrears of Interest, as defined in paragraph 5(4) below). If the Council elects to defer the payment of interest, that interest shall be dealt with in accordance with paragraph 5(4) below. Any failure to pay interest shall not constitute a default by the Society for any purposes.

- (2) Interest shall be paid after any deduction or withholding which the Society is required to make by any applicable law.
- (3) Where the Society has at any time before the relevant interest payment date cancelled, failed to make, suspended or deferred the payment of any interest upon any obligation of the Society of a capital nature (other than an NCF syndicate loan) which falls, in accordance with terms of the obligation concerned, to be paid or credited at any time before the interest payment date and the payment so cancelled or failed to be made, or suspended or deferred remains unpaid, interest that is payable on an NCF syndicate loan shall be deferred and dealt with in accordance with sub-paragraph 5(4); and for the purpose of this sub-paragraph a payment is to be taken as failing to be paid or credited in circumstances where it would have so fallen but for any provisions relating thereto requiring or entitling the Society to cancel, suspend or defer payment.
- (4) To the extent that the Council elects that interest shall not be paid on a particular interest payment date or where interest is deferred under sub-

paragraph 5(3), that interest shall, so long as it remains unpaid, constitute "Arrears of Interest". Subject to sub-paragraph 5(1), Arrears of Interest shall be payable on the next interest payment date to the extent that the Council has not elected to pay it in whole or in part prior to that date. All Arrears of Interest in respect of a NCF syndicate loan shall become due in full on the winding up of the Society. So long as, and to the extent that, the same has not become due and payable, Arrears of Interest shall not bear interest.

- (5) All interest shall be paid out of the New Central Fund.

## **6. Repayment of NCF syndicate loans**

- (1) The Society shall be under no obligation to repay any NCF syndicate loan at any time otherwise than in the winding-up of the Society when it shall be obliged ~~have an unconditional obligation~~ to repay any NCF syndicate loan (including for the avoidance of doubt any Arrears of Interest), subject to sub-paragraph 6(8) and paragraph 7 below.
- (2) The Society may, in the discretion of the Council, repay the whole or any part of any NCF syndicate loan at such time or times as the Council thinks fit.
- (3) Repayments shall be made out of the New Central Fund.
- (4) Subject to sub-paragraph 6(6), the Society may repay any NCF syndicate loan in respect of a particular member, or in relation to ~~a~~ any particular syndicate or year of account, without assuming any obligation or giving rise to

any expectation that any other NCF syndicate loans will be repaid in respect of any other members or in relation to any other syndicates or years of account in any proportion or at all.

(5) The Society shall not repay any NCF syndicate loan unless not less, than six months before doing so, it has given notice to the Financial Services Authority of its intention to do so.

(6) In the event of the winding-up of the Society -

(a) the obligations of the Society in respect of all NCF syndicate loans outstanding rank equally among themselves; and

(b) the obligations of the Society in respect of NCF syndicate loans outstanding are subordinated to –

(i) all other obligations of the Society except those which are expressed to rank equally with or in subordination to NCF syndicate loans; and

(ii) the payment of any underwriting liabilities, other than excluded liabilities, of members (or former members of Lloyd's or the estates of deceased members of Lloyd's) for which the New Central Fund or other assets of the Society may at any time, in the discretion of the Council (whether that discretion is exercised before or after the commencement of the winding-up

of the Society), be applied under the New Central Fund Byelaw (No. 23 of 1996) or under the Central Fund Byelaw (No. 4 of 1986);

but rank in priority to the distribution of any remaining assets of the Society to members of the Society (for the avoidance of doubt, this shall include only distributions of assets to members of the Society in their capacity as members of the Society and not payments made to members of the Society in their capacity as creditors of the Society).

(7) In sub-paragraph 6(6) –

- (a) "excluded liability" means any liability of a member in respect of which Equitas Reinsurance Limited has, under a reinsurance and run-off contract made by it with that member, undertaken to reinsure and indemnify that member, other than any such liability which the Society has a legally binding obligation to pay or discharge on behalf of the member, or to indemnify the member against, under any contract entered into with, or other instrument executed in favour of, the member at or before the time when the New Central Fund Byelaw (No 23 of 1996) came into force (and for the purpose of this sub-paragraph references to a member shall include references to a former member or the estate of a deceased member); and

- (b) nothing shall fetter or otherwise affect the Council's discretion at any time to decide whether or not to apply the New Central Fund or other assets of the Society in the payment of underwriting liabilities.
  
- (8) The claims of members in respect of NCF syndicate loans shall, in a winding-up of the Society, be contingent upon the Society having, and shall only be due and payable in the event that the Society has, assets remaining after payment of and/or provision for the claims of all senior creditors in full.

## **7. Solvency Condition**

The Society shall ~~be under no obligation and shall~~ have no liability (whether actual, contingent or prospective) to repay any NCF syndicate loan or to pay any interest on an NCF syndicate loan (including any Arrears of Interest) to the extent to which any such ~~obligation~~ liability would cause the Society to become insolvent if that repayment were made or to the extent that the Society's liabilities exceed its assets or would do so if that repayment were made.

## **8. Remedies**

Lenders' remedies in respect of non-payment of any sum owed by the Society under an NCF syndicate loan or in respect of any other breach of the terms of the New Central Fund Syndicate Loan Requirements shall be limited to petitioning for the winding-up of the Society or proving for any amount owed by the Society and claiming such sum in the liquidation of the Society.

## **79. Set-off**

Lenders shall, to the fullest extent possible under applicable law, waive their rights to set-off against amounts they owe to the Society in respect of the NCF syndicate loans ~~against~~ any amounts owed by the Society to them ~~under the NCF syndicate loans~~. To the extent that, notwithstanding the foregoing sentence, ~~on a winding up of the Society~~ any set-off takes place, whether by operation of law or otherwise, between: (a) any amount owed by the Society to the lender in respect of a NCF syndicate loan, and (b) any amount owed to the Society by such lender, the lender ~~will~~ shall immediately transfer an amount equal to the ~~such~~ amount which is set-off to the Society or, if applicable, the liquidator (or other relevant insolvency official) of the Society) to be held on trust for the benefit of the senior creditors ~~creditors of the Society who rank ahead of the lender~~ and, until such time as payment is made, the lender will hold a sum equal to such amount in trust for the Society or, if applicable, the liquidator (or other relevant insolvency official) of the Society.

## **10. Assignment**

The entitlements of the lenders in respect of an NCF syndicate loan shall not be capable of assignment otherwise than –

- (a) in connection with a contract of reinsurance to close, to a reinsurer under than contract or to the Managing Agent's Trustees of that reinsurer; or

- (b) in connection with ~~relation to~~ an insurance business transfer scheme, to a transferee, or to the Managing Agent's Trustees of the transferee under that scheme.

## **11. Governing Law**

The terms of the NCF syndicate loans shall be governed by and construed in accordance with the laws of England and Wales.

## **12. Revocation and Commencement**

- (a) The New Central Fund Syndicate Loan Requirements prescribed by the Council on 1 September 2004 are hereby revoked.
- (b) These conditions and requirements shall come into force on ~~1 January~~ 2 March 2005.

## **SCHEDULE**

### **Interpretation**

1. Except where otherwise expressly provided in these conditions or requirements, or where the context otherwise requires, words and expressions used in these conditions and requirements which are defined in the Definitions Byelaw (No. 3 of 2004) have the meanings there given.

2. In these conditions and requirements –

“Arrears of Interest” has the meaning given in paragraph 5(4);

“excluded liabilities” has the meaning given in paragraph 6(7);

“interest payment date” has the meaning given in paragraph 5(1);

“Managing Agent’s Sub-Fund” and “Managing Agent’s Trustees” in relation to a member and the managing agent of a particular syndicate, have the meaning given in the member’s premiums trust deed;

“NCF syndicate loan” has the meaning given in paragraph 2(1);

"senior creditors" means –

- (i) creditors of the Society; and
- (ii) creditors of members of the Society (or of former members or of the estates of deceased members)

in respect of the obligations and underwriting liabilities to payment of which priority is given by paragraph 6(6)(b)(i) and (ii) respectively, but only as regards those obligations or underwriting liabilities.