

FROM: Head of Market Reporting EXTN: 5129
DATE: 20 May 2005 REF: Y3564
SUBJECT: **RELEASE TEST REQUIREMENTS AND TIMETABLE**
SUBJECT AREA(S): Releases of members' surplus PTF assets and partial Lloyd's Deposit
Releases and timing of such releases
ATTACHMENTS: Regulating Trustee (Release of funds) Requirements ("requirements")
& Guidelines for the Partial Release of the Lloyd's Deposit
("guidelines")

ACTION POINTS: Members' agents and Direct Corporate Members to note
DEADLINE(S): Release Test from June 2005

The purpose of this bulletin is to issue the formal requirements and guidelines to be used in the calculation of the amount that may be released to members from their premiums trust funds and Lloyd's Deposit. The guidelines and requirements are in accordance with the proposals agreed by the Franchise Board which were previously notified in the market bulletins entitled "Capital Tests Review" Y3372 and Y3474 issued on 10 August 2004 and 23 December 2004 respectively.

The Requirements and Guidelines now provide for a Total Funding Requirement which is calculated differently for active and non-active members.

Continuous Solvency Transfers

The Council of Lloyd's has amended the agency agreements to remove the restriction in the distribution to members of open year surpluses (in the form of Continuous Solvency Transfers (CSTs)). The amendments will also permit the release of annually accounted profits from 31 December 2005.

Transition Provisions

From 1 January 2005 Lloyd's adopted annual accounting under UK GAAP for syndicate financial reporting, as well as regulatory reporting and for capital setting purposes, which has the effect of restricting profits to an earned premiums basis. The 31 December 2004 syndicate solvency results have been prepared on the existing basis of ultimate expected profits and claims by year of account. The adoption of annual accounting materially reduces the level of solvency surplus in a profit making year. Accordingly, to counter any material difference any overall 2004 year of account surplus will not, therefore, be available to offset against prior year deficits. This treatment will only apply during 2005

Timing

The timetable below sets out details of the provision of release test data to members' agents, direct corporate participants and the timing of any available releases:

<u>Month/Date</u>	<u>Action</u>
27 May 2005	Results of the release test as at 30 April 2005 will be made available to agents. This will allow members with profits and or surplus funds at Lloyd's (FAL) to have a release of both profits and or FAL from June onwards.
19 August 2005	Results of second release test as at 31 July 2005 will be made available to agents. This will take into account losses that have been paid. Members may apply for a release of surplus FAL and any profits not previously released.
June - 31 December 2005	Release of profits.
June - 30 November 2005	Release of surplus FAL.
29 July 2005	Valuation date for 2006 capital test (coming into line).
<u>Note</u> During the summer agents and direct corporate participants will be provided with details of any active members who are not in line for 2005.	

The MSU requests that applications to release surplus FAL are limited to one request per member per year. A charge may be levied for subsequent releases.

Should you have any queries in connection with the timing, please contact Kim Harris on 01634 392779.

If you have other queries relating to this bulletin, please address them to Kevin Nethersell extension 6253, Lorraine Harfitt extension 6420 or Mike Steer extension 5709. This bulletin is being sent to all members' agents, managing agents, direct corporate members, licensed advisers, recognised accountants, and market associations for information.

John Parry

REGULATING TRUSTEE (RELEASE OF FUNDS) REQUIREMENTS

Pursuant to paragraph 2 of the Premiums Trust Fund and Regulating Trustee Byelaw (No. 22 of 1998) and clause 4(c) of each relevant premiums trust deed and all other powers enabling in that behalf

IT IS HEREBY RESOLVED THAT the following conditions and requirements be and are hereby prescribed in relation to all relevant premiums trust funds and so as to apply to the Regulating Trustee

1. The Regulating Trustee may not exercise its powers under clause 15(a) or clause 15(b) of any relevant premiums trust deed to pay or transfer assets belonging to the Personal Reserve Sub-Fund out of the relevant premiums trust fund where the Member is in default in respect of any of his Lloyd's obligations.
2. Subject to paragraph 1, the Regulating Trustee may exercise its powers under clause 15(a) and clause 15(b) of any relevant premiums trust deed to pay or transfer assets belonging to the Personal Reserve Sub-Fund out of the relevant premiums trust fund:
 - (a) where:
 - (i) every year of account of every syndicate of which the Member was a member has been closed by reinsurance to close and all outstanding Lloyd's obligations of the Member have been provided for by such reinsurance to close or other contract; or
 - (ii) the Member has given notice of resignation under paragraph 40 of the Membership Byelaw (No. 17 of 1993) and that Member has the benefit of a resigning member's open year reinsurance contract underwritten at Lloyd's in respect of every open year of account of every syndicate of which the Member is a member which satisfies the conditions set out in paragraph 7.2 or 7.3 of Appendix 2A to the Solvency and Reporting Requirements; and
 - (b) in any other case, if the value of the funds at Lloyd's of the Member exceeds the amount determined in accordance with paragraph 3 (the "Member's Total Funding Requirement") and then only to the extent of such excess and provided that not less than £5,000 (or such other amount as the Council may specify) is retained in the Member's funds at Lloyd's.
3. For the purposes of paragraph 2(b), the Member's Total Funding Requirement is:
 - (a) if the Member is actively underwriting in the current underwriting year, and provided the Member's overall premium limit for the current underwriting year is not less than 50 per cent of the member's overall premium limit for the immediately preceding underwriting year, (A);
 - (b) if the Member is actively underwriting in the current underwriting year but his overall premium limit for the current underwriting year is less than 50 per cent of his overall premium limit for the immediately preceding underwriting year, (B);

- (c) subject to sub-paragraphs (d) and (e), if the Member is not actively underwriting in the current underwriting year, (B);
- (d) if the Member is not actively underwriting in the current underwriting year but is a member of a group which includes other corporate members, one or more of whom is actively underwriting in the current underwriting year (each an "active member"), (A), provided:
 - (i) the OPL of the active member or, where more than one active member, the aggregate OPL of those members, for the current underwriting year is not less than 50% of their OPL or aggregate OPL (as the case may be) for the immediately preceding underwriting year; and
 - (ii) the Member is subject to the obligations contained in clause 15 (connected companies) of the Membership Agreement (corporate member);
- (e) if the Member has made his funds at Lloyd's interavailable and the successor member concerned is actively underwriting in the current underwriting year, (A), unless:
 - (i) the successor member's overall premium limit for the current underwriting year is less than 50 per cent of its overall premium limit for the immediately preceding underwriting year; or
 - (ii) the successor member is a Scottish limited partnership and the Member is not a limited partner of that partnership or is a Resigning Partner;

(in which case (B)),

where:

- (A) is the aggregate of:
 - (1) the Member's adjusted solvency liability; and
 - (2) (a) the Member's capital resources requirement; and
 - (b) the amount required to be provided by the Member as required funds at Lloyd's in relation to the current year of account,
 whichever is the greater; and
- (B) is the aggregate of:
 - (1) the Member's adjusted solvency liability; and
 - (2) (a) (i) the amount of Member's capital resources requirement for general business multiplied by a factor of 2.2 (or such other factor as the Council may specify);
 - (ii) the amount of the Member's capital resources requirement for long term business multiplied by a

factor of 1.1 (or such other factor as the Council may specify);

(b) the Member's adjusted RBC requirement multiplied by a factor of 1.1; and

(c) the Member's enhanced capital requirement,

whichever is the greater.

4. For the purpose of these conditions and requirements:

(a) the value of a Member's funds at Lloyd's shall be determined in accordance with the provisions of paragraph 12 of and Appendix 6 to the Funds at Lloyd's Requirements as at the most recent valuation date; and

(b) where the Member has a special reserve fund it shall be applied first in respect of the Member's general business and then, to the extent that any balance remains, in respect of the Member's long term business.

5. In these conditions and requirements, references to funds at Lloyd's, closed year losses, open year solvency surpluses and open year deficiencies shall be taken to be references to funds at Lloyd's, closed year losses, open year solvency surpluses and open year deficiencies in respect of the Member's general business or long term business, as the case may be.

6. In these conditions and requirements:

"additional solvency statement" has the meaning given in paragraph 1 of Schedule 1 to the Solvency and Reporting Byelaw (No. 13 of 1990);

"adjusted RBC requirement" means the amount calculated in accordance with Lloyd's risk based capital (RBC) model, as from time to time varied or supplemented, subject to the multiplication by a factor of 3 (or such other factor as the Council may specify) of the RBC ratio for each run-off syndicate;

"adjusted solvency liability" means, in relation to a Member, the aggregate of net solvency deficiencies and the amount, if any, by which closed year losses exceed closed year profits as shown on the Member's most recent solvency statement or additional solvency statement less such amount, if any, as has been paid into the Member's premiums trust fund in or towards satisfaction of such losses or deficiencies since the last solvency test date and prior to the relevant date;

"capital resources requirement" has the meaning given in the Glossary made by the Financial Services Authority under the Financial Services and Markets Act 2000;

"enhanced capital requirement" has the meaning given in the Glossary made by the Financial Services Authority under the Financial Services and Markets Act 2000;

"funds at Lloyd's" has the meaning given in paragraph 4 of the Membership Byelaw No. 17 of 1993);

"Funds at Lloyd's Requirements" means the Membership and Underwriting Conditions and Requirements (Funds at Lloyd's) (Individual/Corporate Members) as

prescribed by the Prudential Supervision Committee of the Lloyd's Regulatory Board on 1 September 2000;

"limited partner" means an individual or company which is registered as a limited partner of a Scottish limited partnership pursuant to the Limited Partnerships Act 1907;

"Lloyd's obligations" means, in relation to a Member, all underwriting obligations incurred by him as an underwriting member of the Society at any time before the relevant date and includes obligations to the Society and obligations arising under:

- (i) the byelaws, regulations, rules, directions or other requirements of the Society; and
- (ii) any deed, contract, instrument or other arrangement of any kind approved by the Society;

but does not include obligations arising in respect of any letter of credit, guarantee or other security given to secure the performance of any of his said underwriting obligations in favour of the person giving such guarantee or other security;

"Membership Agreement (corporate member)" has the meaning given in the Membership and Underwriting Requirements (Corporate Member);

"Membership and Underwriting Requirements (Corporate Member)" means the conditions and requirements so-called and made under the Membership Byelaw (No. 17 of 1993) and for the time being in force;

"net solvency deficiency" means in relation to a Member, the amount by which the open year deficiencies exceed the open year surpluses ;

"open year deficiency" means the figure (if negative) shown on the member's most recent solvency statement or additional solvency statement in respect of any year of account (including a run-off account) not closed at the last solvency test date;

"open year surplus" means the figure (if positive) shown on the member's most recent solvency statement or additional solvency statement in respect of any year of account (including a run-off account) not closed at the last solvency test date, less such amount, if any, as has been transferred from Managing Agent's Sub-Fund to the Personal Reserve Sub-Fund of the member's premiums trust fund since the last solvency test date and prior to the relevant date;

"overall premium limit" has the meaning given paragraph 1 of Schedule 1 to the Membership Byelaw (No. 17 of 1993);

"reinsurance to close" has the meaning given in paragraph 1 of Schedule 1 to the Syndicate Accounting Byelaw (No. 18 of 1994);

"relevant premiums trust deed" means any premiums trust deed (whether for general business or for long term business) in one of the forms prescribed by the Council on 2 October or 10 December 1998 (including any amendments which the Council may from time to time make to those forms);

"relevant premiums trust fund" means, in relation to a relevant premiums trust deed, the trust fund held under that deed;

“relevant date” means the most recent valuation date;

“required funds at Lloyd’s” has the meaning given in paragraph 2 of Appendix 1 to the Funds at Lloyd’s Requirements;

“resigning member’s open year reinsurance contract” means a contract of reinsurance whereby the reinsurer agrees to indemnify in accordance with the terms thereof the other party to the contract in respect of or in connection with a resigning member’s liabilities (whether or not he is a party to the contract) for losses arising from the resigning member’s participation on a syndicate as respects a year of account of that syndicate which has not been closed in accordance with the Lloyd’s syndicate accounting rules and which contract of reinsurance is effected in a year subsequent to that in which the resigning member gave notice of his resignation;

“Resigning Partner” means a limited partner who has given notice of resignation from the relevant partnership but whose resignation has yet to take effect;

“run-off account” has the meaning given in the Definitions Byelaw (No. 3 of 2004);

“run-off syndicate” has the meaning given in the Definitions Byelaw (No. 3 of 2004);

“Scottish limited partnership” means a limited partnership formed under the laws of Scotland;

“Solvency and Reporting Requirements” means the Conditions and Requirements Relating to Solvency for the time being prescribed by the Council under the Solvency and Reporting Byelaw (No. 13 of 1990);

“solvency statement” has the meaning given in paragraph 1 of Schedule 1 to the Solvency and Reporting Byelaw (No. 13 of 1990);

“solvency test” means the calculation of a member’s capital resources requirement as at the solvency test date;

“solvency test date” has the meaning given in paragraph 1 of Schedule 1 to the Solvency and Reporting Byelaw (No. 13 of 1990);

“special reserve fund” has the meaning given in paragraph 1 of Schedule 1 to the Membership Byelaw (No.17 of 1993);

“valuation date” means the 30 April, 31 July or 30 September (or such other date as the Council may specify).

7. Terms defined in a relevant premiums trust deed, have in the application of these requirements to a particular relevant premiums trust deed, the meaning given in that deed.
8. A reference in these requirements to any document or legislation (whether primary or subordinate) or to any provision of it shall after the coming into force of any modification or replacement of the same be read as referring to the same as so modified or replaced.
9. These conditions and requirements shall come into force on 11 May 2005.

GUIDELINES FOR THE PARTIAL RELEASE OF THE LLOYD'S DEPOSIT

1. No release may be made where the member is in default in respect of any of his Lloyd's obligations.
2. Subject to paragraphs 1, 4 and 6, a release may be made if the value of the funds at Lloyd's of the member exceeds the amount determined in accordance with paragraph 3 (the "Member's Total Funding Requirement") but only to the extent of such excess and provided that not less than £5,000 (or such other amount as the Council may specify) is retained in the member's funds at Lloyd's (excluding any special reserve fund).
3. For the purposes of paragraph 2, the Member's Total Funding Requirement (*TFR*) is:
 - (a) if the member is actively underwriting in the current underwriting year, and provided the member's overall premium limit for the current underwriting year is not less than 50 per cent of the member's overall premium limit for the immediately preceding underwriting year, (A);
 - (b) if the member is actively underwriting in the current underwriting year but his overall premium limit for the current underwriting year is less than 50 per cent of his overall premium limit for the immediately preceding underwriting year, (B);
 - (c) subject to sub-paragraphs (d) and (e), if the member is not actively underwriting in the current underwriting year, (B);
 - (d) if the member is not actively underwriting in the current underwriting year but is a member of a group which includes other corporate members, one or more of whom is actively underwriting in the current underwriting year (each an "active member"), (A), provided:
 - (i) the OPL of the active member or, where more than one active member, the aggregate OPL of those members, for the current underwriting year is not less than 50% of their OPL or aggregate OPL (as the case may be) for the immediately preceding underwriting year; and
 - (ii) the member is subject to the obligations contained in clause 15 (connected companies) of the Membership Agreement (corporate member);
 - (e) if the member has made his funds at Lloyd's interavailable and the successor member concerned is actively underwriting in the current underwriting year, (A), unless:
 - (i) the successor member's overall premium limit for the current underwriting year is less than 50 per cent of its overall premium limit for the immediately preceding underwriting year; or
 - (ii) the successor member is a Scottish limited partnership and the member is not a limited partner of that partnership or is a Resigning Partner,
 (in which case, (B)),

where:

- (A) is the aggregate of:

- (1) the member's adjusted solvency liability; and
- (2) (a) the member's capital resources requirement; and
 - (b) the amount required to be provided by the member as required funds at Lloyd's in relation to the current year of account,
 whichever is the greater; and
- (B) is the aggregate of:
 - (1) the member's adjusted solvency liability; and
 - (2) (a) (i) the amount of member's capital resources requirement for general business multiplied by a factor of 2.2 (or such other factor as the Council may specify);
 - (ii) the amount of the member's capital resources requirement for long term business multiplied by a factor of 1.1 (or such other factor as the Council may specify);
 - (b) the member's adjusted RBC requirement multiplied by a factor of 1.1; and
 - (c) the member's enhanced capital requirement,
 whichever is the greater.
- 4. Save as provided in paragraphs 5 and 6, the value of any funds at Lloyd's that have been made interavailable by or to a member (as the case may be) must be excluded from the calculation of the value of that member's funds at Lloyd's for the purpose of paragraph 2.
- 5. For the purpose of paragraph 6 only, the value of any funds at Lloyd's that have been made interavailable by a member shall be included in the calculation of the value of the funds at Lloyd's of the successor member.
- 6. Subject to paragraph 8, funds that have been made interavailable by a member may be released to that member provided each of the following conditions is satisfied:
 - (a) each participant in the relevant arrangement has met every cash call made on him;
 - (b) the successor member has met every cash call made on it in;
 - (c) the value of each participant's funds at Lloyd's (including the funds made interavailable by him) is not less than that participant's TFR;
 - (d) the value of the successor member's funds at Lloyd's (including for this purpose the total amount of funds made interavailable to it) exceeds that successor member's TFR; and
 - (e) each participant's share of the successor member's TFR is less than the value of the funds made interavailable by that participant to the successor member.

7. For the purposes of paragraphs 6 and 8, a participant's "share" of the successor member's TFR is the amount determined by multiplying the successor member's TFR by the proportion that the value of funds made interavailable by the participant to the successor member bears to the total value of funds made interavailable to the successor member under the interavailability arrangement, the value of the respective funds being determined for this purpose as at the most recent valuation date.
8. Save in the case of an interavailability arrangement in respect of which there is only one participant, a release to a participant of funds made interavailable by him shall not exceed 50 per cent of the amount by which those funds exceed that participant's share of the successor member's TFR.
9. For the purpose of these guidelines:
 - (a) the value of a member's funds at Lloyd's shall be determined in accordance with the provisions of paragraph 12 of and Appendix 6 to the Funds at Lloyd's Requirements as at the most recent valuation date; and
 - (b) where the member has a special reserve fund it shall be applied first in respect of the member's general business and then, to the extent that any balance remains, in respect of the member's long term business.
10. In these guidelines, references to funds at Lloyd's, closed year losses, open year solvency surpluses and open year deficiencies shall be taken to be references to funds at Lloyd's, closed year losses, open year solvency surpluses and open year deficiencies in respect of the member's general business or long term business, as the case may be.
11. In these guidelines:

"additional solvency statement" has the meaning given in paragraph 1 of Schedule 1 to the Solvency and Reporting Byelaw (No. 13 of 1990);

"adjusted RBC requirement" means the amount calculated in accordance with Lloyd's risk based capital (RBC) model, as from time to time varied or supplemented, subject to the multiplication by a factor of 3 (or such other factor as the Council may specify) of the RBC ratio for each run-off syndicate;

"adjusted solvency liability" means, in relation to a member, the aggregate of net solvency deficiencies and the amount, if any, by which closed year losses exceed closed year profits as shown on the member's most recent solvency statement or additional solvency statement less such amount, if any, as has been paid into the member's premiums trust fund in or towards satisfaction of such losses or deficiencies since the last solvency test date and prior to the relevant date;

"capital resources requirement" has the meaning given in the Glossary made by the Financial Services Authority under the Financial Services and Markets Act 2000;

"cash call" means a request for funds made by a managing agent to members of a syndicate under the terms of the standard managing agent's agreement;

"corporate member" means a member of the Society which is a body corporate;

"enhanced capital requirement" has the meaning given in the Glossary made by the Financial Services Authority under the Financial Services and Markets Act 2000;

"funds at Lloyd's" has the meaning given in paragraph 4 of the Membership Byelaw No. 17 of 1993);

“Funds at Lloyd’s Requirements” means the Membership and Underwriting Conditions and Requirements (Funds at Lloyd’s) (Individual/Corporate Members) as prescribed by the Prudential Supervision Committee of the Lloyd’s Regulatory Board on 1 September 2000;

“interavailable” has the meaning given in paragraph 3 of the Schedule to the Conversion and Related Arrangements Byelaw (No. 22 of 1996);

“interavailability arrangement” has the meaning given in paragraph 2 of the Schedule to the Conversion and Related Arrangements Byelaw (No. 22 of 1996);

“limited partner” means an individual or company which is registered as a limited partner of a Scottish limited partnership pursuant to the Limited Partnerships Act 1907;

“Lloyd’s deposit” means a Lloyd’s deposit, a Lloyd’s life deposit or an additional Lloyd’s deposit, each as defined in paragraph 5 of the Membership Byelaw (No. 17 of 1993);

“Lloyd’s obligations” means, in relation to a member, all underwriting obligations incurred by him as an underwriting member of the Society at any time before the relevant date and includes obligations to the Society and obligations arising under:

- (i) the byelaws, regulations, rules, directions or other requirements of the Society; and
- (ii) any deed, contract, instrument or other arrangement of any kind approved by the Society;

but does not include obligations arising in respect of any letter of credit, guarantee or other security given to secure the performance of any of his said underwriting obligations in favour of the person giving such guarantee or other security;

“Membership Agreement (corporate member)” has the meaning given in the Membership and Underwriting Requirements (Corporate Member);

“Membership and Underwriting Requirements (Corporate Member)” means the conditions and requirements so-called and made under the Membership Byelaw (No. 17 of 1993) and for the time being in force;

“net solvency deficiency” means in relation to a member, the amount by which the open year deficiencies exceed the open year surpluses ;

“open year deficiency” means the figure (if negative) shown on the member’s most recent solvency statement or additional solvency statement in respect of any year of account (including a run-off account) not closed at the last solvency test date;

“open year surplus” means the figure (if positive) shown on the member’s most recent solvency statement or additional solvency statement in respect of any year of account (including a run-off account) not closed at the last solvency test date, less such amount, if any, as has been transferred from Managing Agent’s Sub-Fund to the Personal Reserve Sub-Fund of the member’s premiums trust fund since the last solvency test date and prior to the relevant date;

“overall premium limit” has the meaning given paragraph 1 of Schedule 1 to the Membership Byelaw (No. 17 of 1993);

“participant” has the meaning given in paragraph 2 of the Schedule to the Conversion and Related Arrangements Byelaw (No. 22 of 1996);

“reinsurance to close” has the meaning given in paragraph 1 of Schedule 1 to the Syndicate Accounting Byelaw (No. 18 of 1994);

“relevant date” means the most recent valuation date;

“required funds at Lloyd’s” has the meaning given in paragraph 2 of Appendix 1 to the Funds at Lloyd’s Requirements;

“Resigning Partner” means a limited partner who has given notice of resignation from the relevant partnership but whose resignation has yet to take effect;

“run-off account” has the meaning given in the Definitions Byelaw (No. 3 of 2004);

“run-off syndicate” has the meaning given in the Definitions Byelaw (No. 3 of 2004);

“Scottish limited partnership” means a limited partnership formed under the laws of Scotland;

“Solvency and Reporting Requirements” means the Conditions and Requirements Relating to Solvency for the time being prescribed by the Council under the Solvency and Reporting Byelaw (No. 13 of 1990);

“solvency statement” has the meaning given in paragraph 1 of Schedule 1 to the Solvency and Reporting Byelaw (No. 13 of 1990);

“solvency test” means the calculation of a member’s capital resources requirement as at the solvency test date;

“solvency test date” has the meaning given in paragraph 1 of Schedule 1 to the Solvency and Reporting Byelaw (No. 13 of 1990);

“special reserve fund” has the meaning given in paragraph 1 of Schedule 1 to the Membership Byelaw (No.17 of 1993);

“standard managing agent’s agreement” means (a) in relation to any member, the standard managing agent’s agreement (general); and (b) in relation to a corporate member, the standard managing agent’s agreement (corporate member), each as defined in the Agency Agreements Byelaw (No. 8 of 1988);

“successor member” has the meaning given in paragraph 2 of the Schedule to the Conversion and Related Arrangements Byelaw (No. 22 of 1996);

“valuation date” means the 30 April, 31 July or 30 September (or such other date as the Council may specify).

12. A reference in these guidelines to any document or legislation (whether primary or subordinate) or to any provision of it shall after the coming into force of any modification or replacement of the same be read as referring to the same as so modified or replaced.