

UNDERWRITING REQUIREMENTS

Purpose:

The purpose of the Underwriting Requirements is to conveniently set out all of the matters prescribed, issued or made by the Franchise Board under the Underwriting Byelaw, the Delegated Underwriting Byelaw and the Overseas Underwriting Byelaw. The Underwriting Requirements also contain links to Market Bulletins where they contain further relevant information.

The headings for each of the parts of the Underwriting Requirements correspond with the headings for each of the parts in the relevant Byelaw. The headings for each of the paragraphs of the Underwriting Requirements also include references to the relevant paragraphs in the Byelaw under which the requirements were prescribed, issued or made.

The headings and these notes are for guidance only and do not form part of the Underwriting Requirements.

Words and terms shown in italics have the meaning set out in the Definitions Byelaw.

These requirements (version 5) came into force on 18 July 2005 and amend and supercede the Underwriting Requirements that came into force on 28 October 2004.

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Chapter 1 Requirements made under the Underwriting Byelaw

Permission to act as an underwriting agent – Part A of the Underwriting Byelaw

Criteria for deciding whether an *applicant* is suitable to be granted permission to act as an underwriting agent – paragraph 8(b) of the Underwriting Byelaw

1. In deciding whether an *applicant* is suitable to be granted permission to act as an *underwriting agent* the *Franchise Board* shall have regard to the following criteria and all other relevant matters –
 - (a) whether the *applicant* is a competent, proficient and capable organisation. In considering this the *Franchise Board* may have regard to the following matters –
 - (i) the nature of the *applicant's* business;
 - (ii) the *applicant's* compliance with appropriate principles of good corporate governance;
 - (iii) the quality and adequacy of the *applicant's* human resources including –
 - (i) the competence, reputation, character and suitability of each of the *applicant's* directors;
 - (ii) the collective suitability of the *applicant's* board of directors and of each of its committees;
 - (iii) the competence, reputation, character and suitability of the *applicant's* officers and trustees;
 - (iv) the competence, reputation, character and suitability of the *applicant's* staff;
 - (v) the quality and adequacy of the *applicant's* training and development programme; and
 - (vi) in the case of an *applicant* applying for permission to act as a *managing agent*, the past, present and forecast *underwriting* performance of the *applicant's* underwriters;
 - (iv) the quality and adequacy of the *applicant's* other resources including –
 - (i) the quality and adequacy of the *applicant's* information technology systems;
 - (ii) the quality and adequacy of the *applicant's* accounting and credit control systems;

- (iii) the quality and adequacy of the *applicant's* consultants, advisers, service providers and agents;
 - (iv) the quality and adequacy of the *applicant's* resources to set and comply with appropriate service standards for its customers;
 - (v) the quality and adequacy of the *applicant's* resources to comply with such principles and standards for the conduct or administration of insurance business as the *Franchise Board* may from time to time prescribe, recognise or endorse;
 - (vi) the quality and adequacy of the *applicant's* record keeping arrangements; and
 - (vii) in the case of an *applicant* applying for permission to act as a *managing agent*, the quality and adequacy of the *applicant's* resources and systems for *underwriting* administration;
- (v) the quality and adequacy of the *applicant's* controls and procedures to manage its business including –
- (i) the quality and adequacy of the *applicant's* risk management and internal audit arrangements;
 - (ii) the quality and adequacy of the *applicant's* compliance arrangements;
 - (iii) the quality and adequacy of the *applicant's* arrangements to manage its service providers and agents;
 - (iv) the *applicant's* arrangements for identifying, resolving or managing conflicts of interest; and
 - (v) in the case of an *applicant* applying for permission to act as an *managing agent*, the quality and adequacy of the *applicant's* controls and procedures for the management of *underwriting* risk;
- (b) whether the *applicant* is of appropriate reputation and standing;
 - (c) whether any *person* who *controls* the *applicant* or who is connected or associated with the *applicant* is of appropriate reputation and standing;
 - (d) whether the *applicant* has adequate capital and financial resources.

Criteria for deciding whether an *applicant* is suitable to be granted permission to manage a *syndicate* – paragraph 8(c) of the Underwriting Byelaw

2. In deciding whether a *managing agent* is suitable to manage a *syndicate* the *Franchise Board* shall have regard to the criteria set out in paragraph 1 above having regard to the nature and quality of the *business plan* prepared and submitted by the *managing agent* in respect of the *syndicate* in question.

Principles of relationship – Part B of the Underwriting Byelaw

Principles of relationship – paragraph 10 of the Underwriting Byelaw

3. Following consultation, the *Franchise Board* made and issued the following statement setting out Lloyd’s goals and market objectives and the principles in accordance with which Lloyd’s and *managing agents* will generally be expected to work together and assist each other to achieve those goals and objectives.

The Principles of Relationship

1. The Franchise Board’s Goal

The new franchise framework was developed to preserve the advantages that the Lloyd’s market derives from being a marketplace of distinct independent businesses, whilst committing the Franchise Board to effectively promote the overall profitability of the market.

In order to ensure that the franchise framework is successful and that the Franchise Board can deliver the step-change in market performance that is required for Lloyd’s to compete successfully in future in the global insurance market, the Franchise Board has been set a clear goal:

“Creating and maintaining a commercial environment at Lloyd’s in which the long term return to all capital providers is maximised”.

2. Achieving the Franchise Board’s Goal

In order to achieve its goal, the Franchise Board’s vision for the franchise is to ensure that Lloyd’s is the “leading specialist insurance marketplace” and the preferred market of choice for policyholders, brokers, underwriters and capital. The purpose of this document is to set out the principles in accordance with which the Franchise Board and franchisees will generally be expected to work together to achieve that.

The Franchise Board is committed to allowing franchisees in the Lloyd’s marketplace to operate independently within a franchise framework which is committed to delivering consistent underwriting profit, which benefits from a common rating and

mutual security and which attracts the highest quality management and underwriting talent.

The leading specialist insurance marketplace

Lloyd's derives considerable strength from being a market offering specialist expertise. The marketplace is attractive both to policyholders and brokers and to underwriting businesses. Specialism and expertise are at the heart of Lloyd's competitive advantage. The Franchise Board is committed to developing that advantage.

Independence within the franchise framework

The Lloyd's franchise framework is one where franchisees are recognised as independent businesses with the freedom to participate in whichever types of business they choose, subject to their duties and provided they operate in accordance with a business plan which they have agreed with the Franchise Board.

Commitment to delivering consistent underwriting profit

The Franchise Board recognises that consistent profit does not mean constant profit. Insurance is a cyclical business. However, it is proposed that each franchisee strives to ensure that each syndicate makes an underwriting profit each year, consistent with the long-term profitability target that will be set by the Franchise Board.

Licences, a common rating and mutual security

These are key elements of the Lloyd's Franchise. Lloyd's licenses to underwrite insurance in the UK and overseas and the security behind the Lloyd's policy depend, to varying but critical degrees, on the existence of the New Central Fund. Lloyd's market security ratings reflect the strength of the chain of security, including the New Central Fund. The strength of the rating and the perception of security depend critically on franchisees' performance. The market pays a reputational price for the performance of the poorest businesses, as well as an economic price in higher New Central Fund contributions. The Franchise Board is therefore committed to encourage higher standards of underwriting and risk management.

Attracting the highest quality management and underwriting talent

Attracting the best people will help the Lloyd's market achieve and maintain profitability and make Lloyd's the most attractive insurance market to work in.

3. The Franchise Board's Commitments

The Franchise Board is committed to achieving the Franchise Goal working in conjunction with the market. In order to do that, the Franchise Board will seek to –

- operate in an open, constructive and flexible manner
- take into account the views of individual franchisees
- encourage regular dialogue and consultation with franchisees and with the market associations. The Franchise Board will develop effective working arrangements with the market associations to achieve this
- adopt a cost effective, commercial and efficient approach
- actively support market initiatives relating to franchise business processes, such as LMP, leading to improved service standards and reduced costs
- allocate charges, as far as possible, on a user pays basis
- deliver high levels of service in accordance with agreed service standards and develop a performance culture amongst Lloyd's employees
- rationalise the frequency and manner in which data and information is collected from franchisees and reduce the number of returns that have to be made to Lloyd's
- give adequate notice of proposed changes to requirements for franchisees
- protect the confidentiality of commercially sensitive information provided to it by franchisees in accordance with published guidelines
- assist franchisees which manage underperforming syndicates to improve their performance but take firm action where a franchisee is unable or unwilling to respond to that approach

More specifically, the Franchise Board will –

- set a target level of profitability for the Lloyd's market over the insurance cycle. The target will be a long term target taking into account the cyclical nature of Lloyd's business

- from time to time publish guidelines with which it will generally expect franchisees to comply. These guidelines will cover a range of underwriting and risk management issues which are based on sound insurance industry practice
- develop the business planning process for syndicates and implement and operate it in a constructive and facilitative manner
- carefully monitor the performance of each syndicate against its business plan and assist franchisees to improve the results of underperforming syndicates. If, however, a franchisee does not respond to a facilitative approach the Franchise Board will take appropriate action which may ultimately include the removal of a franchisee from the franchise

In this way, the Franchise Board will seek to –

- improve profit performance and outperform the competition
- maintain and develop an outstanding risk management capability throughout the franchise
- improve standards of service to brokers and to policyholders and to be their market place of choice
- optimise flows of capital to the Lloyd's market
- reduce contributions to the Central Fund
- improve Lloyd's security rating
- protect, strengthen and develop Lloyd's licences and to have a competitive international trading platform

4. Franchisees' commitments

In return, the Franchise Board will expect franchisees to operate in accordance with the following principles –

- deal with Lloyd's in an open, constructive and cooperative manner

- protect –
 - the brand and reputation of Lloyd’s
 - Lloyd’s security rating
 - the security behind Lloyd’s policies including the New Central Fund
 - Lloyd’s licences and authorisations to conduct insurance business in the UK and overseas
- deliver high levels of service to brokers and policyholders in accordance with set service standards, systems and protocols
- prepare high quality business plans in accordance with the relevant guidelines with a view to achieving the Franchise Board’s long term profitability targets
- operate and underwrite in accordance with agreed business plans
- accurately report syndicate performance in a timely manner and assist Lloyd’s in understanding the factors which may have affected syndicate performance
- notify the Franchise Board in good time of any matters which may have a material effect on the franchisee, its syndicates or on Lloyd’s as a whole
- protect the confidentiality of confidential information provided by Lloyd’s

Service standards – paragraph 12 of the Underwriting Byelaw

3A. The *Franchise Board* has prescribed the following standards and arrangements for the conduct and administration of insurance business at Lloyd’s provided always that failure to comply with these standards and arrangements shall not invalidate or call into question any contract or agreement entered into by or on behalf of a *managing agent* or *syndicate* nor shall failure to comply with these standards and arrangements create any right of action or claim in any third party against a *managing agent* or *syndicate*, the authority to enforce compliance being exclusively vested in the *Franchise Board* –

- (a) as from 28 October 2004, a *managing agent* shall not permit the syndicate stamp of a *syndicate* managed by it to be affixed to any slip which relates to a contract or contracts of insurance unless –
 - (i) the slip is in the format of an LMP slip from time to time issued by the LMP Programme Office and the information contained in the slip has been properly completed in accordance with the relevant LMP slip standards;
 - (ii) the slip is marked “LMP Exempt – Client Requirement”; or

- (iii) the slip relates to *motor business, personal lines business* or *term life insurance business* and the slip will not be processed by LPSO Limited;
- (b) as from 28 October 2004, a *managing agent* shall not permit the syndicate stamp of a *syndicate* managed by it to be affixed to any slip which relates to a *binding authority* in respect of the 2005 or later year of account unless the slip has been completed in accordance with the relevant LMP slip guidelines from time to time issued by the LMP programme office;
- (c) as from 1 October 2005, a *managing agent* shall not permit the *syndicate* stamp of a *syndicate* managed by it to be affixed to any *line slip* unless the slip has been completed in accordance with the relevant LMP slip guidelines from time to time issued by the LMP programme office.

Underwriting – Part D of the Underwriting Byelaw

Underwriting guidelines

4. The *underwriting guidelines* made and issued by the *Franchise Board* relating to run-off are set out in Market Bulletin (The Underwriting Byelaw, Underwriting Requirements, Definitions Byelaw and Run-off Guidelines) issued on 30 June 2003.

Risk management requirements – Part E of the Underwriting Byelaw

Codes of practice – paragraph 31 of the Underwriting Byelaw

5. The *codes of practice* made and issued by the *Franchise Board* are set out in Lloyd's Codes Handbook.

Consent to changes – paragraph 32 of the Underwriting Byelaw

6. No *underwriting agent* shall permit any of the following events to occur without the prior written consent of the *Franchise Board* –
 - (a) In the case of a *managing agent*, the appointment or removal of a *person* as a *managing agent's trustee* or the appointment by any *managing agent's trustee* (in his capacity as such) of any *person* as attorney.

Notification of changes - paragraph 34 of the Underwriting Byelaw

7. An *underwriting agent* shall without delay notify the *Franchise Board* in writing if any of the following events occur –
 - (a) an event that must be notified to the *Financial Services Authority* via Lloyd's in accordance with the Supervision Arrangements for Underwriting Agents between the *Financial Services Authority* and the *Society*. Namely –
 - (i) the appointment of an auditor and information about the auditor in accordance with the *Financial Services Authority's Handbook* (SUP 3.3.2 R(2) and (5));
 - (ii) the notification of matters raised by an auditor in accordance with the *Financial Services Authority's Handbook* (SUP 3.7.2 G);
 - (iii) the termination of an auditor's term of office in accordance with the *Financial Services Authority's Handbook* (SUP 3.8.11 R and SUP 3.8.12 R);

- (iv) the general notification requirements in accordance with the *Financial Services Authority's Handbook* (SUP 15.3) including –
 - i. matters having serious regulatory impact (SUP 15.3.1 R);
 - ii. communication with the FSA in accordance with Principle 11 (SUP 15.3.7 G);
 - iii. breaches of rules and other requirements in or under the Financial Services and Markets Act 2000 (SUP 15.3.11 R);
 - iv. civil, criminal or disciplinary proceedings against a firm (SUP 15.3.15 R);
 - v. fraud, errors or other irregularities (SUP 15.3.17 R);
 - vi. insolvency, bankruptcy and winding up (SUP 15.3.21 R);
 - (v) the Core information requirements in accordance with the *Financial Services Authority's Handbook* (SUP 15.5);
 - (vi) where an *underwriting agent* becomes aware that inaccurate, false or misleading information has previously been provided, in accordance with the *Financial Services Authority's Handbook* (SUP 15.6);
 - (vii) the change of an accounting reference date in accordance with the *Financial Services Authority's Handbook* (SUP 16.3.17 R);
 - (viii) annual controllers report in accordance with the *Financial Services Authority's Handbook* (SUP 16.4); and
 - (ix) annual close links report in accordance with the *Financial Services Authority's Handbook* (SUP 16.5);
- (b) in the case of a *managing agent*, that the *managing agent* is or is likely to become associated with a *Lloyd's broker* contrary to the provisions of Lloyd's Act 1982 (divestment);
 - (c) in the case of a *managing agent*, the death or resignation of, or the occurrence of any *notifiable event* in relation to any *managing agent's trustee*; and
 - (d) in the case of a *managing agent*, if at any time the *syndicate premium income* allocable to any year account of a *syndicate* managed by it exceeds or appears to have exceeded or likely to exceed the *syndicate allocated capacity* for that year of account. The notification shall include full particulars of the extent of the excess or expected excess, the reasons why the excess has arisen or is expected to arise and what remedial action the *managing agent* has taken or proposes to take.

Disaster scenarios – paragraph 35 of the Underwriting Byelaw

- 8. Details of the disaster scenarios prescribed by the *Franchise Board* and the requirements relating to the realistic disaster reports are set out in Market Bulletin Y3029 (Realistic Disaster Scenarios 2003) issued on 3 April 2003.

Syndicate premium income – paragraph 36 of the Underwriting Byelaw

9. When calculating *syndicate premium income*, *managing agents* shall –
- (a) allocate insurance business underwritten through a *syndicate* to a year of account in accordance with the accounting policies adopted in respect of that *syndicate*;
 - (b) allocate *premium income* to the same year of account as the insurance business out of which it arises unless that year of account of the *syndicate* has been reinsured to close in which case any payments subsequently received or made by way of additional premiums or returns in respect of such business shall be allocated to the reinsuring *syndicate*;
 - (c) where a year of account of a *syndicate* is closed by reinsuring all liabilities outstanding in respect of insurance business allocated to it into a later year of account of –
 - (i) the same *syndicate*, the premium in respect of such reinsurance to close shall not itself be treated as *premium income* allocable to the later year of that *syndicate*;
 - (ii) another *syndicate*, the premium in respect of such reinsurance to close shall, unless the *Franchise Board* otherwise directs, be treated as *premium income* allocable to the later year of that *syndicate*;
 - (d) treat *premium income* as being credited to a *member* –
 - (i) where it arises out of insurance business in respect of which a policy has been or is to be issued and signed by *LPSO*, in accordance with the central accounting system;
 - (ii) where it arises out of other insurance business, in accordance with the accounting policies adopted by the *managing agent* of the *syndicate* through which that business is underwritten;
 - (e) convert *premium income* which is credited in a currency other than sterling using the following rates of exchange for 2003 year of account –
 - (i) US Dollar 1.50;
 - (ii) Canadian Dollar 2.28;
 - (iii) Euro 1.56;
 - (iv) Australian Dollar 2.62;
 - (v) South African Rand 13.52;
 - (vi) Japanese Yen 183.20;
 - (vii) Swiss Franc 2.40;

- (f) treat premiums paid by a *member* of a *syndicate* under a reinsurance contract which satisfies the requirements for *qualifying quota share contracts* set out in Market Bulletin Y3024 (Qualifying Quota Share Reinsurance Arrangements For The 2003 Year Of Account) issued on 2 April 2003 as *qualifying reinsurance premiums*.

Reports relating to syndicate premium income – paragraph 39 of the Underwriting Byelaw

- 10. The requirements prescribed by the *Franchise Board* regarding *syndicate premium income* monitoring are set out in Market Bulletin Y3057 (Premium Income Data Collection) issued on 12 May 2003.

**Financial resources and financial returns – Part F of
the Underwriting Byelaw**

Financial resources – paragraph 49 of the Underwriting Byelaw

11. The requirements prescribed by the *Franchise Board* regarding the possession by *underwriting agents* of financial resources and capital and the maintenance of solvency margins are set out in the Market Bulletin (Underwriting Agents Financial Resource Requirements (FRRs)) issued on 30 June 2003.

Financial returns – paragraphs 50 and 51 of the Underwriting Byelaw

12. The requirements prescribed by the *Franchise Board* in respect of *quarterly financial returns* and *annual financial returns* are set out in the Market Bulletin (Underwriting Agents Financial Resource Requirements (FRRs)) issued on 30 June 2003.

Run-off – Part L of the Underwriting Byelaw

Delegation of run-off functions – paragraph 86 of the Underwriting Byelaw

13. The following functions undertaken in the management of a *run-off syndicate* or a *run-off account* shall be called *executive functions* –
 - (a) responsibility for *syndicate* strategy, including –
 - (i) approval of forecasts and budgets;
 - (ii) claims reserving and commutation policy and approval;
 - (iii) annual solvency and *syndicate* accounts;
 - (iv) compliance with the *requirements of the Council*;
 - (v) management and control of expenses;
 - (b) reporting and accounting to *members*;
 - (c) performance of duties under *premiums trust deed* – including (but not limited to) investment management policy;
 - (d) management of conflicts of interest between *syndicates* and years of account; and
 - (e) responsibility for the performance of any delegated or sub-contracted functions.
14. The following functions undertaken in the management of a *run-off syndicate* or a *run-off account* shall be called *insurance functions* –
 - (a) claims adjusting;
 - (b) identifying reinsurance recoveries;
 - (c) purchasing reinsurance;
 - (d) evaluating reinsurance security;
 - (e) effecting commutations, negotiations and set-off of inwards and outwards business;
 - (f) preparing and maintaining reserving and actuarial data; and
 - (g) undertaking cash and investment management.
15. The following functions undertaken in the management of a *run-off syndicate* or a *run-off account* shall be called *administrative and processing functions* –
 - (a) maintaining policy risk records;
 - (b) administering and processing claims;
 - (c) aggregating claims and calculating reinsurance recoveries;
 - (d) credit control in collecting reinsurance recoveries; and
 - (e) maintaining statistical records.

Dispute resolution and appeals – Part M of the Underwriting Byelaw

Dispute resolution

16. The following arrangements and procedures are designed to resolve disputes between *underwriting agents* and the *Franchise Board* arising under the Underwriting Byelaw in a timely, constructive and cost effective manner.

1. “Minded to” decisions and reasons

1.1 Before a decision is taken by or on behalf of the *Franchise Board* which will be unfavourable to a specific *underwriting agent* the decision taker will, unless he considers that the circumstances make it inappropriate to do so –

- (a) inform the *underwriting agent* that the decision taker is minded to decide the matter in that way;
- (b) provide the *underwriting agent* with the decision taker’s reasons for deciding the matter in that way; and
- (c) provide the *underwriting agent* with an opportunity to make representations to the decision taker prior to the decision being taken.

1.2 Where a decision is taken by or on behalf of the *Franchise Board* which is unfavourable to a specific *underwriting agent* the decision taker will unless he considers that the circumstances make it inappropriate to do so, provide the *underwriting agent* with the decision taker’s reasons for deciding the matter in that way.

2. Requests to review decisions taken on behalf of the Franchise Board

Step 1 – Submitting a request for a decision to be reviewed

2.1 In the event that a decision is taken on behalf of the *Franchise Board* which is unfavourable to a specific *underwriting agent*, the *underwriting agent* may, where it reasonably and objectively considers the decision to be wrong or unreasonable, request that the decision is reviewed (a “*request*”).

2.2 A *request* shall be made in writing as soon as reasonably practicable following receipt of the decision. The *request* shall include an explanation as to why the *underwriting agent* considers that the decision is either wrong or unreasonable. The *request* shall be made on behalf of the board of directors of

the *underwriting agent* and shall be signed by a director of the *underwriting agent*. The *request* shall be submitted to the decision taker.

Step 2 – Review of the decision by the original decision taker

- 2.3 Following receipt of the *request*, the decision taker shall review the *request* and may, where he considers appropriate, amend, modify or withdraw his decision.

Step 3 – Review of the decision by a director or the Executive Committee

- 2.4 Where the decision taker does not propose to amend, modify or withdraw his decision he shall refer the *request* to a director or, where appropriate, to the Executive Committee. The request shall be reviewed by the director or the Executive Committee and, where the director or the Executive Committee considers appropriate, the decision may be amended, modified or withdrawn.

Step 4 – Review of the decision by the Market Supervision and Review Committee

- 2.5 If, following the review of the *request* by a director or the Executive Committee (including where the original decision taker was the Executive Committee), the *underwriting agent* still reasonably and objectively considers the decision to be wrong or unreasonable, the *underwriting agent* may apply to the Market Supervision and Review Committee to review the *request*. The application shall be made in writing as soon as reasonably practicable. The application shall be made on behalf of the board of directors of the *underwriting agent* and shall be signed by two directors. The application shall be submitted to the Secretary to the *Franchise Board*.
- 2.6 The Market Supervision and Review Committee shall review the *request* and may, where it considers appropriate, amend, modify or withdraw the decision.

Step 5 – Application for permission to appeal to the Appeal Tribunal

- 2.7 Where, following a review of the *request* by the Market Supervision and Review Committee, the *underwriting agent* wishes to apply for permission to appeal to the *Appeal Tribunal*, the *underwriting agent* may make an application to the Market Supervision and Review Committee to do so. The application shall be made in writing as soon as reasonably practicable. The application shall be made on behalf of the board of directors of the *underwriting agent* and shall be signed by two directors. The application shall be submitted to the Secretary to the *Franchise Board*.

2.8 The Market Supervision and Review Committee may, where it considers appropriate, give permission to the *underwriting agent* to appeal to the *Appeal Tribunal*.

3. Request to review decisions taken by the Franchise Board itself

Step 1- submitting a request for a decision to be reviewed

3.1 In the event that a decision is taken by the *Franchise Board* which is unfavourable to a specific *underwriting agent*, the *underwriting agent* may, where it reasonably and objectively considers the decision to be wrong or unreasonable, request that the decision is reviewed (a “*request*”).

3.2 A *request* shall be made in writing as soon as reasonably practicable following receipt of the decision. The *request* shall include an explanation as to why the *underwriting agent* considers that the decision is either wrong or unreasonable. The *request* shall be made on behalf of the board of directors of the *underwriting agent* and shall be signed by two directors of the *underwriting agent*. The *request* shall be submitted to Secretary to the *Franchise Board*.

Step 2 – Review of the decision by the Franchise Board

3.3 The *Franchise Board* shall review the *request* and may, where it considers appropriate, amend, modify or withdraw the decision.

Step 3 – Application for permission to appeal to the Appeal Tribunal

3.4 Where, following a review of the *request* by the *Franchise Board*, the *underwriting agent* wishes to apply for permission to appeal to the *Appeal Tribunal*, the *underwriting agent* may make an application to the *independent non-executive directors of the Franchise Board* to do so. The application shall be made in writing as soon as reasonably practicable. The application shall be made on behalf of the board of directors of the *underwriting agent* and shall be signed by two directors. The application shall be submitted to the Secretary to the *Franchise Board*.

3.5 The *independent non-executive directors of the Franchise Board* may, where they consider appropriate, give permission to the *underwriting agent* to appeal to the *Appeal Tribunal*.

Chapter 2 Requirements made under the Delegated Underwriting Byelaw

Registers of coverholders and registered binding authorities – Part B of the Delegated Underwriting Byelaw

Format and content of the registers - paragraph 6 of the Delegated Underwriting Byelaw

1. The registers of *approved coverholders*, *restricted coverholders* and *registered binding authorities* shall be held electronically on the system the *Franchise Board* operates for that purpose.

Inspection of the registers - paragraph 7 of the Delegated Underwriting Byelaw

2. Any person may inspect the registers of *approved coverholders* and *restricted coverholders*.
3. Any *approved coverholder*, *managing agent* and any *Lloyd's broker* which is a party to a *registered binding authority* or any *Lloyd's broker* which arranged or broked that *registered binding authority* may inspect the part of the register of *registered binding authorities* which relates to that *registered binding authority*.

**Approved Coverholders - Part C
of the Delegated Underwriting Byelaw**

Applications for approval - paragraphs 8 and 9 of the Delegated Underwriting Byelaw

4. An *applicant* shall apply to the *Franchise Board* for its name to be entered in the *register of approved coverholders* by completing the relevant parts of the appropriate form of application.
5. Any *applicant*, which is not a *Lloyd's broker*, must be sponsored by a *Lloyd's broker* or a *managing agent* ("*the sponsor*"). *The sponsor* shall complete the relevant part of the appropriate form of application.

Approval – paragraph 13 of the Delegated Underwriting Byelaw

6. In deciding whether an *applicant* is suitable to be an *approved coverholder* the *Franchise Board* shall have regard to the following criteria and all other relevant matters –
 - (a) whether the *applicant* is a competent, proficient and capable organisation and in considering that the *Franchise Board* may have regard to the following matters –
 - (i) the *applicant's* compliance with appropriate principles of good corporate governance;
 - (ii) the *applicant's* membership of any body or organisation that the *Franchise Board* considers to be necessary or desirable;
 - (iii) the quality and adequacy of the *applicant's* human resources including –
 - (i) the competence, reputation, character and suitability of the *applicant's* directors, officers and staff; and
 - (ii) the knowledge and experience of the *applicant's* directors, officers and staff of the conduct and regulation of insurance business in the Lloyd's insurance market and in any other relevant jurisdiction;
 - (iv) the quality and adequacy of the *applicant's* other resources including the quality and adequacy of the *applicant's* –

- (i) systems, procedures, protocols and arrangements for the conduct of its business;
 - (ii) resources to comply with appropriate service standards for its customers;
 - (iii) resources to comply with such principles and standards for the conduct or administration of insurance business in the Lloyd's insurance market as the *Franchise Board* may from time to time prescribe, recognise or endorse; and
 - (vi) resources and systems for *underwriting* administration and for the administration and agreement of claims;
- (v) the quality and adequacy of the *applicant's* controls and procedures to manage its business including –
- (i) the *applicant's* arrangements for identifying, resolving or managing conflicts of interest; and
 - (ii) the quality and adequacy of the *applicant's* controls and procedures for the management of *underwriting* risk and for the management of the administration and agreement of claims;
- (vi) the nature of the *applicant's* business including its past, present and forecast *underwriting* performance;
- (b) whether the *applicant* is of appropriate reputation and standing;
 - (c) whether any person who *controls* the *applicant* or who is connected or associated with the *applicant* is of appropriate reputation and standing;
 - (d) whether the *applicant* has adequate capital and financial resources;
 - (e) whether the *applicant* has adequate professional indemnity insurance;
 - (f) whether the *applicant* is capable and willing to comply with the terms of any undertaking given by it to the *Franchise Board*; and
 - (g) whether the *applicant* possesses all the licences, approvals or authorisations in order to act as an *approved coverholder* wherever it will conduct insurance business in that capacity.

7. A *managing agent* that intends to enter into a *binding authority* with the *applicant* must, in accordance with paragraph 15(b) of the Delegated Underwriting Byelaw, complete the declaration attached to the application form.

Restricted Coverholders – Part D of the Delegated Underwriting Byelaw

Applications - paragraphs 21 and 23 of the Delegated Underwriting Byelaw

8. A *managing agent* shall make a request to the *Franchise Board* that a *candidate's* name be entered in the register of *restricted coverholders* by completing the form of application.
9. The criteria for eligibility to entered in the register of *restricted coverholders* are that –
 - (a) the *candidate* is either a company whose registered office is in the United Kingdom or is a partnership based in the United Kingdom;
 - (b) the *candidate* will be a party to a *binding authority* which is a *restricted binding authority*; and
 - (c) with effect from 14 January 2005 the *candidate* has permission to carry on insurance mediation in accordance with the Financial Services and Markets Act 2000 and the *Financial Services Authority's requirements* applicable to it.

Binding Authorities - Part E of the Delegated Underwriting Byelaw

Requirements relating to binding authorities - paragraph 30 of the Delegated Underwriting Byelaw

10. Every *registered* and *restricted binding authority* shall contain the following information, provisions and terms and comply with the following conditions and requirements –
 - (a) an agreement number by which the *binding authority* can be identified;
 - (b) the name and address of each *coverholder* which is a party to the *binding authority*;
 - (c) the name and address of each *Lloyd's broker* which is a party to the *binding authority* or which arranged or broked the *binding authority*;
 - (d) the syndicate or syndicates on whose behalf each *managing agent* is delegating authority to enter into contracts of insurance (the “*syndicates*”);
 - (e) the period of the *binding authority* which shall be no greater than 18 months from the date of inception of the *binding authority* in total;
 - (f) the name of the coverholder’s director or partner who is directly responsible, on behalf of the *coverholder*, for the overall operation and control of the *binding authority*;
 - (g) the names of the coverholder’s directors, partners or employees who will have authority to enter into contracts of insurance under the *binding authority*;
 - (h) the names of the coverholder’s directors, partners or employees (if any) who will have authority to issue documents evidencing contracts of insurance under the *binding authority*;
 - (i) the name of any person who will have authority to agree claims made on contracts of insurance entered into by the *coverholder* under the *binding authority*;
 - (j) a list of the terms and conditions which must be incorporated in contracts of insurance entered into under the *binding authority* including -
 - (i) relevant wordings, exclusions and limitations;
 - (ii) the maximum period of cover;
 - (iii) the limits of liability; and
 - (iv) any applicable territorial wordings or general cover conditions as prescribed or endorsed by the *Franchise Board*;

- (k) the maximum aggregate premium income limit in respect of all contracts of insurance that the *coverholder* may enter into under the *binding authority*;
 - (l) the maximum limits of liability in respect of contracts of insurance that the *coverholder* may enter into under the *binding authority*;
 - (m) the territorial limitations on the *coverholder's* authority under the *binding authority*;
 - (n) provisions requiring the *coverholder* to report in respect of all premiums, paid claims, outstanding claims and expenses in respect of contracts of insurance entered into by class or category by the *coverholder* under the *binding authority*;
 - (o) provisions setting out how and when the payment and settlement of monies due from each of the parties to the *binding authority* should be made;
 - (p) provisions for the cancellation and termination of the *binding authority* including provisions that the *binding authority* shall be terminated upon the *Franchise Board* giving such direction or order to the *managing agent* or the *coverholder*;
 - (q) provisions relating to the ongoing obligations of the *coverholder* in the event that the *binding authority* expires or is terminated or cancelled for any reason; and
 - (r) provisions setting out the jurisdiction and governing law for the settlement of disputes arising from the *binding authority*.
11. Every *registered binding authority* shall, in addition to the matters referred to at paragraph 10, contain the following information, provisions and terms and comply with the following conditions and requirements –
- (a) a precise description of the nature or classification of the contracts of insurance that the *approved coverholder* will be authorised to enter into under the *registered binding authority* and any relevant exclusions and limitations;
 - (b) the manner or basis for the calculation of premiums, discounts, commissions, brokerages, fees, charges and expenses.
12. Every *restricted binding authority* shall, in addition to the matters referred to at paragraph 10, contain the following information, provisions and terms and comply with the following conditions and requirements –
- (a) provisions to require the *restricted coverholder* to produce to the *Franchise Board* any information, documents, books, records and other materials which, in the opinion of the *Franchise Board* relate or purport to relate to the operation of the *restricted binding authority* and to give to the *Franchise Board* or its agent or general representative all

reasonable facilities in its premises for the purpose of examining such materials.

Registration of registered binding authorities - paragraphs 32 and 33 of the Delegated Underwriting Byelaw

13. A *binding authority* may only be registered by –
 - (a) a *Lloyd's broker* which is a party to the *binding authority* or which arranged or broked the *binding authority*; or
 - (b) a *managing agent* which is a party to the *binding authority*.

14. Registration of a *binding authority* shall be in accordance with the electronic system the *Franchise Board* operates for that purpose. The address of that web-site is <https://www.coverholders.lloyds.com>

Requirements for insurance documentation – Part F
of the Delegated Underwriting Byelaw

Paragraph 35 of the Delegated Underwriting Byelaw

15. Insurance documentation evidencing contracts of insurance issued by an *approved coverholder* under a *registered binding authority* or by a *restricted coverholder* under a *restricted binding authority* shall include the following information, provisions and terms -
- (a) the name and address of the *coverholder*;
 - (b) all relevant terms and conditions that relate to the contract of insurance entered into by the *coverholder* including:
 - (i) relevant wordings, exclusions and limitations;
 - (ii) the maximum period of cover; and
 - (iii) the limits of liability.
 - (c) the amount of the premium and any discount;
 - (d) information about the procedures for handling claims arising under the contract of insurance and for the resolution of complaints;
 - (e) the law and jurisdiction applicable to the contract of insurance; and
 - (f) any other provisions required under the laws or requirements of the jurisdiction in which the contract was concluded, where the insured is domiciled or of any other relevant jurisdiction and any other provisions as required by the relevant representative or agent of the *Society*.
16. An *approved coverholder* under a *registered binding authority* or *restricted coverholder* under a *restricted binding authority* may only issue insurance documentation evidencing contracts of insurance in which a proportion of the risk is to be accepted by insurers other than members (a “*joint certificate*”) provided that:
- (a) each *managing agent* that is a party to the *binding authority* has agreed to the issue of *joint certificates*;
 - (b) the *joint certificate* includes all the details that are required to be included in insurance documentation evidencing contracts of insurance that are issued by an *approved coverholder* under a *registered binding authority* or by a *restricted coverholder* under a *restricted binding authority*;
 - (c) the proportion or amount of risk accepted by Lloyd’s underwriters is expressly stated on the *joint certificate* and is specified separately from the proportion or amount of risk accepted by other insurers;

- (d) the *joint certificate* contains the following statement -
“*The insurers named hereon bind themselves each for their own part and not one for another. Each insurer’s liability under this certificate shall not exceed the percentage or amount of the risk shown against that insurer’s name*”; and
- (e) the issuance of *joint certificates* has been confirmed as an acceptable practice by the general representative in the country in which their issuance is required or, in the absence of such a general representative, by the *Franchise Board*,

save that nothing in this paragraph shall permit a *joint certificate* to be issued in circumstances where that would contravene any relevant territorial general cover condition or would contravene any requirements of the jurisdiction in which the *coverholder* is domiciled, or any other jurisdiction in which the *coverholder* trades, provides services or does business.

**Third party administrators – Part G of the
Delegated Underwriting Byelaw**

Paragraph 36 of the Delegated Underwriting Byelaw

17. The terms of the agreement entered into between a *managing agent* and a *third party administrator* shall contain the following information, provisions and terms and comply with the following conditions and requirements -
- (a) provisions requiring the *third party administrator* to produce to each *managing agent* that is a party to the relevant *registered binding authority* or the *restricted binding authority* any information, documents, books, records and other materials which, in the opinion of the *managing agent* relate or purport to relate to the operation of the *binding authority* and to give to the *managing agent* all reasonable facilities in its premises for the purpose of examining such materials;
 - (b) provisions requiring the *third party administrator* to produce to the *Franchise Board* any information, documents, books, records and other materials which, in the opinion of the *Franchise Board* relate or purport to relate to the operation of the *registered binding authority* or the *restricted binding authority* and to give to the *Franchise Board* or its agent or general representative all reasonable facilities in its premises for the purpose of examining such materials;
 - (c) provisions requiring the *third party administrator* to notify each *managing agent* that is a party to the relevant *registered binding authority* or the *restricted binding authority* of any complaint or of any actual, pending or potential litigation.
 - (d) the terms of the agreement shall not conflict with the terms of the relevant *registered binding authority* or the *restricted binding authority* to which it relates.

Chapter 3 Requirements made under the Overseas Underwriting Byelaw

Conditions of underwriting – Part B of the Overseas Underwriting Byelaw

Lloyd's Japan – Paragraphs 5 and 8 of the Overseas Underwriting Byelaw

1. (a) *Lloyd's Japan Inc* may charge, pursuant to any agency agreement or other agreement or arrangement between it and any *member* of the *Society* (whether or not an underwriting member) or any *managing agent* of any such *member*, any commission, profit commission, fee or other remuneration or any advance payment or reimbursement of expenses incurred by it in the performance of its functions in connection with the underwriting business of that *member*.
- (b) Any levy under this paragraph should be made by service on the *member* or on the *member's managing agent* of a notice specifying the amount payable and the date or dates on which it is payable.
2. A *member* of the *Society* (whether or not an underwriting member) shall not in the course of his underwriting business at Lloyd's accept *Japanese local insurance business* directly from any proposer or *non-Lloyd's broker* in Japan otherwise than through *Lloyd's Japan Inc* and unless he has appointed *Lloyd's Japan Inc* as General Agent (as defined in article 219 of the Insurance Business Law (Law No. 105 of 1995) of Japan).

Canada – Paragraphs 5 and 8 of the Overseas Underwriting Byelaw

3. It shall be a condition and requirement of permission to underwrite Canadian Business that where any *member* of the *Society* (whether or not an underwriting member) uses or purports to use the system known as Scheme Canada that *member* shall comply with the provisions of the Scheme Canada Rules (as amended from time to time) contained in the schedule 1 to these conditions and requirements and for these purposes –

“Act” means the Insurance Companies Act S.C. 1991 C.47 including any amendments or regulations made pursuant thereto.

“Canadian Business” means such part of a *member's* underwriting business at Lloyd's (being general business) as constitutes either

- (a) contracts or policies of insurance (other than contracts or policies of marine insurance) to the extent to which such contracts or policies insure risks which are or will be ordinarily in Canada including all policies in Canada as defined in the Act;

- (b) contracts or policies of reinsurance underwritten by the *member* of any general business (other than contracts or policies of marine insurance) underwritten by a company (not being a member of Lloyd's) incorporated in Canada and licensed to underwrite insurance business under the laws of Canada or any province or territory thereof;
- (c) contracts or policies of reinsurance underwritten by the *member* of general business (other than contracts or policies of marine insurance) underwritten in Canada by a company (not being a member of Lloyd's) incorporated elsewhere than in Canada and licensed to underwrite insurance business under the laws of Canada or any province or territory thereof;
- (d) any contract of reinsurance to close of any year of account underwritten by the *member* to the extent only to which the *member* is liable under such contract in respect of.
 - (i) contracts or policies of insurance (other than contracts or policies of marine insurance) underwritten by other members to the extent to which such contracts or policies insure risks which are or will be ordinarily in Canada including all policies in Canada as defined in the Act; or
 - (ii) contracts or policies of reinsurance underwritten by other members of general business (other than marine insurance) underwritten by a company (not being a member of Lloyd's) incorporated in Canada and licensed to underwrite insurance business under the laws of Canada or any province or territory thereof ;
 - (iii) contracts or policies of reinsurance underwritten by other members of general business (other than contracts or policies of marine insurance) underwritten in Canada by a company (not being a member of Lloyd's) incorporated elsewhere than in Canada and licensed to underwrite insurance business under the laws of Canada or any province or territory thereof.

SCHEDULE 1

SCHEME CANADA RULES (THE “RULES”)

Paragraphs

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PART A PRELIMINARY

1. Citation and interpretation

- (1) These rules may be cited as ‘Scheme Canada Rules’ (the “Rules”).
- (2) The provisions of the Schedule to these Rules (interpretation) shall have effect.

PART B INSURANCE SERVICES

2. Provision of services

- (1) Lloyd’s Canada Inc (“LCI”) may provide the services referred to in sub-paragraph (2) on the terms prescribed by these Rules.
- (2) The services referred to in sub-paragraph (1) are -
 - (a) a service for the accounting, netting and settlement of Canadian insurance transactions and the transfer of funds more particularly described in Part C;
 - (b) any ancillary service incidental or relating to the foregoing services; and
 - (c) any other service which LCI considers it is in the interests of any of the persons referred to in subparagraph (4) or any class of them to receive in conjunction with any of the foregoing services.
- (3) All or any of the services may be provided wholly or partly by electronic means and by the use of electronic documents.
- (4) The services may be provided to or on behalf of -
 - (a) the Society (in its capacity as principal payee or payor under insurance transactions or otherwise);
 - (b) LCI;
 - (c) any member or group of members of the Society;
 - (d) any underwriting agent (including any substitute agent);

- (e) any approved run-off company;
 - (f) any Lloyd's broker or any person permitted by the Council to broke insurance business at Lloyd's (other than as referred to in subparagraph (g));
 - (g) any Canadian coverholder or correspondent;
 - (h) any trustee of the LCTF and/or LCMTF and/or any premiums trust deed or any person acting pursuant to any power under a trust deed; and
 - (i) any other person to whom LCI agrees to provide a service.
- (5) LCI may provide any service to or on behalf of a participant whether that participant is acting, or appears to the LCI to be acting, as -
- (a) a principal;
 - (b) an agent for a person, whether or not that person is a participant; or
 - (c) a trustee or pursuant to powers under a trust deed, in either case whether or not the beneficiary of the trust concerned is, or where this is more than one, includes, another person referred to in subparagraph (4).

Provided that in each of cases (b) and (c) LCI may treat such a trustee or agent as if it were a transacting principal in respect of the provision of the services and shall have no obligation to provide the services to, or claim unpaid amounts owed by an agent or trustee hereunder from, underlying principals or beneficiaries. LCI shall have a right to claim against any agent or trustee.

- (6) LCI may delegate the provision of all or any of the services referred to in paragraph 2(2) to any person on such terms and conditions as it thinks fit and/or may agree with any person that such terms and conditions as it thinks fit and/or may agree with another person that such other person may provide all or any of such services on the terms and conditions set out or referred to in these Rules on such terms and conditions as may be agreed with LCI (including, without limitation, in relation to the provision of information and assistance to LCI) or otherwise as it thinks fit. If agreed with LCI, any such person may provide any such services in the name of LCI and may, with prior written consent from LCI, sub-delegate or delegate (as the case may be) the

provision of all or any of such services to another person on such terms as may be stipulated in LCI's consent.

PART C SCHEME CANADA

3. Scheme Canada

- (1) LCI may, as part of the services referred to in paragraph 2(2), maintain a system to be known as Scheme Canada ("Scheme") for the processing, advice, accounting, netting and settlement of Canadian insurance transactions, (including monetary obligations arising from insurance transactions) and other transfers of funds.
- (2) In providing the services, LCI is acting as the settlement agent of each of the participants and undertakes no liability as a principal to any participant in respect of any insurance transaction.

4. Demand and collection of moneys

- (1) LCI, as principal in respect of amounts due to it as principal payee under any Canadian insurance transaction, or as agent of any other participant, may demand and/or collect or procure the demand and/or collection from any participant any moneys which are, or which appear to LCI to be, due on any settlement date from that participant (whether as agent or principal) to any other participant or participants (whether as agent or principal) (each a "payee") under any Scheme transaction. Such demands and/or collections may be made through the Lloyd's central accounting system where necessary.
- (2) LCI, as principal in respect of amounts due from it as principal payor under any Canadian insurance transaction, or as agent of any other participant may pay or procure payment any of the amounts referred to under sub-paragraph (1) to the relevant payee.
- (3) LCI may, in making payments to and collecting payments from participants, or procuring the payment to or collection of payments from participants pursuant to sub-paragraphs (1) and (2) above, aggregate and net all such payments in accordance with paragraph 8.
- (4) Subject to paragraph 8, payments under Scheme transactions shall be made by participants in full and without set-off, deduction or counterclaim.

5. Establishment of bank accounts

- (1) One or more bank accounts may be opened (including accounts in the name of the trustee of the LCTF and/or LCMTF) for the purpose of operating, or providing any service under Scheme.
- (2) Every participant shall open and maintain such accounts with such banks as LCI or the Council may prescribe.
- (3) LCI may as a condition of participation, or continued participation, in Scheme require participants to establish irrevocable direct debit arrangements and/or direct credit arrangements in favour of LCI or such other persons as LCI may specify.

6. Currencies

- (1) Scheme transactions shall be settled only in a Scheme currency.
- (2) Subject to sub-paragraph 6(3), participants shall agree such currency conversion arrangements between themselves as are necessary to effect settlement in respect of insurance transactions expressed in convertible currencies which are required to be settled under the Scheme.
- (3) LCI may, but shall not be obliged to, prescribe the exchange rate to be used, and the procedures and requirements to be followed, for the conversion of amounts payable in respect of underlying insurance transactions expressed in a convertible currency into a Scheme currency and for making adjustments to exchange rates.
- (4) LCI may, on written notice to participants, declare that a convertible currency is to become a Scheme currency or declare that a Scheme currency is no longer a Scheme currency.

7. Advice and accounting of Scheme transactions

- (1) In respect of any Scheme transaction, the participants concerned shall provide to LCI such information and documents relating to it as LCI may require in order to facilitate the advice and, if necessary, the accounting, netting and settlement of the Scheme transaction and shall comply with the provisions of any regulations, requirements, codes of practice and/or manuals made or issued by LCI in accordance with paragraph 23 below.

- (2) Without prejudice to the generality of sub-paragraph (1), any requirement made under that sub-paragraph or pursuant to any regulations, requirements, codes of practise and/or manuals made or issued by LCI in accordance with paragraph 23 below may -
 - (a) impose conditions which are absolute or which are to vary from time to time by such factors as are specified in or are determined in accordance with such conditions and requirements;
 - (b) make different provision for different classes or categories of participants;
 - (c) make different provision for different classes or categories of insurance transaction;
 - (d) be made in respect of a specific insurance transaction or a specific class or category of insurance transaction or be of general application;
 - (e) contain incidental and supplementary provisions.
- (3) LCI shall be entitled to rely on information and documents provided under sub-paragraph (1) in effecting Scheme transactions.

8. **Settlement of Scheme transactions**

- (1) Subject to paragraphs 8(5) and 14, prior to each settlement date (the “relevant settlement date”) LCI shall calculate in respect of each participant and in respect of each Scheme currency:
 - (a) the aggregate amount due to be paid to that participant by the other participants under all Scheme transactions of which LCI has notice which are denominated in that Scheme currency and are due to be settled on the relevant settlement date (the “entitlements”);
 - (b) the aggregate amount due to be paid by that participant to other participants under all Scheme transactions of which LCI has notice which are denominated in that Scheme currency and which are due to be settled on the relevant settlement date (the “gross payments”).
- (2) If the entitlements exceed the gross payments the amount of such excess shall, subject to sub-paragraph 11(4), be directly credited or otherwise paid by LCI to the participant on the relevant settlement date.

- (3) If the gross payments exceed the entitlements, the amount of such excess shall be directly debited, by LCI from such participant's account(s) or paid by the participant to LCI for value on the relevant settlement date.
- (4) LCI may settle a Scheme transaction otherwise than in accordance with sub-paragraphs (1) to (3) and shall consider representations from participants that a Scheme transaction that would otherwise be settled in accordance with sub-paragraphs (1) to (3) should not be so settled.
- (5) Any direction made under sub-paragraph (4) may be given in respect of a specific Scheme transaction or a specific class of Scheme transaction or be of general application

9. Settlement dates

Amounts due for settlement under the Scheme shall be settled or brought into settlement between participants on one of the applicable settlement dates as specified from time to time by LCI except where a Scheme transaction is to be settled otherwise than in accordance with paragraphs 8(1) to (3) above whereupon the settlement date shall be determined by LCI in its absolute discretion.

10. Settlement information statements

- (1) LCI may deliver or shall procure the delivery to every participant of settlement information statements in accordance with this paragraph.
- (2) A settlement information statement delivered to a participant may provide such information as to enable the participant to ascertain (from the settlement information statement alone or in conjunction with other information) those Scheme transactions to which the participant is a party and which have been, or which will be, accounted and, if such is the case, settled under the Scheme during the period covered by the settlement information statement.
- (3) Settlement information statements delivered under sub-paragraph (1) may -
 - (a) contain different information for different classes of participant and for different classes of Scheme transaction;
 - (b) be delivered at such intervals as LCI may determine; and
 - (c) contain such additional information as LCI may determine.

- (4) A participant may appoint a person to whom LCI is able to send settlement information statements to and to receive settlement information statements on its behalf.
- (5) The members of a syndicate shall for the purposes of sub-paragraph (4) be deemed to have appointed the managing agent of the syndicate to receive all settlement information statements on their behalf.
- (6) Where a participant has appointed a person under sub-paragraph (4), the participant shall give written notification to LCI of the appointment together with such additional information as LCI may require.
- (7) Where a participant has appointed a person under sub-paragraph (4), the obligations of LCI to the participant under sub-paragraph (1) shall be discharged by delivery of settlement information statements to the person so appointed by the participant.

11. **Obligation to fund settlements**

- (1) Every participant shall, in accordance with any conditions and requirements of LCI, make available, or procure that there are made available, sufficient funds on the applicable settlement date for the settlement of any Scheme transaction in respect of which amounts are to be paid by or on behalf of that participant.
- (2) Where a participant is required to make funds available for the settlement of Scheme transactions and does not make the full amount of such funds available on or before the applicable settlement date LCI may -
 - (a) refuse to settle any or all Scheme transactions until sufficient funds have been made available; or
 - (b) apply any funds received from the participant in the *pro rata* settlement of outstanding Scheme transactions to which it is a party; or
 - (c) settle any or all Scheme transactions in respect of, on account of or on behalf of the participant.
- (3) Where LCI settles a Scheme transaction under sub-paragraph (2)(c), the participant shall on demand pay forthwith to LCI amounts equal to any sums so paid in settlement in respect of, on account of or for the benefit on behalf of that participant, together with (if so demanded) interest thereon charged in accordance with sub-paragraph (5) and shall indemnify LCI in respect of any

interest paid or payable or any charges, expenses or liabilities incurred by LCI or the Society by reason of LCI having settled the Scheme transaction, and LCI and/or the Society may bring proceedings to recover the same as a civil debt. All amounts payable pursuant to this sub-paragraph by any participant carrying on an underwriting business shall be treated for all purposes as an expense of that underwriting business.

- (4) Where LCI refuses to settle any Scheme transaction under sub-paragraph 2(a) LCI may either reduce the amount of the entitlements of any participant payable to it pursuant to paragraph 8 by the amount which such participant would have received in respect of such Scheme transaction had it been settled in full or may suspend the payment to the relevant participant until such Scheme transactions have been settled in full. Where LCI makes a pro rata partial settlement of a Scheme transaction under sub-paragraph 2(b) LCI shall reduce the amount of the entitlements of any participant payable to it pursuant to paragraph 8 by an amount equal to the amount which such participant would have received in respect of such Scheme transaction had it been settled in full less the amount of the pro rata partial settlement made by LCI.
- (5) LCI may charge interest on any amount paid under sub-paragraph (2)(c) from the applicable settlement date until the date of repayment of such amount to LCI or the Society. The rate of interest shall be five per cent. above the then current prime rate of the Royal Bank of Canada (or such other leading bank as LCI may select).
- (6) Without prejudice to any other powers of LCI, LCI may treat any sum payable under sub-paragraph (3) or (5) as a Scheme transaction which may be settled, or brought into settlement, under Scheme.
- (7) Without prejudice to the provisions of paragraph 18, the rights and liabilities conferred or created by this paragraph shall subsist notwithstanding that the participant in respect of, or on account of or for the benefit of whom a transaction has been settled under sub-paragraph 2(b) has, if a member of the Society, ceased to be such a member by reason of resignation, death or otherwise or, if not such a member, has ceased to be a participant.

12. **Wrongful and unpaid credits**

- (1) Where, in calculating the entitlements due to a participant under paragraph 8(1)(a), LCI has taken into account any amount which is due to be paid to that participant and which is not subsequently paid on the relevant settlement date

or any amount which is not due to that participant on the relevant settlement date, LCI may directly debit the accounts of that participant in respect of that amount or make demand for the prompt repayment of that amount. Such participant shall repay LCI immediately on its making such demand and that participant shall indemnify LCI against any loss, liability, charge or expense arising from the crediting or other payment of such amount to its account.

- (2) Where, at any stage during the operation of a service a participant becomes aware of an inputting or similar or analogous error such participant shall immediately notify LCI of the error. LCI may, where it is practicable so to do, reverse any transaction notified to it as having been erroneously made or of which LCI has itself become aware. The participant shall settle in full any transaction notified to it pending the correction taking effect.

13. **Default declarations**

- (1) Where -
 - (a) a participant -
 - (i) is unable to fulfil its obligations in respect of any Scheme transaction; or
 - (ii) appears to LCI to be or likely to be so unable; or
 - (b) an insolvency event occurs in relation to the participant or any relevant principal or beneficiary on whose behalf it acts,

LCI may make a default declaration in respect of that participant, whereupon the following provisions of this Part shall apply.

- (2) Where LCI makes a default declaration, it shall as soon as is reasonably practicable thereafter give written notice of the default declaration to the defaulter and such other persons as LCI thinks fit.
- (3) The form of the default declaration and the manner in which notice thereof is given to the persons referred to in sub-paragraph (2) shall be as LCI thinks fit.
- (4) LCI may at any time it thinks fit revoke a default declaration.
- (5) Where LCI revokes a default declaration it shall give written notice thereof to the defaulter and such other persons as it thinks fit.

14. **System transactions involving defaulters**

As soon as is reasonably practicable after a participant has been declared a defaulter, LCI may -

- (a) suspend the settlement of sums due to or from the defaulter which would otherwise be settled or brought into settlement on settlement dates after the date on which the participant has been declared a defaulter; and
- (b) take such steps and make such arrangements as LCI thinks fit to facilitate the settlement of amounts due to the defaulter from other participants and other persons and amounts due from the defaulter to other participants and other persons, provided that LCI shall not be obliged to take any action in respect of the settlement of sums for which instructions have already been given to any relevant clearing institutions.

15. **General saving relating to default**

Nothing in this Part shall prevent LCI, the Society, any other participant or any other person from exercising any lawful right or fulfilling any lawful obligation in respect of the defaulter whether or not the right or obligation concerned arises in respect of a Scheme transaction.

16. **Termination of the Scheme**

- (1) LCI may in its absolute discretion upon giving not less than six months' notice (or such lesser period as LCI may determine at any time, having regard to the prevailing circumstances) to participants terminate any or all of the services including the provision of the Scheme.
- (2) As soon as practicable after any notice to terminate the Scheme has taken effect LCI shall take such steps as it considers appropriate -
 - (a) to account to participants for any sums that may be due to them under the Scheme; and
 - (b) to facilitate the orderly winding up of the Scheme.
- (3) Termination of the Scheme or any service shall not release any participant from any liability which at the time of termination had already accrued to another participant or LCI nor affect in any way the provisions of paragraphs 28 and 29.

17. **Exclusion from participation in the Scheme**

- (1) LCI may exclude a participant from participation in the Scheme where-
 - (a) in the opinion of LCI, the participant has used or is using or is proposing to use the Scheme in a way which has caused or is causing or will cause material harm or damage to the Scheme, other participants or information processed, held or transmitted on, under or through the Scheme;
 - (b) the participant has ceased to be a person referred to in paragraph 2(4)(b) to (i);
 - (c) LCI has made a default direction in respect of the participant under paragraph 13;
 - (d) an insolvency event has occurred in relation to the participant or any principal or beneficiary on whose behalf it acts;
 - (e) the participant has failed to comply with or any other provision of these Rules or any provision of any requirements, regulation, code of practice or manual made or published by LCI issued under paragraph 23;
 - (f) the participant has failed to pay a charge payable under paragraph 22 within the period for the time being prescribed; or
 - (g) having regard to the circumstances then pertaining LCI thinks fit that a participant is excluded from participation in the Scheme.
- (2) Before exercising the powers conferred on LCI by this paragraph in respect of a participant referred to in paragraph 2(4)(c) to (i), LCI shall -
 - (a) inform the participant concerned in writing of its intention and of the grounds for the intended exclusion; and
 - (b) allow the participant to make representations as to the intended exclusion within such a period and in such form as LCI may allow.
- (3) If in the opinion of LCI the power conferred by sub-paragraph (1) is required to be exercised immediately, LCI may exercise such powers without having first taken the steps referred to in sub-paragraph (2).

- (4) In any case falling within sub-paragraph (3) LCI shall-
 - (a) as soon as possible inform the participant concerned of the reasons for the exclusion; and
 - (b) allow the participant to make representations within such period as LCI may require.
- (5) LCI shall as soon as practicable after the exclusion of a participant from participation in the Scheme notify in writing all the other participants thereof.

18. Saving of rights on termination or exclusion

The termination of the Scheme under paragraph 16 or the exclusion from participation of a participant under paragraph 17 shall not affect any right, obligation or liability of any person accrued, due or outstanding at the date of termination or exclusion and arising under the Scheme or from his participation in the Scheme or in respect of any Scheme transaction.

PART D INFORMATION

19. Provision of information

- (1) LCI may require any participant to supply LCI and/or any service provider with such information as LCI may specify in connection with the provision of any service.
- (2) Each participant shall immediately notify LCI and any service provider on becoming aware that an insolvency event has occurred or is likely to occur in relation to it or any principal or beneficiary on whose behalf it acts.

20. Storage and distribution of information

LCI and any service provider may as part of, or for the purposes of, or in connection with, providing a service hold information provided under paragraph 19 of any other provisions of these Rules or otherwise provided to, or obtained by, it in providing a service and, subject to paragraph 21 may distribute such information or any of it.

21. Confidentiality of information

- (1) Subject to paragraph (2) and paragraph 24 (2), information provided to, or obtained by, LCI under these Rules or in providing any service shall be held subject to the provisions of the Information and Confidentiality Byelaw (No.

21 of 1993 and applicable Canadian law), provided that LCI may disclose such information to any service provider in so far as it thinks fit.

- (2) Information provided to, or obtained by, any service provider under these Rules or in providing any service shall be held subject to the provisions relating to disclosure and use as may be agreed between the service provider and LCI.

PART E MISCELLANEOUS AND GENERAL

22. Power of LCI to prescribe charges

- (1) Every applicant and every participant shall pay to LCI such charges as LCI shall notify to them from time to time .
- (2) For the purposes of this paragraph LCI may -
 - (a) determine the amount of any charges in accordance with a specified scale or other specified factors;
 - (b) determine the time or times of payment of charges;
 - (c) provide for the exemption from payment of, or the return or abatement of, any charges in specified circumstances;
 - (d) charge interest on such amounts of charges as are unpaid on the due date until the date of payment at a rate determined by LCI; and
 - (e) make different provision for different cases.

23. Regulations, codes of practice and manuals

- (1) LCI may make, amend and terminate requirements, regulations, and issue codes of practice and/or manuals in respect of the provision and operation of the services or any of them and the administrative and technical procedures to be observed by participants.
- (2) Where any provision in a regulation, requirement, code of practice or manual made or issued under sub-paragraph (1) conflicts with a provision of these Rules, the latter shall prevail.

24. Power to enter into agreements, etc.

- (1) LCI may enter into such contracts and arrangements as LCI considers are necessary or expedient for the purposes of or in connection with the provision of any service under this byelaw.
- (2) Where LCI has entered into a contract or arrangement as described in sub-paragraph (1), and, as a result thereof, LCI uses systems and equipment owned, maintained, operated or controlled by third parties, LCI may disclose to such third parties information about participants and Scheme transactions to the extent that such disclosure is necessary for the purpose of, or giving effect to, the contract or arrangement concerned.
- (3) Any service provider may, if LCI so agrees, disclose to third parties information about participants and their businesses to the extent that such disclosure is necessary for the purpose of or in connection with the provision of any service.

25. Variation of services

- (1) Subject to this paragraph, LCI may vary a service or any part of a service.
- (2) Subject to sub-paragraph (3), LCI shall not vary a service to any material extent without giving prior notice of the proposed variation to the affected participants. LCI shall consider the representations (if any) of the affected participants on any such variation before reaching any decision on the variation.
- (3) If in the opinion of LCI any material variation is required to be made as a matter of urgency in order to enhance a service or any part of a service or to preserve the integrity of the services or any part of a service or to preserve the interests of participants or any of them LCI may make that variation without first having taken the steps referred to in sub-paragraph (2).
- (4) In any case falling within sub-paragraph (3) LCI shall -
 - (a) as soon as practicable thereafter inform the affected participants in writing of the variation; and
 - (b) permit the affected participants to make representations to LCI on the action taken by LCI within such period as LCI may prescribeand where such representations are received by LCI, it shall reconsider the action taken under sub-paragraph (3).

26. **Service of notices**

- (1) All notices and other communications by LCI or a service provider which are required to be given to a participant under these Rules shall for all purposes be treated as effectively given if left at or sent by post to the address from time to time notified to LCI or the service provider in question by that participant as the address to which notices and other communications are to be sent or, if give by facsimile transmission or email by submitting it to such number or email address from time to time notified to LCI or the service provider in question as appropriate by that participant.
- (2) Any notice or communication sent to a participant by ordinary post shall be treated as having been effectively given by properly addressing and posting a letter containing that notice or communication and shall be deemed to have been served 24 hours after the letter is posted. Any notice or communication sent by facsimile or email transmission shall be deemed to have been received when evidence of its receipt is transmitted to the person sending it and any notice or communication sent by electronic means shall be deemed to have been received when transmitted.

27. **Liability**

- (1) Neither LCI nor any delegate of LCI (each a “service provider”) shall have any liability (whether direct or indirect, in contract, tort or otherwise) to any participant or any principal or beneficiary of any participant or any of their respective shareholders or any other person (each such person a “claimant”) for or in connection with the services except for direct losses suffered by the claimant to the extent that such losses are found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted directly and primarily from the negligence or wilful misconduct of that service provider and in no event shall LCI or that service provider be liable for any claimant’s loss of profits, business or anticipated savings or for any indirect or consequential loss whatsoever.
- (2) Without limiting any provision of sub-paragraph (1), LCI shall not be responsible for the negligence or wilful misconduct of, or any other loss or liability arising in connection with, the action or inaction of any service provider selected by LCI with reasonable care.
- (3) LCI will have no liability or responsibility, except as expressly provided in these Rules, for the good faith or acts or omissions, creditworthiness, performance or standing of any participant or any other person whomsoever or

for admitting any participant to the Scheme, making or failing to make any default declaration in respect of a participant or taking or failing to take any action to terminate or suspend the provision of any service to any participant.

- (4) LCI assumes no liability or responsibility for the consequences arising out of delay or loss in transmission of any messages, letters, cheques or documents, or for delay, mutilation or other errors arising in transmission of any telecommunication or other electronic notification and will not be liable or responsible for any delays resulting from the need to obtain clarification of any instructions received.
- (5) Each participant shall indemnify and hold harmless LCI and any service provider from and against any and all claims, damages, losses, liabilities, costs and expenses (including, without limitation legal fees and disbursements) that may be incurred by or asserted or awarded against LCI or any service provider, in each case arising out of or in connection with any investigation, litigation or other proceeding commenced by any person against LCI or any service provider which arises out of or in connection with the provision by LCI or any service provider of any of the services to that participant or as a result of any breach by that participant of its obligations to LCI or any service provider, except to the extent such claim, damage, loss, liability, cost or expense has resulted directly and primarily from LCI's or any service provider negligence or wilful misconduct. All amounts payable pursuant to this subparagraph by any participant carrying on an underwriting business shall be treated for all purposes as an expense of that underwriting business.

28. **Records/Determinations**

- (1) In the absence of manifest error, the records of LCI relating to the settlement of Scheme transactions shall constitute conclusive evidence as to matter.
- (2) Any determination or notification by LCI concerning any rate or amount to be determined or calculated in connection with the services shall, in the absence of manifest error, be conclusive evidence as to the matter.

29. **Compliance with laws**

In carrying out the services LCI or any service provider may refrain from doing anything which might, in its opinion, constitute a breach of any law or regulation or any duty of confidentiality or be otherwise actionable at the suit of any person and may do anything which, in its opinion, is necessary or desirable to comply with any law or regulation of any jurisdiction or to comply with the order of any court.

30. **Force Majeure**

LCI and any service provider shall have no responsibility or liability for or regarding any non-performance, improper performance, suspension of performance or delay in performance, of LCI's or any service provider's obligations under or in connection with the services by reason of any circumstances beyond LCI's or any service provider's reasonable control including, without limitation, by reason of any failure by a clearing agent to make a payment on a settlement date, any breakdown or failure of transmission, communication or computer facility or other mechanical breakdown or malfunction, work stoppage, postal or other strike or other labour disturbance or industrial action, earthquake, flood, fire, storm and other act of God, explosion, accident, sabotage, terrorism, insurrection, revolution, riot, rebellion or other unrest or disturbance or present or future law or act of any governmental or regulatory authority.

31. **Commencement and transitional provisions**

- (1) These Rules shall come into force on 1 March 2004.
- (2) The document entitled "Scheme Canada Manual" shall be deemed to be a manual issued under paragraph 23.

SCHEDULE

Interpretation

1. In these Rules, unless the context otherwise requires -

"approved run-off company" has the meaning given to it in the Underwriting Byelaw (No. 2 of 2003)

"arrangement" includes any agreement or arrangement whether or not intended to be enforceable by legal proceedings and whether or not evidenced in writing;

"Canadian coverholder" means any approved coverholder (as defined in the Delegated Underwriting Byelaw (No 1 of 2004)) who transacts Canadian insurance business pursuant to a recognised binding authority in Canada;

"Canadian correspondent" means a broker (not being a Lloyd's broker) or other intermediary in Canada introducing risks:

- (a) directly to a Lloyd's broker for placing with underwriters; or
- (b) if a non-Lloyd's intermediary, directly to underwriters otherwise than by a binding authority.

"Canadian insurance transaction" means any transaction effected, or intended to be effected, as part of, or arising from, the business of insurance or any activity whatsoever directly or indirectly related to, or arising from, the business of insurance in Canada;

"claimant" has the meaning given to it in paragraph 27(1);

"convertible currency" means a currency which is not a Scheme currency;

"default declaration" means a declaration made by LCI under paragraph 13(1);

"defaulter" means a participant in respect of which LCI has made a default declaration;

"direct credit arrangement" means any arrangement whereby a person is authorised to credit another person's account;

"direct debit arrangement" means any arrangement whereby a person other than the

account holder is authorised to debit, or take money from, that account;

“entitlements” has the meaning given to it in paragraph 8(1);

“gross payments” has the meaning given to it in paragraph 8(1);

“insolvency event” means:

- (a) in relation to any individual or partnership, the making of a receiving order in bankruptcy against such individuals 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 bankruptcy or adjudicated or declared insolvent by the due process of law of any country; and
- (b) in relation to any body corporate its making or proposing any composition with its creditors or otherwise acknowledging its insolvency, 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, a receiver, trustee or analogous officer being appointed in respect of the whole or any material 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;

"insurance" includes assurance, reinsurance, reassurance and suretyship;

“LCI” means Lloyd’s Canada Inc (or its successors and assignees from time to time);

“LCMTF” means the trust fund constituted by the Lloyd’s Canadian Margin Fund Trust Deed dated 25 May 2001 as amended from time to time;

“LCTF” means the trust fund constituted by the Lloyd’s Canadian Trust Deed dated 25 May 2001 as amended from time to time;

"managing agent" means a person who is listed as a managing agent in the register of underwriting agents under the Underwriting Byelaw (No. 2 of 2003);

"participant" means a person set out in paragraph 2(4) acting in one of the capacities set out at paragraph 2(5) to whom or on behalf of whom a service is for the time being provided under this byelaw;

“payee” has the meaning given to it in paragraph 4(1);

"premiums trust deed" means a trust deed in the form for the time being required by the Council constituting a premium trust fund (including all such trust deeds relating to long term business and any Overseas Direction or Special Trust Direction as therein defined);

"prescribed form" means, in relation to any application, notice or other document, such forms and contents as may from time to time be prescribed by LCI;

"Scheme currency" means any currency in which LCI or any service provider settles Scheme transactions;

"Scheme" means Scheme Canada as referred to in paragraph 3;

"Scheme transaction" means an insurance transaction which, in accordance with these Rules is, or should be, processed under the Scheme or in respect of which monetary obligations are, or should be, settled under the Scheme;

"services" means the services referred to in paragraph 2(2) for the time being provided under this byelaw;

“services provider” means (other than in paragraph 27) a person, other than LCI, who is referred to in paragraph 2(6) and who provides any service referred to in paragraph 2(2);

“settlement information statement” means a statement as described in paragraph 10;

“settlement date” means a date specified by LCI under paragraph 9 for the settlement of Scheme transactions.

“Society” means the Society incorporated by Lloyd’s Act 1871 by the name of Lloyd’s;

"substitute agent" means a person appointed to act as agent for an underwriting member under the Substitute Agents Byelaw (No 20 of 1983) or in accordance with part K of the Underwriting Byelaw (No 2 of 2003)

“syndicate" means a group of underwriting members underwriting insurance business at Lloyd's through the agency of a managing agent;

“underwriting agent” has the meaning given to it in the Underwriting Byelaw (No. 2 of 2003), and includes any substitute agent.

2. The references in paragraphs 2(3), 26(1) and 26(2) to "electronic means" and in paragraph 2(3) to "electronic documents" include references to computers, networks and any means whereby information is processed, held or transmitted in a machine-readable form and to documents which are in a machine-readable form. The references in this byelaw to any other Lloyd’s byelaw shall be deemed to be a reference to that Lloyd’s byelaw as the same may be amended from time to time;