

MARKET BULLETIN

REF: Y4048

Title	Disclosure of Relevant Information to Unaligned Members
Purpose	Guidance
Type	Scheduled
From	Matthew Chandler, Head of Admissions, General Counsel's Division Contact Details: 0207 327 5743 Email: matthew.chandler@lloyds.com
Date	3 August 2007
Deadline	
Related links	http://www.lloyds.com/Lloyds_Market/Capacity/Capacity_auctions/Rules_And_guides.htm http://fsahandbook.info/FSA/index.jsp

Introduction

1. This bulletin has been issued to –
 - a. remind managing agents of their duties to disclose all relevant information to unaligned members of syndicates which they manage;
 - b. assist managing agents, especially in the context of the capacity auctions, in determining whether information should be disclosed;
 - c. assist managing agents in determining whether they may delay the disclosure of relevant information or delay obtaining relevant information; and
 - d. remind managing agents of circumstances when any connected persons must not participate in the auctions.
2. Overall, this guidance is intended to assist managing agents to operate in a practical and commercial manner, consistent with their underlying fiduciary duties to members. Compliance with this guidance may be relied upon as evidence of compliance with a managing agent's duties to its members. The Auction Rules have been amended accordingly (see - http://www.lloyds.com/Lloyds_Market/Capacity/Capacity_auctions/Rules_And_guides.htm)

3. The Capacity Transfer Panel has issued this bulletin, via the Auction Official, following consultation with members (through the Association of Lloyd's Members) and with underwriting agents (through the Lloyd's Market Association).

Disclosure of information

4. In accordance with their general fiduciary duties and clause 4.2(i) of the standard managing agent's agreement, managing agents are required to disclose to members of a managed syndicate "*in good time any information in its possession relating to the Managed Syndicate and its activities, or any developments in respect of those activities, which could reasonably be expected to influence the Name in deciding whether to become or remain a member of the Managed Syndicate or to increase or reduce his participation in the Managed Syndicate*" ("Relevant Information").
5. In addition, clause 4.2(i) requires managing agents to use their reasonable endeavours to obtain Relevant Information.

Determining whether information is Relevant Information – Precise Information

6. It may not always be easy for a managing agent to determine whether it is in possession of Relevant Information. Particular difficulties arise where a managing agent is uncertain whether a transaction or proposal may be implemented, especially where that depends upon the intentions or actions of a third party outside of their control.
7. In these circumstances, inappropriate or early disclosure could damage the legitimate interests of the syndicate's members and the managing agent. Disclosure might also be inconsistent with a managing agent's obligations for the treatment of inside (price sensitive) information.
8. Accordingly, for any information (whether or not relating to a particular transaction or proposal) to be Relevant Information (and therefore disclosable), it must be of a precise nature. Information is precise if it –
 - i) indicates circumstances that exist or may reasonably be expected to come into existence or an event that may reasonably be expected to occur; and
 - ii) is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances on the members of the Managed Syndicate.

9. This definition of “precise information” has been adopted from the definition of “inside information” set out in the Financial Services Authority’s Handbook see - <http://fsahandbook.info/FSA/html/handbook/DTR/2/5>. The definition has been incorporated within the definition of Relevant Information set out in the Auction Rules. Lloyd’s expects members and managing agents to interpret clause 4.2(i) of the Managing Agent’s Agreement and compliance with the managing agent’s underlying fiduciary duties accordingly. This should assist managing agents in complying with their duties to both members and shareholders where the FSA’s listing, prospectus and disclosure rules apply.

Delay

10. The FSA’s rules (see DTR 2.5 <http://fsahandbook.info/FSA/html/handbook/DTR/2/5>) also recognise that, in certain circumstances, it may be appropriate to delay the disclosure of inside information to protect legitimate interests provided that the delay will not mislead the public.
11. Similar considerations apply at Lloyd’s with regard to Relevant Information. Managing agents should not be obliged to disclose impending developments the premature disclosure of which could prejudice the legitimate interests of the syndicate’s members and the managing agent. Members understand that some information must be kept confidential until developments are at a stage when an announcement can be made without prejudicing the legitimate interests of the syndicate’s members and the managing agent.
12. Therefore, a managing agent may, under its own responsibility –
- i) delay the disclosure of Relevant Information
 - ii) delay using its reasonable endeavours to obtain Relevant Information

so as not to prejudice the interests of the syndicate’s members or of the managing agent provided always that such delay would not be likely to mislead those members.

13. Delaying disclosure will not always mislead members, although a developing situation should be monitored so that if circumstances change an immediate disclosure can be made.
14. Managing agents may delay the disclosure of Relevant Information where that is specifically in accordance with any decision or ruling of the Takeover Panel.

Auction participation

15. If any managing agent –
- i) is in any doubt as to whether information in its possession (which has not been made available to the syndicate's members) is or is not Relevant Information;
 - ii) has delayed disclosing Relevant Information; or
 - iii) has delayed using its reasonable endeavours to obtain Relevant Information

any connected person must not subscribe for or tender any prospective participation or submit an Order in any auction or assist or encourage any other person to do the same.

16. Managing agents should formally consider and minute issues relating to Relevant Information in advance of the first auction and, as may be necessary, during the auctions.

General

17. Any questions relating to this bulletin should be addressed to Matthew Chandler, Head of Admissions, General Counsel's Division, telephone 0207 327 5743, email matthew.chandler@lloyds.com.

Matthew Chandler
Head of Admissions
General Counsel's Division