

MARKET BULLETIN

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Title	Guide to Agents on the Procedures for Settlement of Syndicate Losses and Cash Calls
Purpose	To inform Members' Agents of new procedures for collecting unpaid cash calls
Type	Event
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Related links	

This Market Bulletin attaches a revised Guide to Agents on the Procedures for Settlement of Syndicate Losses and Cash Calls and summarises the new procedures for collecting unpaid cash calls.

In summary, once the members' agent has satisfied Lloyd's that it has taken reasonable steps to collect cash call debts (short of commencing litigation), and assuming the non paying member has no Funds at Lloyd's left, the New Central Fund (NCF) will be drawn down in order that Lloyd's centrally can pursue the outstanding liabilities as NCF debts (to litigation if necessary).

Where the non paying member claims he cannot pay, the members' agent is required to try to obtain completion of a Financial Declaration (to be verified by the member's accountant or agent) and provide to Lloyd's Legal and Compliance Department the Financial Declaration (if obtained), an application to draw on the NCF and details of the reasonable steps that the members' agent has taken to effect collection of the cash call. If a member's inability to pay has been previously accepted by Lloyd's then a further Financial Declaration is unlikely to be required.

Following a withdrawal from the NCF, if Lloyd's commences proceedings against a member or issues a bankruptcy petition the members' agent will pay Lloyd's a "one off" payment of £2000.

The Limited Financial Assistance arrangements will continue to operate.

The changes from the previous version of the Guide are mostly at paragraph 6 of the new guide. If the members' agent wishes to see a version of the new Guide showing the changes from the previous version please contact Nicholas Demery.

In the event of any questions on the new procedures for collecting unpaid cash calls please contact Nicholas Demery or Paul Martin on tel no. 020 7327 5711, email: paul.martin@lloyds.com.

**Guide to Agents on the Procedures
for Settlement of
Syndicate Losses and Cash Calls**

Contents

1. Introduction
2. Underwriting Agents' Responsibilities
 - 2.1 General Responsibilities of Agents
 - 2.2 Managing Agents – Responsibilities
 - 2.3 Members' Agents – Responsibilities
3. Lloyd's Responsibilities
4. Timetable – Funding of Losses Process
5. Members With Available Funds at Lloyd's
 - 5.1 Special Reserve Fund – Mandatory Use
 - 5.2 Use of Other Funds at Lloyd's or Assets Outside Lloyd's
 - 5.3 Use of Personal Reserve Sub-Fund
 - 5.4 Use of Lloyd's Deposit
 - 5.4.1 Voluntary Drawdown
 - 5.4.2 Compulsory Drawdown
6. Withdrawal from New Central Fund
 - 6.1 Members with Insufficient Funds at Lloyd's
 - 6.2 Request for Withdrawal from New Central Fund
 - 6.3 Recovery of New Central Fund Withdrawals
7. Market/Regulatory Bulletins

1. Introduction

This document is intended to give guidance to agents as to best practice in relation to the procedures for the funding of syndicate losses and cash calls. The guidelines are not intended to detract from the general law as it applies to agents or the requirements of the Agency Agreements Byelaw (No.8 of 1988), the relevant Lloyd's trust deeds or applicable conditions and requirements made under the Lloyd's byelaws.

2. Underwriting agents' responsibilities

2.1 General responsibilities of agents

Underwriting agents have a responsibility to pursue the effective collection of funds from the members for whom they act to meet their syndicate losses and cash calls so as to enable the members' underwriting liabilities to be discharged. They must therefore take all reasonable steps to effect recovery of outstanding cash calls from members but they will not now be required to commence litigation against members who are in default.

A failure to take reasonable steps to effect recovery of members' outstanding cash calls is a matter which the Council of Lloyd's may take into account in exercising its powers under the Underwriting Byelaw (No. 2 of 2003), in particular its powers to review any permission granted to any body to act as an underwriting agent and to withdraw permission to act as an underwriting agent..

2.2 Managing agents

Managing agents should give members as much notice as possible of the likelihood of a cash call being made.

Where the managing agent makes a cash call, the member is not obliged to pay it unless he has first been provided with, in the case of a closed year loss, a copy of the audited annual report and accounts, and in any other case, a cash call statement signed by the agent and accompanied by a report signed by the syndicate auditor. The cash call statement and report must be in the form required by Council. The latest requirements for this purpose are the Cash Call Statements (Contents and Form) Requirements (1999) (for a copy of these requirements, see Regulatory Bulletin (ref. 068/2000) dated 12 September 2000 entitled *Cash Call Requirements*).

The date specified in the cash call statement for payment must be not less than 35 days from the date of service of the cash call statement.

Where the cash call is served by post by sending it to the member's members' agent it will be deemed to have been received 48 hours from the date of posting. In any other case it will be deemed to have been received 72 hours from the date of posting. A managing agent proposing to serve a cash call by post should take into account these deemed times for service in determining the due date for payment to be specified in the cash call statement.

Managing agents must ensure the regular reconciliation of their records of outstanding cash call balances with the Outstanding Balance (OB) files provided by the Market Services (MS).

Where a member has insufficient FAL to meet a cash call and fails to make additional funds available to do so, the managing agent should liaise with the members' agent in order, where appropriate, to attempt to recover sums payable in respect of that member's outstanding cash call. Regular updates in respect of the progress of any such attempts should be given to MS.

Under the terms of the Agents' Agreement, a managing agent is entitled to be reimbursed by the relevant members' agent in respect of all reasonable legal and other costs incurred by the managing agent in taking action to enforce payment by a member of his underwriting liabilities provided the members' agent has been given an adequate opportunity to ask the member to comply with the request for funds. As stated in section 2.2 agents will not now be required to commence litigation against members who are in default.

2.3 Members' agents

Generally, a managing agent's cash call will be served on the member via his members' agent. Under the members' agent's agreement, the members' agent has an obligation promptly to inform the member of the cash call and, except in relation to a MAPA member, forward a copy of the cash call statement/audited accounts to him. Such documents must however be made available to a MAPA member if he requests them.

A member must be given not less than 21 days notice from the date of service of the cash call for payment of that call.

Where the cash call is sent by the members' agent to the member by post, it will be deemed to have been received 72 hours from the date of posting. Members' agents should take this into account when serving a cash call on the member by post.

The members' agent has an obligation under the Agents' Agreement to use its best endeavours to ensure that the member complies with his obligation to pay the cash call. It also has a duty to reimburse the managing agent all reasonable legal and other costs incurred by the managing agent in taking action to recover from the member any sums payable by him in respect of the cash call provided the members' agent has been given an adequate opportunity to ask the member to comply with the request for funds.

Members' agents should therefore liaise with the member to determine how the cash call is to be met and make recommendations as to the method of funding.

Evidence of efforts made to obtain payment of outstanding cash calls will generally be required if a withdrawal from the New Central Fund is requested.

3. Lloyd's responsibilities

Lloyd's is responsible for operating the central cash management system known as the Debt Allocation Matrix (DAM) in which all members' assets and liabilities are recorded. In its capacity as trustee of each member's funds at Lloyd's, Lloyd's will determine how a member's funds are to be apportioned to meet particular cash calls. Lloyd's will provide information to agents regularly on the net funding position of their members.

At regular intervals following the due date for payment of cash calls, Lloyd's will arrange for audit reports relating to members' outstanding liabilities to be produced based on the information in the DAM to facilitate the submission of compulsory deposit drawdown requests.

4. Timetable - funding of losses process

An indicative timetable of the settlement process is attached as Appendix 1.

5. Members with available funds at Lloyd's

Where a member has available funds at Lloyd's, the usual sequence of funding syndicate losses and cash calls is as follows.

5.1 Special Reserve Fund – mandatory use

Where a member has a Special Reserve Fund (SRF), it is mandatory under the tax legislation governing the SRF that any cash call or loss be met (to the extent that there are sufficient assets in the member's SRF) first from that fund.

Members will be given the opportunity to liquidate any non-cash holdings in their SRF prior to the due date for the payment of the losses or cash calls. If no such request has been received at least ten working days before the due date for payment, Lloyd's will realise assets so as to provide sufficient cash to meet the required amount of the withdrawal from the fund.

5.2 Use of other funds at Lloyd's or assets outside Lloyd's

Where a member's SRF has been exhausted or he has no SRF, the member may settle his losses or cash calls by way of a payment or transfer of funds held outside Lloyd's into the personal reserve sub-fund (PRF) of his premiums trust fund (PTF). The member may also utilise assets already held in the PRF and, to the extent that these are insufficient, the deposit.

5.3 Use of the Personal Reserve Sub-Fund

Subject to mandatory use of the SRF as described in paragraph 5.1, a member may instruct his members' agent to utilise assets held in his PRF to settle his losses and cash calls. Where MSU receives a request from a members' agent to apply PRF assets in discharging such liabilities, it will generally act in accordance with that request. Where this involves the sale of securities, the member must arrange this via his own broker.

In any event, Lloyd's as Regulating Trustee of the PTF may apply a member's PRF in or towards payment of the member's outstanding liabilities. In practice, it will not usually do this until at least 21 days after the due date for payment of the loss or cash call.

5.4 Use of the Lloyd's Deposit

5.4.1 Voluntary drawdown

Where a member's SRF (if any) and PRF are insufficient or have been exhausted, the member may request that his Lloyd's deposit be used to pay his losses or cash calls. For this purpose, a member must complete and sign a voluntary drawdown form requesting that his underwriting liabilities be funded out of assets held at Lloyd's. Where this involves the sale of securities the member must arrange this via his own broker. The members' agent must also complete and sign a form of declaration in support of the request. The members' agent should then submit the forms to MS.

Copies of the relevant forms are attached to the Market Bulletin (ref. Y2080) dated 24 June 1999 entitled *Deposit Drawdowns – Voluntary Requests* which outlines the voluntary deposit drawdown process.

To reduce the amount of time and costs associated with deposit drawdowns, members may elect in advance of anticipated cash calls to transfer cash and securities from their deposit to their PRF. Such a transfer may generally be made as a one-off annual transaction. Full details of this process are set out in the Market Bulletin (ref. Y2463) dated 10 January 2001 entitled *Transfer of cash and securities from Lloyd's deposit to the personal reserve sub-fund of the premiums trust fund to pay cash calls*.

5.4.2 Compulsory drawdown

Where a member has funds available in his deposit but is unwilling to request a voluntary deposit drawdown, the members' agent (or in the case of a direct corporate member, the managing agent of the syndicate concerned) should submit a request for a compulsory deposit drawdown on behalf of the member. A copy of the relevant form for this purpose, FOL1, is attached to the Market Bulletin (ref. Y2093) dated 14 July 1999 entitled *Compulsory Deposit Drawdowns*.

To assist agents in this process, MS will provide them with drawdown schedules identifying each of those members for whom a deposit drawdown is considered appropriate, the amount of their outstanding liabilities and the value of their deposit available to meet those liabilities. Agents should check the schedules and submit a FOL1 to MS duly signed and dated as soon as possible and in any event, within 28 days.

It should be noted that, in relation to deposits held under *old style* deposit trust deeds and security and trust deeds (i.e. deeds executed prior to September 1989), before a compulsory deposit drawdown can be actioned by MS, a Managing Agent's Declaration of Underwriting Liabilities/Syndicate Auditor's Report (DUL) relating to the member concerned must be submitted to MS by the relevant managing agent. MS will request DULs from managing agents on an 'as required' basis.

In other cases, Lloyd's will obtain an audit report in relation to the member's underwriting liabilities from the Corporation's auditors based on information held centrally in the DAM. This will normally be obtained and provided to members' agents 7 to 10 weeks after the due date for payment of the cash call.

MS will action a compulsory deposit drawdown once it is in receipt of a request from the members' agent (or in the case of a direct corporate, the managing agent of the syndicate concerned) in the requisite form and an appropriate audit report.

6. Withdrawal from New Central Fund

6.1 Members with insufficient funds at Lloyd's

Where a member has insufficient funds at Lloyd's to meet his underwriting liabilities, he has an obligation to make additional funds available to do so.

MS will provide members' agents, and in the case of direct corporate members, managing agents, with details of those members that have outstanding cash calls and insufficient funds at Lloyd's to meet those calls.

Where an individual member advises his members' agent that he has insufficient assets outside Lloyd's to meet his underwriting liabilities, the members' agent should ask the member to provide a Financial Declaration (FD) giving details of his financial circumstances. The member should also be asked to provide all relevant documentation in support of the FD. The FD should be verified by the member's accountant. In the absence of such verification, provided that the members' agent is satisfied that the information contained in the FD is accurate, it may verify the FD in place of the member's accountant. A member should provide a completed FD together with all supporting documentation within 28 days.

Where the member provides a FD with supporting documentation and his members' agent is satisfied that the member has made full and frank disclosure and that he has insufficient assets outside Lloyd's to meet his underwriting liabilities, the member's agent should make a request to Legal & Compliance Department (LCD) for a payment out of the New Central Fund to meet the member's outstanding liabilities. The members' agent should also provide LCD with a copy of the member's FD and supporting documentation.

A copy of the form on which a request for a withdrawal from the New Central Fund should be made (FOL5) together with the form of FD is attached to the Market Bulletin (ref. MFS/CT/ARM/Y2150) dated 20 October 1999 entitled *Application for withdrawals from the New Central Fund*.

A request for payment from the New Central Fund to meet a members' outstanding liabilities will also be considered where previous evidence of hardship or lack of assets has been accepted and there has been no change in the financial circumstances of the member.

6.2 Request for Withdrawal from New Central Fund

Where the reasonable efforts of agents have failed to obtain payment of the member's underwriting liabilities the member's agent (or in the case of a direct corporate member, the relevant managing agent) should submit to LCD a request for a New Central Fund withdrawal (FOL5). The evidence of the efforts made to obtain payment, any financial information obtained and any other relevant information should be provided at the same time to LCD.

In relation to direct corporate members the appropriate form of request for a New Central Fund withdrawal may be obtained by the relevant managing agent(s) from Market Reporting Department. Any such application will be considered on receipt of the completed form from the relevant agent

6.3 Recovery of New Central Fund Withdrawals

LCD will consider the extent to which and how any monies withdrawn from the New Central Fund might be recovered from the member. If LCD commence legal action for recovery or issue a bankruptcy petition against a member, the members' agent will pay to Lloyd's a non-recoverable sum of £2,000 within 14 days of LCD notifying the members' agent of the issue of proceedings or bankruptcy petition. Where Lloyd's is minded to commence legal action or issue a bankruptcy petition against a member for less than £15,000 (or £30,000 in respect of a member resident overseas) LCD will discuss the proposed action first with the members' agent.

7. Market/Regulatory Bulletins

For ease of reference, Market and Regulatory Bulletins containing information relevant to the current funding of losses process (including those already referred to above) are listed below. Y2150 Application for Withdrawals from the New Central Fund is modified by this Bulletin.

Y2080	Deposit Drawdowns – Voluntary Requests	24 June 1999
Y2093	Compulsory Deposit Drawdowns	14 July 1999
Y2120	Cash Calls	26 August 1999
Y2150	Application for Withdrawals from the New Central Fund	20 October 1999
068/2000	Cash Call Requirements	12 September 2000
Y2463	Transfer of Cash and Securities from Lloyd's Deposit to PRF to pay Cash Calls	10 January 2001
Y2598	Payment of losses – cash calls	10 August 2001
Y2694	Settlement of Syndicate Losses an Cash Calls	11 January 2002

Settlement Process Indicative Timetable

Appendix 1

Process	Timescale	Procedure	Comments
Service of cash call statement	T - 35	Managing agent must give not less than 35 days' notice from date of service cash call for payment to member	Members' obligations in respect of cash calls are set out in clause 7 of the standard managing agent's agreement and clause 9 of the standard members' agent's agreement.
VOLUNTARY FUNDING			
Agents will be notified of the date by which FAL holdings should be liquidated and instructions given to Market Services (MS) to realise the same	T - 35		
Voluntary drawdown form submitted by members' agent	Between T - 21 and T - 4		Voluntary drawdown requests should be submitted promptly by the members' agent.
SRF non-cash assets	T - 10	If insufficient cash is held in SRF then investments will be liquidated approximately 10 working days prior to the due date of the cash call	SRF must be used to settle any cash calls to extent assets in that fund available before any other FAL or assets outside Lloyd's may be used. Three clear days notice of MS's intention to sell assets will be given.
SRF cash	Between T - 10 and T - 4	SRF cash transferred to the member's PRF	
Syndicate credited	T + 0	Transfer from PRFs to syndicate PTFs via BACS by due date for payment of cash call	
NON VOLUNTARY FUNDING			
PRF non-cash assets (no instruction received from members' agent)	T + 21	Sell orders placed to liquidate sufficient cash to pay calls normally 21 days from due date for payment of cash call	Lloyd's as Regulating Trustee has power to liquidate PRF assets. Agents will be advised of members in relation to whom PRF assets sold. Three clear days notice of MS's intention to sell assets will be given

Settlement Process Indicative Timetable

Appendix 1

Process	Timescale	Procedure	Comments
PRF cash (no instruction from members' agent)	T + 21	PRF cash transferred to syndicate PTF after 21 days of due date for payment of cash call	
Drawdown schedule sent to members' agents in respect of members with deposit	T + 42	Identification of members for whom a compulsory deposit drawdown is necessary (member has no other FAL available except deposit)	The audit report details the member's outstanding liabilities and will be accompanied by a letter indicating that members' agent should make a request for a compulsory deposit drawdown (see Bulletin Y2093, dated 14 July 1999)
Details of members with outstanding cash calls and insufficient FAL issued to agents in form of a drawdown schedule	T + 42	Identification of members in respect of whom recovery efforts may be required or a request for a Central Fund withdrawal made	Where syndicate debts remain unpaid, MS will issue details of those members with insufficient FAL to meet the call
Members' agents submit FOL 5 to 'fast-track' NCF withdrawals	T + 43 to T + 56	Identification of those members with no FAL and insufficient assets outside Lloyd's to meet the cash call	For members who are unable to pay MS will consider a 'fast-track' NCF withdrawal upon receipt of a FOL 5 without the need for a Financial Declaration
Members' agents follow up non 'fast-track' members for payment	T + 43	Members' agents should write to members requesting immediate settlement of outstanding amounts or if member in financial difficulties, provision of Financial Declaration	Members should be requested to complete and return a Financial Declaration within 28 days of receipt of the request from their agent
Members' agents return FOL Forms to initiate compulsory deposit drawdown	T + 70	Agents should complete and return FOL 1(D) within 28 days	See Bulletin Y2093, dated 14 July 1999
Members' agents should write to members failing to provide Financial Declaration	T + 72	Where members fail to provide a Financial Declaration it must be assumed that assets are available to meet outstanding cash call	
Members' agent submit Financial Declaration and request for NCF withdrawal in form FOL 5 to LCD	T + 43 to T + 102	Agents should submit FOL5 and the Financial Declaration to LCD without delay following receipt from member of satisfactory Financial Declaration	See also Bulletin Y2150, dated 20 October 1999

Settlement Process Indicative Timetable**Appendix 1**

Process	Timescale	Procedure	Comments
Members' agents should commence recovery attempts against defaulting member.	T + 102 T + 43 to T + 102	Where the reasonable efforts of members' agents have failed to obtain payment, request for withdrawal from New Central Fund should be made by members' agents (or in the case of a direct corporate member, the relevant managing agent). Evidence of efforts to obtain payments, any relevant financial or other information should also be sent to LCD.	Agents should advise LCD of the progress of any recovery attempts.