

**LLOYD'S OF LONDON
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SUBJECT: **REVIEW OF CAPITAL RULES - BILATERAL
ARRANGEMENTS**

ACTION POINTS: **Managing agents and members' agents to note**
DEADLINE: **For immediate attention**

Introduction

On 6 May 1998, the Council made rules governing bilateral arrangements in syndicate capacity. The rules consist of the Bilateral Arrangements (1998) Byelaw (No. 8 of 1998) and the Bilateral Arrangements (1998) Rules which are attached to this bulletin. On the same date, Council also approved the 1998 Auction Rules, details of which are given in Market Bulletin Y866.

The rules on., bilateral arrangements are one outcome of a review of all the rules relating to capital issues that is one of the key objectives set out in Lloyds' Regulatory Plan for 1998.

Background

The Council first considered the introduction of bilateral arrangements in September 1997. It concluded that it was not appropriate to introduce them at that time but that further consideration should be given in 1998 to developing methods of transferring capacity, including enhancing the auction process and introducing bilateral arrangements.

A discussion document on the provision, transfer and restructuring of capacity, containing a proposed framework for introducing bilateral transactions, was published for consultation in February 1998 (Regulatory Bulletin 008/98). On the basis of market responses to the proposed framework and research carried out by the Policy Department on best practice in other City markets, it was concluded that further work was necessary on the subject of

bilateral transactions.

On 1 April 1998, the Council approved a number of changes to the rules governing capacity transfer, based on proposals set out in the February discussion document. At the same time, the Council accepted in principle a recommendation that bilateral arrangements in respect of syndicate capacity be permitted to take place from July 1998 in parallel to, and interacting with, capacity auctions (Regulatory Bulletin 030/98).

Interaction

The framework approved by Council for bilateral arrangements involves a mandatory form of interaction so that:

- a party wishing to acquire capacity under a bilateral arrangement is also required to acquire capacity which is tendered in the auction but unallocated where that capacity is tendered at a price below that fixed for the bilateral transaction (the bilateral price); and
- a party wishing to dispose of capacity under a bilateral arrangement is also required to satisfy subscription orders which remain unsatisfied in the auction where those orders specify a price higher than the bilateral price.

The mandatory interaction will also require:

- a bilateral party seeking to acquire capacity to pay the bilateral price for any capacity acquired by interaction; and
- a bilateral party seeking to dispose of capacity to receive the auction subscription price for any subscription orders matched by interaction.

The model of the interaction proposed is set out in diagram form, together with a simple narrative example, in Appendix 1.

Timetable

An illustrative timetable for the 1998 auctions, based on a pro forma timetable for the existing auction process adjusted to accommodate bilateral arrangements, is set out in Appendix 2.

The timetable's key features are:

- for the first two days, the auction process will be conducted along conventional lines, subscribers and tenderers being matched in the normal way at the end of Day 2;
- before the end of Day 2, details of all proposed bilateral arrangements will have to be notified to the Auction Office, including the names of parties to the proposed transaction, the relevant syndicate, the amount of capacity involved and the agreed bilateral price;
- a summary of the auction results will be published at the start of Day 3, together with a report by syndicate of unmatched capacity, analysed in price bands;

bilateral parties not wishing to proceed because the potential interaction obligations are too great (see below) must notify the Auction Office by 1 pm on Day 3;

interaction then matches bilateral parties with auction tenderers and subscribers and bilateral parties so matched are advised of the result by close of Day 3;

on Day 4, bilateral arrangements are completed and the results of the auction, interaction and bilateral arrangements published.

Overall, the timetable for each auction, compared with the actual timetable for 1997, has not significantly lengthened.

Level of interaction

Where the level of interaction required with unmatched subscription or tender orders is 15% or less of the capacity which is the subject of the bilateral transaction, the parties to the proposed arrangement will be required to meet all interaction obligations in full. If the level of unmatched orders exceeds 15% of the bilateral transaction, the parties to the bilateral transaction will have two options:

- i) to withdraw the bilateral transaction altogether, at the option of either party to the transaction; or
- ii) to continue with the bilateral transaction, meeting all resulting interaction obligations in full.

Interaction will be subject to a limit equivalent to the capacity involved in the proposed bilateral transaction.

Interaction mandator-v for auction participants

Participants in the auction unmatched at the end of an auction will have no option but to interact with a bilateral transaction, if one has been registered on that syndicate at a relevant price.

Prioritisation

Where more than one bilateral arrangement is proposed on the same syndicate in any one auction, the bilateral arrangement with the highest price will be required to interact first, followed by the next highest priced bilateral arrangement, until all possible interaction has taken place. If there is more than one arrangement at the same price, the obligation to interact will be apportioned on a pro rata basis. If higher priced bilateral arrangements satisfy by interaction all relevant tenders and subscriptions in the auction, lower priced bilateral arrangements registered with the Auction Office will be completed without incurring such obligations.

Completion of bilateral arrangements

Once interaction obligations have been notified, parties to all registered bilateral

arrangements will be required to settle the proposed arrangements at the bilateral price already notified. The amount of capacity transferred between the two parties to the bilateral transaction will be reduced by the amount of capacity acquired or disposed of to meet interaction obligations, unless the bilateral parties agree and notify the Auction Office otherwise in a revision notice which must be lodged with the Auction Office by 10 am on the Friday of each auction week. In any event, the amount of capacity transferred between the bilateral parties cannot exceed that originally notified to the Auction Office.

Eligible arrangements

The facility to conclude bilateral arrangements will be restricted to arrangements of a minimum size of £250,000 of capacity per transaction per syndicate. This is intended to reinforce the status of the proposed facility as an “upstairs” market rather than as simply an alternative to the auction.

Small holdings of capacity on the same syndicate, however, may be grouped or aggregated for the purposes of meeting the £250,000 minimum limit. The intention is to permit aggregation of capacity held by members with a common members’ agent. In such cases, the aggregated members will clearly have to have found a bilateral counterparty to the proposed transaction before it becomes eligible for bilateral status. Members’ agents will also have to ensure that they obtain express authority from members (including MAPA participants) before engaging in bilateral arrangements on their behalf and that they are in a position to give any relevant advice to their members.

Managing agents (or connected companies) will not be permitted to take part in or promote such aggregation arrangements, since they have access to capacity offers, including announced auction offers, a route unavailable in the first instance to any other market user.

Settlement and funding arrangements

All bilateral transactions will be settled for cash and no other form of consideration will be acceptable.

The pre-funding requirements attaching to bilateral arrangements in respect of any interaction obligations will be similar to those already applicable to auction subscribers, i.e. a bilateral party seeking to acquire capacity with a potential interaction obligation in excess of £50,000 will have to pre-fund in the same way as would an auction subscriber.

Exchanges of capacity

Bilateral arrangements involving exchanges of capacity will not be permitted per se. They will need to be “unbundled” or disaggregated into parallel cash arrangements. They can then be processed as bilateral transactions but will be subject to interaction, funding and settlement obligations in the normal way.

Overall level of bilateral arrangements

Subject to the requirements in respect of mandatory offers being complied with in the normal way, there will be no restriction on the aggregate amount of a syndicate’s capacity that can be

acquired by means of bilateral arrangements.

To avoid any suggestion that permitted bilateral arrangements involve the issue of, or trading in, securities for the purposes of US securities law, the number of bilateral arrangements per participant will be restricted to a maximum of 25 per year per syndicate. For the purposes of that limit, each MAPA's syndicate capacity will be treated as if it is that of a single member.

Disclosure requirements

Parties to bilateral transactions will be subject to the same requirements under the auction rules in respect of disclosure and market conduct as the generality of auction participants.

Disclosures between bilateral parties themselves will be expected at a minimum to satisfy the standards expected of auction participants. In particular, parties to bilateral negotiations will have to ensure that any information made available privately that would constitute relevant information under the auction rules has been made public before the auction in which the bilateral transaction is notified to the Auction Office.

There will be no requirement for "pre-trade" transparency of bilateral arrangements, other than the obligation to notify the Auction Office on Day 2 of an auction. When, however, public disclosure is made voluntarily or accidentally, parties to the transaction will need to ensure that the information publicly available is adequate to ensure that a properly informed and orderly market in the relevant syndicate's capacity exists.

As indicated in the timetable in Appendix 2, full "post trade" disclosure of bilateral transactions will be made through the Auction Office on Day 4. Such disclosure will include details of the parties involved, the volume of capacity involved and the price paid. There will be no de minimis level for this disclosure requirement.

Permitted bilateral arrangements

The Bilateral Arrangements Byelaw defines permitted bilateral arrangements as, inter alia, those which comply with the requirements of the Byelaw itself and the Bilateral Arrangements Rules. No other form of bilateral arrangement is therefore permitted, such as so-called "swap and drop" arrangements which involve parties wishing to exchange capacity outside the auction achieving the desired result by "dropping" their capacity for no value to their respective managing agents, on the understanding that it will be reallocated to the other party for the following year of account.

Fees

The fee structure for bilateral transactions will be the same as that applicable to auction arrangements and entail payment of:

a £10 fixed fee for notification of a bilateral transaction;
a £75 fixed fee for withdrawal of such notification; and

an allocation fee of 0.05% by both or all parties to the bilateral transaction,
based on the amount of capacity matching as a result of the transaction.

The allocation fee will also be payable at the same rate on auction orders matched by the interaction process.

Overseas jurisdictions

Parties to potential bilateral transactions will be responsible for ensuring compliance with local laws (including securities laws) in all relevant jurisdictions. Lloyd's accepts no responsibility or liability in this regard. Bilateral parties are recommended to consult overseas lawyers who have appropriate experience. Appendix II of the Capacity Offer Rules 1998 contains a list of overseas law firms from whom Lloyd's has taken advice from time to time and who may therefore be considered to be familiar with the issues involved. None of these law firms is obliged to provide advice but Lloyd's has no objection to advice being given by them. By including these law firms on the list Lloyd's is not, however, recommending their services. Appendix 3 to this bulletin contains a summary of certain issues which may be relevant to bilateral parties proposing to enter into a bilateral arrangement where one or more of the parties is resident outside the United Kingdom.

General and administrative matters

The contents of this bulletin are not intended to replace the bilateral byelaw and rules which are attached to it and should only be read in conjunction with those rules. The bilateral byelaw and rules take precedence in all respects over the contents of this bulletin, and, in the case of any inadvertent inconsistency, the reader should refer to the byelaw and rules.

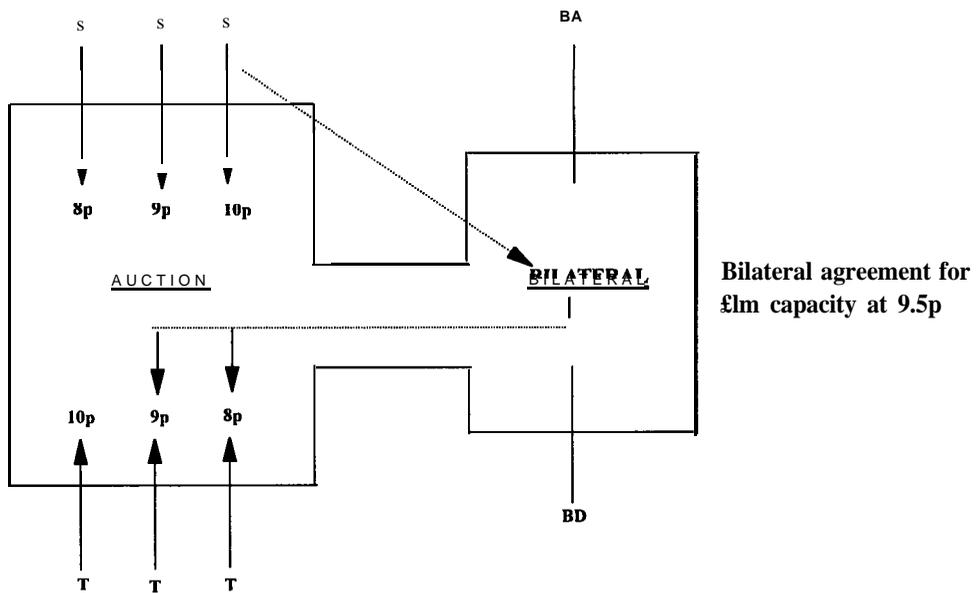
It is intended to organise a workshop in the next few weeks for the benefit of agents and other interested parties to explain the rules (and in particular some of their practical implications) and to take any questions which users of the rules may have. Further details of this will be circulated through the LUAA and other market associations.

Any queries on the bilateral transaction rules, contents of this bulletin and related policy matters should be referred to Richard Miller (extension 5897) or Michael Solarin (extension 6685) in the Policy Department. Queries on the practical and administrative arrangements in respect of bilateral arrangements should be addressed to Clive Wormald (extension 5918) or Sandra Sherlock (extension 5899) in MSU.

This bulletin is being sent to all underwriting agents, corporate members, Lloyd's advisers, recognised auditors and market associations, including the ALM.

Barbara Merry
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Regulatory Division

MANDATORY INTERACTION

**KEY**

- BA Bilateral party acquiring capacity
- BD Bilateral party disposing of capacity
- s Auction subscribers
- T Auction tenderers
- > Interaction

APPENDIX 1**(continued)****Illustration**

1 The diagram above shows:

a proposed bilateral transaction between BA and BD for Elm of capacity at 9.5p;

unmatched auction subscriptions and tenders at the end of the conventional auction process at a range of prices.

2 On the mandatory interaction basis proposed, before the bilateral transaction can be completed:

BA must satisfy the unmatched tenders orders at 8p and 9p (i.e. those with floor prices below the proposed bilateral price) but not those at 10p, which remain unmatched; and

BD must allocate capacity to fill the unmatched subscription orders at 10p (i.e. those offering more than the proposed bilateral price) but not those at 8p and 9p, which remain unmatched.

3 Interaction is on the basis that:

BA will pay the price fixed for the bilateral transaction of 9.5p to all tenderers matched by the process of interaction; and

BD will receive the auction subscription price for any subscription orders matched by interaction.

4 After the interaction process has been completed, BA and BD will complete the bilateral transaction at the originally agreed price of 9.5p. The amount of capacity involved may, by mutual agreement, be reduced as a consequence and to the extent of mandatory interaction.

**ILLUSTRATIVE TIMETABLE FOR 1998 AUCTION,
INCORPORATING INTERACTION WITH BILATERAL ARRANGEMENTS**

Day One - Tuesday

Tenders and subscriptions received.
Auction match, regulatory copy produced.
Penny bands report, current prices summary published.

Day Two - Wednesday

Tenders, subscriptions and revisions received.
Bilateral transaction notifications received
Auction match, regulatory copy produced.

Day Three - Thursday

Penny band reports, auction summary, unmatched bid details published to:
1) Stock Exchange, 2) All issuers, 3) Fax bulletin board (by 9 am).
Bilateral transaction withdrawals advised to Auction Office (by 1 pm).
Interaction run and bids matched, regulatory copy produced.
Results of interaction advised to bilateral parties (before 5 pm).

Day Four - Friday

Bilateral parties to submit revision notices (by 10 am).
Results of interaction and bilateral arrangements advised to Stock Exchange (before 12 noon at latest).
Detailed results of auction and interaction advised to all participants (before 5 pm at latest).
Stamp details updated.

BILATERAL ARRANGEMENTS**OVERSEAS JURISDICTIONS**

Below is a summary of certain issues in relation to bilateral arrangements in certain overseas jurisdictions.

The information set out below is not intended to summarise comprehensively the position in the relevant jurisdiction or to constitute definitive legal advice. It is the primary responsibility of the bilateral parties and their advisers to ensure compliance with overseas securities laws and all other relevant legislation in the jurisdiction(s) concerned. Therefore, Lloyd's accepts no responsibility or liability in this regard.

Attention is drawn to the fact that in many overseas jurisdictions the laws relating to pre-contractual disclosure of information are more stringent than those in England. Full and frank disclosure of any information relating to the value of capacity which is the subject of bilateral deals (including prospective syndicate profits) will be required to satisfy these laws. Also any underwriting agent (or any connected persons) proposing to enter into a bilateral arrangement should be aware that fiduciary duties owed to their Names may be significant and in addition to any contractual duties.

1. Other than ensuring proper pre-contractual disclosure, there appear to be no particular obstacles to bilateral arrangements in the following jurisdictions:

British Virgin Islands	Japan
Bermuda	Luxembourg
Denmark	The Netherlands/The Netherland Antilles
France	Portugal
Germany	Switzerland
Guernsey	Spain
Ireland	
Jersey	

2. **Australia**

It should be noted that in order to avoid business registration requirements in Australia, any bilateral arrangement should be structured in such a way as the conclusion of the contract takes place in England and not in Australia.

Section 1025(3) of the Corporation Law prohibits the publication of a "notice" ("notice" is widely defined) which calls attention, whether directly or indirectly, to an invitation or intended invitation to subscribe for securities of a corporation. The term "corporation" is widely interpreted and therefore there must be no advertising in or into Australia territorially.

Australian law relating to misleading or deceptive conduct is more stringent than the corresponding laws in England. Bilateral parties should verify diligently the accuracy of any statements made (including opinions and forecasts) concerning syndicate participations and to ensure that any documents relating to a bilateral arrangement contain wording which will minimise the reliance on any such statements.

3. **Belgium**

The Belgian Banking and Finance Commission (BFC) has indicated that it is inclined to treat syndicate participations as securities for the purposes of Belgian securities law. To avoid various requirements, including prior approval of the BFC, a bilateral deal should be structured so that it does not constitute a “public” offer. An offer will be “public” unless:-

- (i) it is directed to less than 51 Names; and
- (ii) it is not marketed in any way (including the distribution of materials addressed to Names personally); and
- (iii) it is not made through an intermediary in Belgium.

Further, if the minimum consideration per Name would amount to at least BEF 10 million or all the Names are licensed within the meaning of the Belgian insurance legislation, the bilateral will not be considered “public”. Given the minimum size of a bilateral deal is greater than BEF 10 million, it should not be considered public. However, bilateral deals entered into by a MAPA Operator or a members’ agent aggregating Names together to reach the £250,000 minimum size may be problematic if the consideration to be received by each Name is less than BEF 10 million.

4. **United States of America**

It is possible that US regulators could construe bilateral arrangements as falling within the framework of US securities regulation. Those proposing to enter into bilateral arrangements are therefore advised to have regard to such regulations. In particular, bilateral participants should avoid making generalised offers which could be construed as “tender-offers” under US securities laws.

Members’ agents should have regard to the provisions of the Investment Advisers’ Act 1940 and similar state statutes. The role of a members’ agent entering into a bilateral on behalf of a MAPA or an aggregation arrangement may result in a members’ agent acting as an investment adviser and therefore subject to registration. Also, to avoid US broker-dealer and investment adviser legislation, a members’ agent and its employees should not receive transaction-based or other special compensation. It is recommended that members’ agents seek legal advice.

5. **Canada**

Provided that:

- (i) the consideration for a bilateral deal is cash only;
- (ii) any bilateral contract will be governed by English law; and
- (iii) the Names involved are found to be sufficiently sophisticated and knowledgeable to exert ultimate control over their underwriting business

a bilateral arrangement should not infringe provincial securities or other relevant laws of Canada. Point (iii) is likely to be presumed in most cases but may be more difficult in relation to transactions undertaken by a MAPA operator or pursuant to a members' agent's aggregation arrangement where the Name is receiving consideration of less than Can\$ 150,000.

Attention is also drawn to the fact that additional wording concerning the use of the French language may be required in any documentation relating to bilateral arrangements made in Quebec.

7. Greece

The payment of the cash consideration will have to comply with Greek foreign exchange regulations.

8. New Zealand

Bilateral participants should be aware that the provisions of the Investment Advisors (Disclosure) Act 1996 may be applicable. This Act may require the disclosure of certain key information to syndicate members.

9. South Africa

Subject to satisfaction of any applicable exchange control requirements there should be no obstacles to bilateral arrangements in South Africa.

10. Isle of Man

Parties to proposed bilateral arrangements should seek legal advice at an early stage, particularly with regard to the issue of whether either of them could be construed as "carrying on investment business" in the Isle of Man under the Investment Business Order 1991.

11. Italy

Any bilateral arrangement should be made on an individual and personalised basis with Names resident in Italy. In July 1998 a new financial services and securities law is to come into force which should clarify the Italian legal position with regard to bilaterals. There may be circumstances in which advance filings are required with the Bank of Italy and legal advice should be sought at an early stage.

12. Hong Kong

Provided that a party does not propose bilateral arrangements with more than 50 Names resident in Hong Kong it should not be necessary for the transaction to involve a registered or exempt dealer. However, it is an offence for any person who is not a registered or exempt dealer to carry on a business of “dealing in securities” which definition may include a bilateral arrangement. A “one-off” transaction is unlikely to amount to the carrying on of such a business but if a Name enters into bilateral arrangements with Names resident in Hong Kong on a regular and continuing basis the position is less clear. Such “dealing” may, however, be carried on by a registered or exempt dealer.

BILATERAL ARRANGEMENTS (1998) BYELAW

(No. 8 of 1998)

(Made on 6th May 1998)

The Council of Lloyd's in exercise of its powers under section 6(2) of, and paragraphs (4) and (15) of Schedule 2 to, Lloyd's Act 1982 by special resolution hereby makes the following byelaw.

Part A - Preliminary

1. Interpretation

- (1) In this byelaw "permitted bilateral arrangement" means a participation nomination -
 - (a) validated by or under the authority of the Auction Official during the period beginning on 17th July 1998 and ending on 25th September 1998;
 - (b) for which the only consideration is cash; and
 - (c) which complies with the requirements of this byelaw and the conditions imposed or requirements made under it.
- (2) The provisions of the Schedule to this byelaw (interpretation) shall have effect.

Part B - Permitted bilateral arrangements

2. Amendment of Agency Agreements Byelaw (No. 8 of 1988)

The Agency Agreements Byelaw (No. 8 of 1988) is amended as follows -

- (a) in paragraph 14 (assignment of syndicate participations) by inserting in sub-paragraph (1) between sub-paragraphs (a) and (b) the following new sub-paragraph (aa) -

“(aa) by a permitted bilateral arrangement within the meaning of the Bilateral Arrangements (1998) Byelaw (No. 8 of 1998) and with any conditions imposed or requirements made thereunder and with any other applicable requirements of the Council;“;

- (b) in paragraph 15 (rights of managing agents with respect to assignment of syndicate participations) by revoking sub-paragraph (5) and substituting the following new sub-paragraph (5) -

“(5) An application may be made under this paragraph in respect of a nomination made under any arrangement or scheme validated by the Council for the purposes of sub-paragraphs (a) or (c) of paragraph 14(1), or any validated conversion arrangement (as defined in the Conversion and Related Arrangements Byelaw (No. 22 of 1996)) or any permitted bilateral arrangement (as defined in the Bilateral Arrangements (1998) Byelaw (No. 8 of 1998)) only to the extent, if any, expressly provided in any conditions and requirements prescribed or imposed by the Council pursuant to paragraph 14(3) of this byelaw or pursuant to either of those other byelaws respectively.“.

3. Auctions

- (1) Where the proposed permitted bilateral arrangement concerns a syndicate in respect of which a tender order has been submitted in the most recent auction which -
- (a) specified a floor limit lower than the price specified in the proposed permitted bilateral arrangement; and
- (b) remains unsatisfied

the proposed nominee shall satisfy that order in priority to the proposed permitted bilateral arrangement in accordance with the requirements and conditions made by the Council under paragraph 5.

- (2) Where the proposed bilateral arrangement concerns a syndicate in respect of which a subscription order has been submitted in the most recent auction which -

- (a) specified a subscriber's premium higher than the price specified in the proposed permitted bilateral arrangement; and
- (b) remains unsatisfied

the party making the proposed participation nomination shall satisfy that order in priority to the proposed permitted bilateral arrangement in accordance with the requirements and conditions made by the Council under paragraph 5.

4. Validation

- (1) A permitted bilateral arrangement shall be conditional on its validation by or under the authority of the Auction Official.
- (2) The validation of any permitted bilateral arrangement shall be effected in such manner and within such period, and subject to such other conditions and requirements, as are for the time being prescribed under paragraph 5.

5. Conditions and requirements

- (1) The Council may prescribe such conditions or requirements to be satisfied or complied with in relation to any permitted bilateral arrangement as it may think fit.
- (2) Without prejudice to the generality of sub-paragraph (1), any conditions and requirements under that sub-paragraph -
 - (a) may include requirements as to the manner in which and time by which any submission for validation under paragraph 4 shall be made;
 - (b) may include the requirement to complete notices or other documents with such contents and such form as may be prescribed by the Auction Official or any other person for the time being authorised by the Council;
 - (c) may include the requirement to execute and deliver or otherwise become a party to any form of contract, assignment, undertaking, mandate, or other document or instrument whatsoever prescribed by the Auction Official or any other person for the time being authorised by the Council;

- (d) may be applicable generally or in relation to any particular case or class of cases;
- (e) may specify circumstances in which a person is to be exempt from any such condition or requirement or may be excused from compliance with any such condition or requirement to such extent as the Council may think fit; and
- (f) may contain incidental, supplementary and transitional provisions.

6. Annual limit on permitted bilateral arrangements

- (1) A member, a candidate, or a prospective candidate shall not enter into more than 25 permitted bilateral arrangements in any one year of account in relation to the same syndicate, whether as the member making the participation nomination or as the nominee.
- (2) For the purpose of this paragraph only, permitted bilateral arrangements made in respect of prospective participations through a single MAPA shall be treated as a single permitted bilateral arrangement.

7. Reduction in syndicate capacity made by managing agent

Where, in accordance with paragraph 5 of the Syndicate Pre-emption Byelaw (No. 19 of 1997), a managing agent reduces the syndicate allocated capacity of a syndicate for the 1999 year of account the amount of his member's syndicate premium limit in respect of which a member may make a permitted bilateral arrangement shall be reduced by the same proportion as the member's syndicate premium limits of the members for the 1998 year of account who are to participate in the syndicate for the 1999 year of account.

8. Overseas jurisdictions

- (1) The Council may prohibit, or impose such conditions or requirements as it thinks fit in relation to, any permitted bilateral arrangement where any party thereto is resident or domiciled in a jurisdiction outside the United Kingdom if it appears to the Council that such arrangement would be unlawful or would require compliance with unduly burdensome requirements.

(2) The powers of the Council under this paragraph may be exercised generally or in relation to any particular case or class of cases.

9. Fees

The Council may prescribe fees to be paid by any person in respect of any permitted bilateral arrangement or the validation thereof.

Part C - Miscellaneous and Supplementary

10. Modification of Conversion Rules and Auction Rules etc

The Council may in relation to permitted bilateral arrangements or for purposes consequential to this byelaw amend, modify or disapply, whether generally or in relation to a particular case or class of cases, any provision of the Conversion Rules, the Auction Rules or any conditions or requirements made in respect of corporate members under the Membership Byelaw (No. 17 of 1993).

12. Furtherance of permitted bilateral arrangement

(1) The managing agent and the nominee's members' agent shall do all such acts and things and shall execute all such documents as shall be necessary or expedient on their part to give effect to a permitted bilateral arrangement.

(2) Without limiting the generality of sub-paragraph (1), the managing agent shall enter into an agreement in the terms of the standard managing agent's agreement (general) or standard managing agent's agreement (corporate member) with the nominee.

(3) Subject to sub-paragraph (4) and without limiting the generality of sub-paragraph (1), the managing agent shall enter into an agreement in the terms of the standard agent's agreement with the nominee's members' agent if there is no such agreement current between the managing agent and that members' agent.

(4) The Council may, on application by the managing agent, waive the requirements of sub-paragraph (3) in any particular case.

13. Commencement

This byelaw shall come into force on 6th May 1998.

SCHEDULE

INTERPRETATION

In this byelaw, unless the context otherwise requires -

- “auction” means an auction held under a capacity allocation scheme established under the Auction Byelaw (No. 14 of 1997);
- “Auction Official” means the person for the time being appointed under paragraph 3 of the Auction Byelaw (No. 14 of 1997);
- “Auction Rules” means the Auction Rules, as from time to time amended, made by the Council under paragraph 2(5) of the Auction Byelaw (No. 14 of 1997);
- “floor limit” means the minimum premium which a tenderer requires to receive in respect of each EI of tendered capacity in an auction;
- “participation nomination” means a nomination such as is referred to in clause 11A.2 of an agreement in the terms of the standard managing agent’s agreement (general) or of the standard managing agent’s agreement (corporate member) respectively prescribed by the Agency Agreements Byelaw (No. 8 of 1988);
- “prospective participation” means in relation to a syndicate, the amount of the member’s syndicate premium limit with which a person will for the time being be entitled to participate as a member of that syndicate for the 1999 year of account;
- “subscribed capacity” means the amount of the prospective participation specified in a subscription order;
- “subscriber” means a person on whose behalf a subscription order is submitted;

“subscriber’s premium”	means the premium which a subscriber is willing to pay in respect of each £1 of subscribed capacity;
“subscription order”	has the meaning given in the Auction Byelaw (No. 14 of 1997);
“syndicate”	means a group of members of Lloyd’s or a single corporate member underwriting insurance business at Lloyd’s through the agency of a managing agent to which a particular syndicate number is assigned by or under the authority of the Council.
“tendered capacity”	means the amount of the prospective participation specified in a tender order;
“tenderer”	means a person on whose behalf a tender order is submitted;
“tender order”	has the meaning given in the Auction Byelaw (No. 14 of 1997);
“validation date”	means the date on which a permitted bilateral arrangement is validated and becomes unconditional;

BILATERAL ARRANGEMENTS (1998) BYELAW

(No. 8 of 1998)

EXPLANATORY NOTE

(This note is not part of the byelaw)

This byelaw sets out the general structure of the rules governing a permitted bilateral arrangement and extends the categories permitted by paragraph 14 of the Agency Agreement Byelaw” of the “participation nomination” provided for by clause 11A of the standard managing agent’s agreement. Permitted bilateral arrangements are subject to certain rules analogous to some of the Auction Rules: the amount of capacity transferred is subject to any “de-emption” by the managing agent; and managing agents are required to enter into standard agency agreements with the nominee and the nominee’s members’ agent’s.

To avoid any suggestion that permitted bilateral arrangements involve the issue of, or trading in, securities for the purpose of US securities law members (or prospective members) are each limited to 25 permitted bilateral arrangements per syndicate. For the purpose of the 25 transaction limit, the syndicate MAPA capacity is treated as if it were that of a single member.

The byelaw applies only to transactions during 1998 for the 1999 year of account.

BILATERAL ARRANGEMENTS (1998) RULES

The Council of Lloyd's in exercise of its powers under section 6(l) of Lloyd's Act 1982, paragraph 2(5) of the Auction Byelaw (No. 14 of 1997) and paragraphs 5 and 8 of the Bilateral Arrangements (1998) Byelaw (No.8 of 1998) hereby prescribes the following conditions and requirements.

1. Citation

These conditions and requirements may be cited as the Bilateral Arrangements (1998) Rules.

2. Interpretation

(1) Subject to sub-paragraph (2), except where the context otherwise requires, words and phrases defined in the Bilateral Arrangements (1998) Byelaw (No.8 of 1998) and the Auction Rules have the same meanings where used in these Rules.

(2) In these Rules, "the nominee's Auction Funding Account" means an account of a type validated by the Auction Official and opened by the nominee with National Westminster Bank Plc or such other bank as the Auction Official may agree.

3. Validation

(1) A permitted bilateral arrangement may be validated only on the Friday immediately following an auction and shall not be validated later than 5.00pm unless the Auction Official otherwise agrees.

(2) A permitted bilateral arrangement shall not be validated unless -

(a) the prospective participation to which the arrangement relates is not less than £250,000;

(b) by 2.00pm (or such later time as the Auction Official may permit) on the Wednesday in the week in which an auction is held there has been submitted to the Auction Office notice of the proposed arrangement (a "bilateral notice") containing a statement signed by or on behalf of each of the parties to the arrangement and giving particulars of -

(i) the parties to the arrangement, stating which of them is making a

participation nomination;

- (ii) the syndicate concerned;
- (iii) the amount of prospective participation on the syndicate in respect of which a participation nomination is to be made;
- (iv) the price to be paid in respect of each 1 of the prospective participation which is the subject of the arrangement (the “bilateral price”);
- (v) such other particulars as the Auction Official may require, whether generally or in relation to the particular arrangement;

and certifying

- (vi) that the only consideration for the participation nomination is cash;
- (vii) that in respect of the syndicate concerned -
 - (a) no subscription order which has previously submitted on behalf of the party making the participation nomination in any auction during 1998 has been satisfied;
 - (b) the party making the participation nomination is not a person in whose favour a participation nomination under a permitted bilateral arrangement has previously been made;
 - (c) no tender order which has previously submitted on behalf of the nominee in any auction during 1998 has been satisfied; and
 - (d) the nominee has not previously made a participation nomination under a permitted bilateral arrangement;
- (viii) that neither party to the proposed arrangement is in possession of any Relevant Information which has not been made publicly available; and
- (ix) where a party to the proposed arrangement is resident in a jurisdiction other than the United Kingdom, that all local laws (including any applicable securities laws) have been and will be complied with;

- (c) the prospective participation on the syndicate concerned of the person making a participation nomination is not less than the amount of the prospective participation that is subject to the arrangement;
 - (d) the nominee has complied with his funding obligations under paragraph 5(1) below;
- (3) For the purposes of sub-paragraph (2)(a) -
- (a) an arrangement made in respect of prospective participations through a single MAPA shall be treated as a single arrangement and the respective amounts of those prospective participations shall be aggregated in determining whether the condition specified in that sub-paragraph is fulfilled;
 - (b) save where one party to the arrangement is a connected company of the managing agent of the syndicate concerned, an arrangement made by a members' agent on behalf of members for whom it acts as such in respect of the prospective participations of those members shall be treated as a single arrangement and the respective amounts of those participations shall be aggregated in determining whether the condition specified in that sub-paragraph is fulfilled;
 - (c) the amount of any prospective participation satisfied by a party to the proposed arrangement pursuant to paragraph 6 below shall be taken into account in determining whether the condition specified in that sub-paragraph is fulfilled.
- (4) The Auction Official may prescribe any form, whether electronic or otherwise, to be used for the submission of any notice or information to the Auction Office for the purposes of this paragraph.
- (5) No later than 5.00pm (or such later time as the Auction Official may permit) on the validation date the Auction Official shall cause there to be published electronically in a form prescribed by him, or by such other means as he may agree, particulars of any permitted bilateral arrangement which has been validated, including those particulars submitted under sub-paragraph (2).

4. Fees

- (1) A fee of £10 (inclusive of VAT) shall be payable by each party by whom or on whose

behalf a bilateral notice is submitted.

(2) An additional fee shall be payable by each party to a permitted bilateral arrangement in respect of each arrangement which is validated. The amount of the fee shall be equal to 0.05% of the amount of prospective participation acquired (in the case of a nominee) or in respect of which a participation nomination is made (in the case of the party making the participation nomination).

(3) A fee of £75 (inclusive of VAT) shall be payable by each party by whom or on whose behalf a withdrawal notice pursuant to paragraph 7 below is submitted.

5. **Funding**

(1) Where the amount payable in respect of 15% of the prospective participation specified in a bilateral notice is £50,000 or more, the nominee shall submit to the Auction Official an authority in Form 1 and shall transfer or cause to be transferred to the nominee's Auction Funding Account that amount in cleared funds at least one working day before the day on which the bilateral notice is submitted.

(2) Where a tender order is satisfied in whole or in part by a nominee pursuant to paragraph 6 below and the amount of the premium payable to the tenderer exceeds £50,000 and any amount transferred by the nominee to the nominee's Auction Funding Account pursuant to sub-paragraph (1), the nominee shall transfer or cause to be transferred to the nominee's Auction Funding Account or such other account as the Auction Official may specify the balance due in settlement of the tender order within 3 working days after publication of the particulars specified in paragraph 6(4).

6. **Unsatisfied Auction Orders**

(1) Where any bilateral notices concern the same syndicate as that specified in any unsatisfied tender orders and the bilateral prices respectively specified in those notices exceed the respective floor limits of those unsatisfied orders -

- (a) subject to the following provisions of this paragraph, a nominee shall satisfy those orders in priority to the prospective participation which is the subject of the proposed arrangement;
- (b) the bilateral notices shall be ranked in order of their respective bilateral prices with the notice specifying the highest bilateral price ranking first in order of priority;

- (c) any bilateral notices specifying the same bilateral price shall be ranked equally and, subject to sub-paragraphs (d) and (e), any orders shall be satisfied pro rata to the amount of the prospective participations specified in the respective notices;
- (d) the unsatisfied orders shall be ranked in order of their respective floor limits with the order specifying the lowest floor limit ranking in priority;
- (e) any unsatisfied orders specifying the same floor limit shall be ranked according to the Relevant Time attributable to those orders with the order attributed the earliest Relevant Time being accorded priority;
- (f) the price per £1 of capacity to be paid to the tenderer in respect of any order satisfied by a nominee shall be an amount equal to:

$$\frac{A}{B}$$

where:

A= the aggregate of the amounts payable by all nominees for prospective participations to which the order relates; and

B= the total amount of prospective participations to which the order relates which have been satisfied by the nominees.

- (2) Where any bilateral notices concern the same syndicate as that specified in any unsatisfied subscription orders and the bilateral prices respectively specified in those notices are less than the respective subscriber's premium of those unsatisfied subscription orders -
 - (a) subject to the following provisions of this paragraph, a party making a participation nomination shall satisfy those orders in priority to the prospective participation which is the subject of the proposed arrangement;
 - (b) the bilateral notices shall be ranked in order of their respective bilateral prices with the notice specifying the highest bilateral price ranking first in order of priority;
 - (c) any bilateral notices specifying the same bilateral price shall be ranked equally

and, subject to sub-paragraphs (d) and (e), any orders shall be satisfied pro rata to the amount of the prospective participations specified in the respective notices;

(d) the unsatisfied orders shall be ranked in order of their respective subscriber's premium with the order specifying the highest subscriber's premium ranking in priority;

(e) the price to be paid by a Subscriber in respect of any order satisfied by a party making a participation nomination shall be the subscriber's premium.

(3) For the avoidance of doubt, nothing in this paragraph shall oblige a party to a proposed arrangement to acquire a prospective participation or make a participation nomination, as the case may be, in excess of the amount specified in that party's bilateral notice.

(4) No later than 5.00pm (or such later time as the Auction Official may permit) on the Thursday immediately following an auction the Auction Official shall cause there to be published electronically in a form prescribed by him, or by such other means as he may agree, to each party to whom sub-paragraphs (1) and (2) apply particulars of any prospective participations allocated in or towards satisfaction of any orders pursuant to this paragraph.

7. Withdrawal and revision of notices

(1) Subject to the following provisions of this paragraph, no bilateral notice may be withdrawn or altered after it has been submitted.

(2) A bilateral notice may be withdrawn where -

(a) the amount of the prospective participation which the party to the proposed arrangement may be obliged to acquire or make a participation nomination in respect of, as the case may be, pursuant to paragraph 6 exceeds 15 per cent of the amount of prospective participation specified in the bilateral notice; and

(b) notice is given to the Auction Office by or on behalf of either party to the proposed arrangement of that party's intention to withdraw from the proposed arrangement (a "withdrawal notice") by no later than 1.00pm on the Thursday following the relevant auction.

(3) Where an order is satisfied in whole or in part by a party to a proposed arrangement pursuant to paragraph 6, unless the parties to the proposed arrangement submit a revised notice in accordance with sub-paragraph (4) below, the amount of the prospective participation specified in their bilateral notice shall be treated as having been reduced to the extent that the order has been so satisfied.

(4) Subject to sub-paragraphs (5) and (6), where a party to a proposed arrangement has satisfied in whole or in part an order pursuant to paragraph 6, the parties to the proposed arrangement may submit a notice (a “revised notice”) revising a bilateral notice by specifying an amount of prospective participation greater than that specified in the bilateral notice.

(5) The amount of prospective participation specified in the revised notice shall not exceed in aggregate the amount specified in the bilateral notice and any amount satisfied pursuant to paragraph 6.

(6) A revised notice shall be submitted to the Auction Office by no later than 10.00am on the Friday following the relevant auction.

(7) The Auction Official may prescribe any form, whether electronic or otherwise, to be used for the submission of any notice to the Auction Office for the purposes of this paragraph.

8. Settlement of Auction Orders

(1) The Auction Official shall no later than each Statement Date cause there to be issued to each party to a permitted bilateral arrangement who has satisfied any orders pursuant to paragraph 6 a statement as to the net amount (“the Net Amount”) payable or receivable by that party in respect of those orders. The Net Amount (“NA”) shall be calculated as follows:

$$NA = (V-W-X-Y) + z$$

Where:

V = the amount of all premiums receivable by that party in respect of subscription orders satisfied under paragraph 6.

W = the amount of all premiums payable by that party in respect of tender orders satisfied pursuant to paragraph 6.

X = the fee of £10 due pursuant to paragraph 4(1) above

Y = the amount of the fee due pursuant to paragraph 4(2) above.

Z = the amount (if any) transferred by that party to an Auction

Funding Account (or such as other account as may have been specified by the Auction Official) pursuant to paragraph 5 above.

- (2) Where the Net Amount is a negative amount, it is referred to below as a Debit Amount and the statement as a Debit Statement and, where it is a positive amount, it is referred to below as a Credit Amount and the statement as a Credit Statement.
- (3) Subject to Auction Rule 18(5) which shall apply *mutatis mutandis*, the Auction Official shall cause the Credit Amount payable to each nominee in receipt of a Credit Statement to be credited to the nominee's Auction Funding Account in cleared funds no later than close of business on the Relevant Credit Date.
- (4) Subject to Auction Rule 18(5) which shall apply *mutatis mutandis*, the Auction Official shall cause the Credit Amount payable to a party making a participation nomination in receipt of a Credit Statement to be credited to such account as that party may specify in cleared funds no later than close of business on the Relevant Credit Date or within 14 days after details of such account are notified to the Auction Official, whichever is the later.
- (5) Each party in receipt of a Debit Statement shall cause the Debit Amount to be credited in cleared funds to the Lloyd's Auction Settlement Account no later than close of business on the Relevant Debit Date.
- (6) Rules 18(10), 18(11), 18(12), 18(13), 18(14) and 18(15) of the Auction Rules shall apply *mutatis mutandis*.

9. Nomination

For the purposes of Clause 11A.3 of any agreement in terms of the standard managing agents' agreement (general) and the standard managing agents agreement (corporate member), the Auction Official shall be and is hereby nominated by the Council as a person in favour of whom authority may be given to sign nominations on behalf of any member under Clause 11.

10. **Overseas jurisdictions**

- (1) No permitted bilateral arrangement may be made by or to a person resident in a prohibited territory.
- (2) The Auction Official shall give not less than 15 business days notice of any change in the list of prohibited territories.
- (3) For the purposes of this paragraph, a “prohibited territory” means Singapore and such other territories as may be prescribed as prohibited territories by the Auction Official from time to time.

11. **Advertisements for qualifying participation nominations**

No underwriting agent, connected company or associate of any underwriting agent, or any Lloyd’s adviser, member (other than a member wishing to make a participation nomination) or any other person involved directly or indirectly shall issue or cause to be issued any advertisement which relates to a participation nomination.

12. **Commencement**

These conditions and requirements shall come into force on 6th May 1998.