

## MARKET BULLETIN

REF: Y5080

<b>Title</b>	Amlin Underwriting Limited
<b>Purpose</b>	To provide information relating to proceedings before the Enforcement Board relating to Amlin Underwriting Limited
<b>Type</b>	Event
<b>From</b>	Patricia Isherwood, Secretary to the Lloyd's Enforcement Board
<b>Date</b>	3 April 2017
<b>Deadline</b>	N/A
<b>Related links</b>	N/A

In proceedings before the Lloyd's Enforcement Board, Amlin Underwriting Limited ("AUL") has admitted a charge of detrimental conduct.

AUL was the managing agent of Syndicate 2001 at all material times. As the managing agent AUL was responsible for managing the assets of the syndicate held on trust under the terms of the Lloyd's Premium Trust Deed ("PTD").

In summary the charge relates to (1) AUL's failure to operate effective systems and controls governing the use of the Lloyd's Premium Trust Fund ("PTF"), which led to payments being incorrectly made from the fund, and (2) AUL's failure to appreciate the seriousness of the breach of the PTD and to investigate and report the matter to its Board and to Lloyd's in a timely manner.

The most significant breach of the PTD occurred in 2015 when premiums for the Amlin Group's reinsurance programme were paid out of the PTF. This included payment of US\$88m for premiums attributable to group entities other than Syndicate 2001. The payment of premiums on behalf of the non-Lloyd's insurance companies was a breach of

the terms of the PTD because such payments are not permitted trust outgoings, being unconnected to the underwriting of the syndicate.

Following identification of the potential breach AUL failed to investigate the issue or escalate it either internally or to Lloyd's in a timely manner.

Lloyd's is satisfied that the breach was not deliberate or reckless and all funds have been repaid with interest. At no point was the solvency of the PTF in question and neither the Corporate Member nor policyholder suffered any detriment. There was also no direct or indirect benefit to AUL arising from the breach.

AUL has never disputed the breach and has cooperated with the Lloyd's investigation.

The Enforcement Board has approved the following settlement terms –

- 1 AUL is to be fined in the amount of £630,000 (this fine reflects a 30% discount for early settlement. Otherwise the fine would have been £900,000);
- 2 AUL shall be censured in the terms of the attached Notice of Censure; and
- 3 AUL shall pay a contribution of £90,500 towards the costs of Lloyd's in respect of these proceedings.

These penalties were calculated in accordance with the framework for the imposition of sanctions set out in the Enforcement Requirements.

Following this case Lloyd's will be looking at how it can better ensure trustees across the market are familiar with their obligations under the PTD and that such obligations are met.

Patricia Isherwood  
Secretary to the Lloyd's Enforcement Board

## Notice of Censure

### Amlin Underwriting Limited

At all material times Amlin Underwriting Limited (“AUL”) was the managing agent of Syndicate 2001. As the managing agent it was responsible for managing the assets of the syndicate held on trust under the terms of the Lloyd’s Premium Trust Deed (“PTD”).

#### Case Summary

AUL has admitted a charge of detrimental conduct. In summary this relates to (1) AUL’s failure to operate effective systems and controls governing the use of the Lloyd’s Premium Trust Fund (“the fund”), which led to payments being incorrectly made from the fund, and (2) AUL’s failure to appreciate the seriousness of the breach of the PTD and to investigate and report the matter to its Board and to Lloyd’s in a timely manner.

#### The Events

AUL is part of a wider insurance group which includes two other non-Lloyd’s insurance companies. In late 2014 the Amlin group underwent a restructure to implement a “matrix” business organisation structure with underwriting activity being organised along product lines and support functions being centralised at group level.

As a part of this reorganisation, the outwards re-insurance programme was restructured along class of business lines covering multiple entities for 2015.

Premiums for certain 2015 outwards re-insurance contracts were paid from the fund via the LORS system including payment of US\$88.2 million for premiums attributable to group entities other than syndicate 2001. The most significant of those payments were made in February 2015. The payment of premiums from the fund on behalf of the non-Lloyd’s insurance companies was a breach of the terms of the PTD because such payments are not permitted trust outgoings, being unconnected to the underwriting of the syndicate, nor were they permitted loans, investments or other permissible transactions.

The potential breach of the PTD was initially identified on or around 18 March 2015. However, there was a lack of urgency regarding the seriousness of the issue and a lack of clarity for some time around who in the organisation should take responsibility for investigating and reporting the matter.

After the potential breach was identified, the non-Lloyd’s companies were asked in April 2015 to repay the fund. The non-Lloyd’s companies subsequently repaid the fund with interest at commercial rates.

The AUL Board was not notified of the potential breach until around 4 August 2015 and Lloyd’s was not notified until 4 September 2015. The matter came to the Board’s attention

when it was necessary to modify the standard Letter of Representation to the external auditors in connection with the half year accounts.

The delay in investigating the matter and implementing remedial steps contributed to a further breach in August 2015. The group also made a retrocessional reinsurance purchase on behalf of the syndicate and another non-Lloyd's company in May 2015. The premium for this was paid out of the fund via LORS in August 2015 notwithstanding the prior error in respect of outwards reinsurance premiums. AUL identified this additional breach of the PTD in April 2016 and promptly notified Lloyd's of the same.

In the course of its own investigation AUL identified five further breaches of the PTD related to outwards reinsurance which had occurred between 2012–2015 as well as a number of historical small value breaches unrelated to reinsurance purchases which occurred between 2012-2016. These also were notified promptly to Lloyd's. Two further breaches unrelated to reinsurance took place in August 2016. The combined total of all of these other breaches was approximately US\$1.4m.

AUL reviewed its controls around the outwards reinsurance premiums and implemented additional controls around the use of the fund for the 2016 renewals. This included the discontinuance of the use of LORS for multi-entity outwards reinsurance premiums. The group also commissioned an Internal Audit investigation, the results of which were shared with Lloyd's.

After Lloyd's initiated its formal inquiry into these matters AUL commissioned Ernst & Young to review the suitability of the remedial steps and to consider whether further controls were needed. Ernst & Young's report dated 11 November 2016 recommended certain enhancements to the control regime. AUL has agreed to implement the enhancements recommended by E&Y.

### **Criticisms of AUL**

AUL accepts that the payments were made from the fund in breach of the Lloyd's PTD. Assets are held under the terms of the PTD in order to ensure that only certain prescribed outgoings and expenses connected with the underwriting of the syndicate can be paid or discharged from the fund. This is important to ensure these assets are properly safeguarded, ultimately for the benefit of the policyholders. AUL acknowledges that the erroneous payments were unacceptable and should not have occurred.

AUL also accepts that, following the restructure in late 2014, when agreeing the group level purchase of outwards reinsurance for 2015, it should have considered specifically whether the existing procedures and controls over the payment of outwards reinsurance premiums and the use of the fund were adequate. AUL also accepts that the trustees of the fund and certain individuals involved in the management and administration of the outwards reinsurance programme had an inadequate understanding of key terms of the PTD, including the restrictions on the use of the fund. For example, the trustees and other relevant individuals were not provided with any formal training in relation to the PTD.

AUL further accepts that it failed to ensure that this matter was investigated in a fully effective and timely manner and that AUL failed to ensure that the Board and Lloyd's were notified of the breach promptly. AUL also accepts that it should have acted more quickly to put appropriate remedial steps in place to prevent further breaches.

AUL has therefore admitted the charge of detrimental conduct (pursuant to paragraph 3b of the enforcement bylaw) in respect of the above.

### **Settlement Terms**

As a result of the above admissions, the following agreed terms have been approved by the Enforcement Board:

1. AUL is to be fined in the amount of £630,000 (this fine reflects a 30% discount for early settlement. Otherwise the fine would have been £900,000);
2. AUL shall be censured in the terms of this Notice of Censure; and
3. AUL shall pay a contribution of £90,500 towards the costs of Lloyd's in respect of these proceedings.

These penalties were calculated in accordance with the framework for the imposition of sanctions set out in the Enforcement Requirements.

### **Mitigation**

In assessing these penalties in respect of AUL, Lloyd's has taken into account the following factors:

1. AUL has never disputed the breach itself and it has cooperated fully with the Lloyd's investigation into this matter and has settled these proceedings at an early stage without the need for contested enforcement proceedings;
2. At no point was the solvency of the Premium Trust Fund in question, and neither the Corporate Member nor any policyholder suffered any detriment as a result of the breach;
3. AUL has implemented training for trustees and members of staff involved with the fund;
4. All sums erroneously paid from the fund were repaid in full with interest by the non-Lloyd's insurers so the fund suffered no financial detriment;
5. There was no direct or indirect benefit to AUL arising from the breach;
6. AUL appointed Ernst & Young to undertake a review of the relevant controls and as a result put in place certain enhanced procedures; and
7. Lloyd's is satisfied that AUL's breach was neither deliberate nor reckless.