

UNDERWRITING REQUIREMENTS

Purpose:

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

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

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

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

With the exception of certain of the requirements in Chapter 1 and the requirements in Chapter 2, these requirements (version 6) were made by Council on 7 December 2005 when Council made the requirements contained at Chapter 4 (requirements made under the Membership Byelaw) and the requirements contained in Chapter 5 (requirements made under the Enforcement Byelaw).

These requirements (version 6) came into force on 7 December 2005 and amend and supercede the Underwriting Requirements that came into force on 18 July 2005.

The requirements made at Chapter 1 (requirements made under the Underwriting Byelaw) at paragraph 7(e) and paragraph 10A were made by the Council on 4 February 2008. They came into force on 11 February 2008.

The requirements in Chapter 2 (requirements under the Intermediaries Byelaw) were made by the Council on 28 March 2007. They come into force on 28 March 2007 and amend and supercede the requirements in Chapter 2 of the Underwriting Requirements that came into force on 7 December 2005.

Contents

- Chapter 1 Requirements made under the Underwriting Byelaw
- Chapter 2 Requirements made under the Intermediaries Byelaw
- Chapter 3 Requirements made under the Overseas Underwriting Byelaw
- Chapter 4 Requirements made under the Membership Byelaw
- Chapter 5 Requirements made under the Enforcement Byelaw

Chapter 1 Requirements made under the Underwriting Byelaw

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

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

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

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

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

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

Principles of relationship – Part B of the Underwriting Byelaw

Principles of relationship – paragraph 10 of the Underwriting Byelaw

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

The Principles of Relationship

1. The Franchise Board's Goal

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

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

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

2. Achieving the Franchise Board's Goal

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

The Franchise Board is committed to allowing franchisees in the Lloyd's marketplace to operate independently within a franchise framework which is committed to

delivering consistent underwriting profit, which benefits from a common rating and mutual security and which attracts the highest quality management and underwriting talent.

The leading specialist insurance marketplace

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

Independence within the franchise framework

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

Commitment to delivering consistent underwriting profit

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

Licences, a common rating and mutual security

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

Attracting the highest quality management and underwriting talent

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

3. The Franchise Board's Commitments

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

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

More specifically, the Franchise Board will –

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

In this way, the Franchise Board will seek to –

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

4. Franchisees' commitments

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

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

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

Service standards – paragraph 12 of the Underwriting Byelaw

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

- (a) a *managing agent* shall not permit the syndicate stamp of a *syndicate* managed by it to be affixed to any slip which relates to a contract or contracts of insurance unless –
 - (i) the slip is in the format of a Market Reform slip from time to time issued by the Market Reform Programme Office and the information

contained in the slip has been properly completed in accordance with the relevant Market Reform slip guidance;

- (ii) the slip is marked “MR Exempt – Client Requirement”; or
 - (iii) the slip relates to *motor business, personal lines business* or *term life insurance business* and the slip will not be processed by LPSO Limited;
- (b) a *managing agent* shall not permit the *syndicate* stamp of a *syndicate* managed by it to be affixed to any slip which relates to a *binding authority* in respect of the 2005 or later year of account unless the slip has been completed in accordance with the relevant slip guidelines from time to time issued by the Market Reform programme office;
- (c) a *managing agent* shall not permit the *syndicate* stamp of a *syndicate* managed by it to be affixed to any *line slip* unless the slip has been completed in accordance with the relevant slip guidelines from time to time issued by the Market Reform programme office.

Underwriting – Part D of the Underwriting Byelaw

Underwriting guidelines

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

Risk management requirements – Part E of the Underwriting Byelaw

Codes of practice – paragraph 31 of the Underwriting Byelaw

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

Consent to changes – paragraph 32 of the Underwriting Byelaw

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

Notification of changes - paragraph 34 of the Underwriting Byelaw

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

- (iv) the general notification requirements in accordance with the *Financial Services Authority's Handbook* (SUP 15.3) including –
 - i. matters having serious regulatory impact (SUP 15.3.1 R);
 - ii. communication with the FSA in accordance with Principle 11 (SUP 15.3.7 G);
 - iii. breaches of rules and other requirements in or under the Financial Services and Markets Act 2000 (SUP 15.3.11 R);
 - iv. civil, criminal or disciplinary proceedings against a firm (SUP 15.3.15 R);
 - v. fraud, errors or other irregularities (SUP 15.3.17 R);
 - vi. insolvency, bankruptcy and winding up (SUP 15.3.21 R);
 - (v) the Core information requirements in accordance with the *Financial Services Authority's Handbook* (SUP 15.5);
 - (vi) where an *underwriting agent* becomes aware that inaccurate, false or misleading information has previously been provided, in accordance with the *Financial Services Authority's Handbook* (SUP 15.6);
 - (vii) the change of an accounting reference date in accordance with the *Financial Services Authority's Handbook* (SUP 16.3.17 R);
 - (viii) annual controllers report in accordance with the *Financial Services Authority's Handbook* (SUP 16.4); and
 - (ix) annual close links report in accordance with the *Financial Services Authority's Handbook* (SUP 16.5);
- (b) [deleted by The Legislative Reform (Lloyd's) Order (Market Provisions) Byelaw (No.1 of 2009).]
 - (c) in the case of a *managing agent*, the death or resignation of, or the occurrence of any *notifiable event* in relation to any *managing agent's trustee*; and
 - (d) in the case of a *managing agent*, if at any time the *syndicate premium income* allocable to any year account of a *syndicate* managed by it exceeds or appears to have exceeded or likely to exceed the *syndicate allocated capacity* for that year of account. The notification shall include full particulars of the extent of the excess or expected excess, the reasons why the excess has arisen or is expected to arise and what remedial action the *managing agent* has taken or proposes to take.
 - (e) in the case of an *underwriting agent* or *approved run-off company*, there are any changes of a kind prescribed from time to time by the *Franchise Board* relating to the appointment of directors (and in the case of an *approved run-off company*, partners), *active underwriters* or *run-off managers*. The detailed requirements prescribed by the *Franchise Board* for the provision of information are set out in Market Bulletin Y4126 ([Streamlining Approval of Appointments to Senior Positions \(Individual Registration\), Advance Consents](#))

[for fully-aligned syndicates and Change of Control for Underwriting Agents.](#))
issued on 22 February 2008.

Disaster scenarios – paragraph 35 of the Underwriting Byelaw

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

Syndicate premium income – paragraph 36 of the Underwriting Byelaw

9. When calculating *syndicate premium income*, *managing agents* shall –
- (a) allocate insurance business underwritten through a *syndicate* to a year of account in accordance with the accounting policies adopted in respect of that *syndicate*;
 - (b) allocate *premium income* to the same year of account as the insurance business out of which it arises unless that year of account of the *syndicate* has been reinsured to close in which case any payments subsequently received or made by way of additional premiums or returns in respect of such business shall be allocated to the reinsuring *syndicate*;
 - (c) where a year of account of a *syndicate* is closed by reinsuring all liabilities outstanding in respect of insurance business allocated to it into a later year of account of –
 - (i) the same *syndicate*, the premium in respect of such reinsurance to close shall not itself be treated as *premium income* allocable to the later year of that *syndicate*;
 - (ii) another *syndicate*, the premium in respect of such reinsurance to close shall, unless the *Franchise Board* otherwise directs, be treated as *premium income* allocable to the later year of that *syndicate*;
 - (d) treat *premium income* as being credited to a *member* –
 - (i) where it arises out of insurance business in respect of which a policy has been or is to be issued and signed by *LPSO*, in accordance with the central accounting system;
 - (ii) where it arises out of other insurance business, in accordance with the accounting policies adopted by the *managing agent* of the *syndicate* through which that business is underwritten;

- (e) convert *premium income* which is credited in a currency other than sterling using the following rates of exchange for 2003 year of account –
- | | | |
|-------|--------------------|---------|
| (i) | US Dollar | 1.50; |
| (ii) | Canadian Dollar | 2.28; |
| (iii) | Euro | 1.56; |
| (iv) | Australian Dollar | 2.62; |
| (v) | South African Rand | 13.52; |
| (vi) | Japanese Yen | 183.20; |
| (vii) | Swiss Franc | 2.40; |
- (f) treat premiums paid by a *member* of a *syndicate* under a reinsurance contract which satisfies the requirements for *qualifying quota share contracts* set out in Market Bulletin Y3024 (Qualifying Quota Share Reinsurance Arrangements For The 2003 Year Of Account) issued on 2 April 2003 as *qualifying reinsurance premiums*.

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

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

Criteria for determining whether a person is fit and proper or otherwise suitable – Paragraph 42A of the Underwriting Byelaw

- 10A In determining whether a *person* is fit and proper or otherwise suitable to act as a director of an *underwriting agent*, director or partner of an *approved run-off company*, as an *active underwriter* or *run-off manager*, the *Franchise Board* may take into account any consideration it thinks fit including but not limited to:
- (a) the *person's* integrity;
 - (b) the *person's* professional competence;
 - (c) the *person's* compliance with any regulatory requirements or any *requirements of the Council*;
 - (d) the *person's* business conduct;
 - (e) the professional and administrative support to be provided to the *person*;
 - (f) whether the *person* has passed or secured exemption from any examinations required by the *Franchise Board*.

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

Financial resources – paragraph 49 of the Underwriting Byelaw

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

Financial returns – paragraphs 50 and 51 of the Underwriting Byelaw

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

Run-off – Part L of the Underwriting Byelaw

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

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

Dispute resolution and appeals – Part M of the Underwriting Byelaw

Dispute resolution

16. The following arrangements and procedures are designed to resolve disputes between *underwriting agents* and the *Franchise Board* arising under the Underwriting Byelaw in a timely, constructive and cost effective manner.
 1. “Minded to” decisions and reasons
 - 1.1 Before a decision is taken by or on behalf of the *Franchise Board* which will be unfavourable to a specific *underwriting agent* the decision taker will, unless he considers that the circumstances make it inappropriate to do so –
 - (a) inform the *underwriting agent* that the decision taker is minded to decide the matter in that way;
 - (b) provide the *underwriting agent* with the decision taker’s reasons for deciding the matter in that way; and
 - (c) provide the *underwriting agent* with an opportunity to make representations to the decision taker prior to the decision being taken.
 - 1.2 Where a decision is taken by or on behalf of the *Franchise Board* which is unfavourable to a specific *underwriting agent* the decision taker will unless he considers that the circumstances make it inappropriate to do so, provide the *underwriting agent* with the decision taker’s reasons for deciding the matter in that way.
 2. Requests to review decisions taken on behalf of the Franchise Board
 - Step 1 – Submitting a request for a decision to be reviewed*
 - 2.1 In the event that a decision is taken on behalf of the *Franchise Board* which is unfavourable to a specific *underwriting agent*, the *underwriting agent* may, where it reasonably and objectively considers the decision to be wrong or unreasonable, request that the decision is reviewed (a “*request*”).
 - 2.2 A *request* shall be made in writing as soon as reasonably practicable following receipt of the decision. The *request* shall include an explanation as to why the *underwriting agent* considers that the decision is either wrong or unreasonable. The *request* shall be made on behalf of the board of directors of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Step 2 – Review of the decision by the Franchise Board

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

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

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

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

Chapter 2 Requirements made under the Intermediaries Byelaw

Section 1 Delegated Underwriting

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

Format and content of the registers - paragraph 6 of the Intermediaries Byelaw

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

Inspection of the registers - paragraph 7 of the Intermediaries Byelaw

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

**Approved Coverholders - Part C
of the Intermediaries Byelaw**

Applications for approval - paragraphs 8 and 9 of the of the Intermediaries Byelaw

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

Approval – paragraph 13 of the of the Intermediaries Byelaw

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

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

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

Restricted Coverholders – Part D of the Intermediaries Byelaw

Applications - paragraphs 21 and 23 of the of the Intermediaries Byelaw

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

Binding Authorities - Part E of the Intermediaries Byelaw

Requirements relating to binding authorities - paragraph 30 of the of the Intermediaries Byelaw

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

- (m) the territorial limitations on the *coverholder's* authority under the *binding authority*;
- (n) provisions requiring the *coverholder* to report in respect of all premiums, paid claims, outstanding claims and expenses in respect of contracts of insurance entered into by class or category by the *coverholder* under the *binding authority*;
- (o) provisions setting out how and when the payment and settlement of monies due from each of the parties to the *binding authority* should be made;
- (p) provisions for the cancellation and termination of the *binding authority* including provisions that enable the *binding authority* to be terminated upon the *Franchise Board* giving such direction or order to the *managing agent* or *coverholder*;
- (q) provisions relating to the ongoing obligations of the *coverholder* in the event that the *binding authority* expires or is terminated or cancelled for any reason; and
- (r) provisions setting out the jurisdiction and governing law for the settlement of disputes arising from the *binding authority*.

10A. Every *restricted binding authority* that authorises a *coverholder* to enter into a contract of insurance where the contract is in respect of *motor business* shall contain the following information, provisions and terms and comply with the following conditions and requirements –

- (a) an agreement number or other method of identification by which the *binding authority* can be identified;
- (b) the name and address of each *coverholder* which is a party to the *binding authority*;
- (c) the syndicate or syndicates (either by syndicate number or by any trading name by which the syndicate is known) on whose behalf each *managing agent* is delegating authority to enter into contracts of insurance (the “*syndicates*”);
- (d) provisions that require the *coverholder* to enter into contracts of insurance in a form, and containing such terms and conditions, as prescribed or provided by the *managing agent*.
- (e) provisions requiring the *coverholder* to report in respect of all premiums, paid claims, outstanding claims and expenses in respect of contracts of insurance entered into by class or category by the *coverholder* under the *binding authority*;
- (f) provisions setting out how and when the payment and settlement of monies due from each of the parties to the *binding authority* should be made;
- (g) provisions for the cancellation and termination of the *binding authority* including provisions that enable the *binding authority* to be terminated by the *managing agent* for any reason or to enable the *binding authority* to be terminated upon the *Franchise Board* giving such direction or order to the *managing agent* or *coverholder*;

- (h) provisions relating to the ongoing obligations of the *coverholder* in the event that the *binding authority* expires or is terminated or cancelled for any reason; and
 - (i) provisions setting out the jurisdiction and governing law for the settlement of disputes arising from the *binding authority*.
11. Every *registered binding authority* shall, in addition to the matters referred to at paragraph 10, contain the following information, provisions and terms and comply with the following conditions and requirements –
- (a) a precise description of the nature or classification of the contracts of insurance that the *approved coverholder* will be authorised to enter into under the *registered binding authority* and any relevant exclusions and limitations;
 - (b) the manner or basis for the calculation of premiums, discounts, commissions, brokerages, fees, charges and expenses.
12. Every *restricted binding authority* shall, in addition to the matters referred to at paragraph 10, contain the following information, provisions and terms and comply with the following conditions and requirements –
- (a) provisions to require the *restricted coverholder* to produce to the *Franchise Board* any information, documents, books, records and other materials which, in the opinion of the *Franchise Board* relate or purport to relate to the operation of the *restricted binding authority* and to give to the *Franchise Board* or its agent or general representative all reasonable facilities in its premises for the purpose of examining such materials.

Requirements relating to line slips - paragraph 30 of the of the Intermediaries Byelaw

- 12A. Every *line slip* shall contain the following information, provisions and terms and comply with the following conditions and requirements –
- (a) a reference number or other method of identification by which the *line slip* can be identified;
 - (b) the name and address of the *Lloyd's broker* responsible for placing or administering the *line slip*;
 - (c) the syndicate or syndicates on whose behalf each *managing agent* is delegating authority to enter into contracts of insurance (the “*syndicates*”) and (if any) the authorised insurance companies that are delegating authority to enter into contracts of insurance;
 - (d) the *managing agent* or authorised insurance company that is authorised to enter into contracts of insurance under the *line slip* (the “*slip leader*”);

- (e) the period of the *line slip* which shall be no greater than 18 months from the date of inception of the *line slip* in total;
- (f) the maximum aggregate premium income limit in respect of all contracts of insurance that the *slip leader* may enter into under the *line slip*;
- (g) the maximum limits of liability in respect of contracts of insurance that the *slip leader* may enter into under the *line slip*;
- (h) the territorial limitations on the *slip leader's* authority under the *line slip*;
- (i) provisions to ensure that each of the parties to the *line slip* receive information relating to the operation of the *line slip* including, in respect of each contract of insurance entered into under the *line slip*, details of the name of the insured, the sum insured, the premium charged and the period of the contract of insurance;
- (j) provisions setting out how and when the payment and settlement of monies due from each of the parties to the *line slip* should be made;
- (k) provisions for the amendment, cancellation and termination of the *line slip* by the parties to the *line slip*;
- (l) provisions setting out the jurisdiction and governing law for the settlement of disputes arising from the *line slip*;
- (m) a precise description of the nature or classification of the contracts of insurance that the *slip leader* will be authorised to enter into under the *line slip* and any relevant exclusions and limitations;
- (n) the manner or basis for the calculation of premiums, discounts, commissions, brokerages, fees, charges and expenses.

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

13. A *binding authority* may only be registered by –
- (a) a *Lloyd's broker* which is a party to the *binding authority* or which arranged or broked the *binding authority*; or
 - (b) a *managing agent* which is a party to the *binding authority*.
14. Registration of a *binding authority* shall be in accordance with the electronic system the *Franchise Board* operates for that purpose. The address of that web-site is <https://www.coverholders.lloyds.com>

Requirements for insurance documentation – Part F
of the Intermediaries Byelaw

Paragraph 35 of the Intermediaries Byelaw

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

- (c) the proportion or amount of risk accepted by Lloyd's underwriters is expressly stated on the *joint certificate* and is specified separately from the proportion or amount of risk accepted by other insurers;
- (d) the *joint certificate* contains the following appropriate several liability statement in accordance with market bulletin ([Binding Authorities US and non-US Combined \("joint"\) certificates issued by coverholders](#)) dated 11 March 2008; and
- (e) the issuance of *joint certificates* has been confirmed as an acceptable practice by the general representative in the country in which their issuance is required or, in the absence of such a general representative, by the *Franchise Board*,

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

Third party administrators – Part G of the
Intermediaries Byelaw

Paragraph 36 of the Intermediaries Byelaw

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

Section 2 Brokers

Registration – Part I of the Intermediaries Byelaw (and paragraph 27 of the Underwriting Byelaw)

Paragraph 46 of the Intermediaries Byelaw and Paragraph 27 (i) (i) of the Underwriting Byelaw.

18. The criteria to be applied in respect of a *person* established in a member state of the European Union are that it –
- (a) is registered with a competent authority for the purposes of the European Parliament and Council Directive of 9 December 2002 on insurance mediation (No.2002/92/EC)(the “Directive”);
 - (b) is able and willing to enter into an agreement with each *managing agent* with whom it intends to place business recording the general terms and conditions on which business will be conducted between them;
 - (c) has adequate, suitable and compatible systems, protocols and arrangements for the conduct of business in the London insurance market;
 - (d) has suitable procedures in place to ensure that insurance monies (money relating to premiums, return premiums and claims) are properly safeguarded;
 - (e) has adequate professional indemnity insurance; and
 - (f) can demonstrate its ability to comply with any other criteria that the *Franchise Board* may from time to time prescribe,

and regard shall be had to any guidance the *Franchise Board* may issue in respect of the application of the above criteria. (See Section 3 of the “*Guide for Applicants*” at http://www.lloyds.com/Lloyds_Market/Market_participants/Brokers/Broker_Registration.htm)

19. The criteria to be applied in respect of a *person* not established in a member state of the European Union are that it –
- (a) either –
 - (i) is registered or approved by a regulator or other statutory body that requires the intermediary or broker to meet professional requirements in relation to its competence, good repute and financial capacity equivalent to those provided for in the Directive; or
 - (ii) can demonstrate that it meets professional requirements in relation to its competence, good repute and financial capacity equivalent to those provided for in the Directive;

- (b) satisfies the criteria at paragraph 18(b) to (f) above; and
- (c) can demonstrate that it is capable and suitable to transact business having regard to such following criteria and any other relevant matter –
 - (i) whether the *person* possesses appropriate knowledge and ability to conduct *insurance business* in the London insurance market;
 - (ii) whether the *person* and its directors employees and controllers or partners in it are of good repute;
 - (iii) the adequacy of the capital and financial resources of the *person*;
 - (iv) whether the *person* complies with all laws, rules and fiscal requirements applicable to it as an insurance intermediary wherever it is established and wherever it conducts or will conduct business.

Requirements made under paragraph 46 of the Intermediaries Byelaw (registration of Lloyd's brokers)

20. In determining whether an applicant should be registered as a *Lloyd's broker* the *Franchise Board* shall have regard to the criteria at paragraphs 18 to 19 above of these requirements save that the *Franchise Board* may, where it considers it appropriate, disapply, amend or add to these criteria as it considers appropriate.

Chapter 3 Requirements made under the Overseas Underwriting Byelaw

Conditions of underwriting – Part B of the Overseas Underwriting Byelaw

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

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

Canada – Paragraphs 5 and 8 of the Overseas Underwriting Byelaw

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

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

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

- (a) contracts or policies of insurance (other than contracts or policies of marine insurance) to the extent to which such contracts or policies insure risks

which are or will be ordinarily in Canada including all policies in Canada as defined in the Act;

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

SCHEDULE 1

SCHEME CANADA RULES (THE “RULES”)

Paragraphs

PART A - PRELIMINARY

1 Interpretation

PART B - INSURANCE SERVICES

2 Provision of services

PART C - SCHEME CANADA

- 3 Scheme Canada
- 4 Demand and collection of moneys
- 5 Establishment of bank accounts
- 6 Currencies
- 7 Advice and accounting of Scheme transactions
- 8 Settlement of Scheme transactions
- 9 Agreed settlement dates
- 10 Settlement information statements
- 11 Obligations to fund settlements
- 12 Wrongful and unpaid credits
- 13 Default declarations
- 14 Scheme transactions involving defaulters
- 15 General saving relating to default
- 16 Termination of Scheme
- 17 Exclusion from participation in Scheme
- 18 Saving of rights on termination or exclusion

PART D - INFORMATION

- 19 Provision of information
- 20 Storage and distribution of information
- 21 Confidentiality of information

PART E - MISCELLANEOUS AND GENERAL

- 22 Power of Lloyd’s Canada Inc to prescribe charges
- 23 Regulations, codes of practice and manuals
- 24 Power to enter into agreements, etc.
- 25 Variation of services
- 26 Service of notices
- 27 Liability
- 28 Records/Determinations
- 29 Compliance with laws
- 30 Force majeure
- 31 Commencement and transitional provisions

PART A PRELIMINARY

1. Citation and interpretation

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

PART B INSURANCE SERVICES

2. Provision of services

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

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

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

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

written consent from LCI, sub-delegate or delegate (as the case may be) the provision of all or any of such services to another person on such terms as may be stipulated in LCI's consent.

PART C SCHEME CANADA

3. Scheme Canada

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

4. Demand and collection of moneys

- (1) LCI, as principal in respect of amounts due to it as principal payee under any Canadian insurance transaction, or as agent of any other participant, may demand and/or collect or procure the demand and/or collection from any participant any moneys which are, or which appear to LCI to be, due on any settlement date from that participant (whether as agent or principal) to any other participant or participants (whether as agent or principal) (each a "payee") under any Scheme transaction. Such demands and/or collections may be made through the Lloyd's central accounting system where necessary.
- (2) LCI, as principal in respect of amounts due from it as principal payor under any Canadian insurance transaction, or as agent of any other participant may pay or procure payment any of the amounts referred to under sub-paragraph (1) to the relevant payee.
- (3) LCI may, in making payments to and collecting payments from participants, or procuring the payment to or collection of payments from participants pursuant to sub-paragraphs (1) and (2) above, aggregate and net all such payments in accordance with paragraph 8.
- (4) Subject to paragraph 8, payments under Scheme transactions shall be made by

participants in full and without set-off, deduction or counterclaim.

5. Establishment of bank accounts

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

6. Currencies

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

7. Advice and accounting of Scheme transactions

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

issued by LCI in accordance with paragraph 23 below.

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

8. Settlement of Scheme transactions

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

subject to sub-paragraph 11(4), be directly credited or otherwise paid by LCI to the participant on the relevant settlement date.

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

9. **Settlement dates**

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

10. **Settlement information statements**

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

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

11. **Obligation to fund settlements**

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

that participant, together with (if so demanded) interest thereon charged in accordance with sub-paragraph (5) and shall indemnify LCI in respect of any interest paid or payable or any charges, expenses or liabilities incurred by LCI or the Society by reason of LCI having settled the Scheme transaction, and LCI and/or the Society may bring proceedings to recover the same as a civil debt. All amounts payable pursuant to this sub-paragraph by any participant carrying on an underwriting business shall be treated for all purposes as an expense of that underwriting business.

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

12. **Wrongful and unpaid credits**

- (1) Where, in calculating the entitlements due to a participant under paragraph

8(1)(a), LCI has taken into account any amount which is due to be paid to that participant and which is not subsequently paid on the relevant settlement date or any amount which is not due to that participant on the relevant settlement date, LCI may directly debit the accounts of that participant in respect of that amount or make demand for the prompt repayment of that amount. Such participant shall repay LCI immediately on its making such demand and that participant shall indemnify LCI against any loss, liability, charge or expense arising from the crediting or other payment of such amount to its account.

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

13. **Default declarations**

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

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

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

the defaulter and such other persons as it thinks fit.

14. System transactions involving defaulters

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

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

15. General saving relating to default

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

16. Termination of the Scheme

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

paragraphs 28 and 29.

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

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

first taken the steps referred to in sub-paragraph (2).

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

18. Saving of rights on termination or exclusion

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

PART D INFORMATION

19. Provision of information

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

20. Storage and distribution of information

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

21. Confidentiality of information

- (1) Subject to paragraph (2) and paragraph 24 (2), information provided to, or

obtained by, LCI under these Rules or in providing any service shall be held subject to the provisions of the Information and Confidentiality Byelaw (No. 21 of 1993 and applicable Canadian law), provided that LCI may disclose such information to any service provider in so far as it thinks fit.

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

PART E MISCELLANEOUS AND GENERAL

22. Power of LCI to prescribe charges

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

23. Regulations, codes of practice and manuals

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

24. Power to enter into agreements, etc.

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

25. Variation of services

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

and where such representations are received by LCI, it shall reconsider the action taken under sub-paragraph (3).

26. Service of notices

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

27. Liability

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

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

28. Records/Determinations

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

29. Compliance with laws

In carrying out the services LCI or any service provider may refrain from doing anything which might, in its opinion, constitute a breach of any law or regulation or

any duty of confidentiality or be otherwise actionable at the suit of any person and may do anything which, in its opinion, is necessary or desirable to comply with any law or regulation of any jurisdiction or to comply with the order of any court.

30. **Force Majeure**

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

31. **Commencement and transitional provisions**

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

SCHEDULE

Interpretation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“insolvency event” means:

- (a) in relation to any individual or partnership, the making of a receiving order in bankruptcy against such individuals or any partner in such partnership by the due process of law of any country, such individual or partner in such partnership making or proposing any composition with his creditors or otherwise acknowledging his insolvency, or being adjudicated bankruptcy or adjudicated or declared insolvent by the due process of law of any country; and
- (b) in relation to any body corporate its making or proposing any composition with its creditors or otherwise acknowledging its insolvency, a bankruptcy order being made against it by the due process of law of any country; its being adjudicated or declared insolvent by the due process of law of any country, an order being made or resolution being passed for its winding up or dissolution, a receiver, trustee or analogous officer being appointed in respect of the whole or any material of its property or assets, its directors presenting or filing in any court a petition in respect of its bankruptcy, winding up or other insolvency or which seeks any reorganisation, dissolution or similar relief or there occurring an event in any jurisdiction which is analogous to any of the foregoing events;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 4 Requirements made under the Membership Byelaw

Admission to membership – Part A of the Membership Byelaw

Categories of membership – paragraph 2 of the Membership Byelaw

1. Within the category of non-underwriting membership, there shall be a class of members called *non-underwriting working members*.
2. The criteria for eligibility to be a *non-underwriting working member* are that the *non-underwriting working member* –
 - (a) occupies himself principally with the conduct of business at Lloyd's by a *Lloyd's broker* or *underwriting agent*; and
 - (b) either –
 - (i) is a director of an *underwriting agent* or is employed by an *underwriting agent* as an *active underwriter*; or
 - (ii) is a director of a *Lloyd's broker*.

Criteria for deciding whether a candidate is suitable to be admitted to the membership of the Society – paragraph 11 of the Membership Byelaw

3. In deciding whether a *candidate* which is a body corporate is suitable to be admitted as a *member* the *Council* shall have regard to the following criteria and all other relevant matters –
 - a. the competence, reputation, character and suitability of each of the directors of the body corporate;
 - b. the collective suitability of the board of directors of the body corporate and of each of its committees;
 - c. the competence, reputation, character and suitability of the officers and staff of the body corporate;
 - d. the competence, reputation, financial standing, character and suitability of any *controller* of the body corporate;
 - e. the competence, reputation, financial standing, character and suitability of any *connected company* of the body corporate;
 - f. the competence, reputation, character and suitability of any director of or partner in any *controller* of the body corporate;

- g. the competence, reputation, character and suitability of any director of or *controller* of a *connected company* of the body corporate;
 - h. the adequacy of the capital of the body corporate; and
 - i. the location of the accounting and other records of the body corporate.
4. In deciding whether a *candidate* which is a *Scottish limited partnership* is suitable to be admitted as a *member* the *Council* shall have regard to the following criteria and all other relevant matters –
- a. the competence, reputation, character and suitability of each of the directors of any *general partner*;
 - b. the collective suitability of the board of directors of the *general partner* and each of its committees;
 - c. the competence, reputation, character and suitability of the officers and staff of the *Scottish limited partnership*;
 - d. the competence, reputation, financial standing, character and suitability of any *controller* of the *Scottish limited partnership* or any *general partner*;
 - e. the competence, reputation and financial standing, character and suitability of any *connected company* of the *Scottish limited partnership* or any *general partner*;
 - f. the competence, reputation, character and suitability of any director of or partner in any *controller* of the *Scottish limited partnership* or any *general partner*;
 - g. the competence, reputation, character and suitability of any management company;
 - h. the competence, reputation, character and suitability of any director of or *controller* of a *connected company* of the *Scottish limited partnership* or the *general partner*;
 - i. the adequacy of the capital of the *Scottish limited partnership* and any *general partner*; and
 - j. the location of the accounting and other records of the *Scottish limited partnership* and any *general partner*.

Conditions and Requirements for admission of corporate candidates to membership of the Society – paragraphs 6 and 7 of the Membership Byelaw

5. The requirements prescribed under paragraphs 6 and 7 of the Membership Byelaw for the purpose of admission of *candidates* which are body corporates to membership of

the Society are the Membership and Underwriting Requirements (corporate members) as set out in Market Bulletin Y2086 [\(Membership and Underwriting Requirements\)](#) issued on 5 July 1999.

Funds at Lloyd's – Part B of the Membership Byelaw

Conditions and requirements for the provision of Funds at Lloyd's – paragraph 16 of the Membership Byelaw

6. The requirements prescribed under paragraph 16 of the Membership Byelaw in respect of funds at Lloyd's are set out in Market Bulletin Y3612 ([Membership and Underwriting Conditions and Requirements \(Funds at Lloyd's\)](#)) issued on 18 August 2005.

Notification of and consent to changes – Part D of the Membership Byelaw

Consent to changes – paragraph 27 of the Membership Byelaw

7. No *member* shall knowingly permit any of the following events to occur without the prior written consent of the *Council* –
- (a) the acquisition of any *interest in securities* of another *corporate member*, a *controller* of a *corporate member*, *Lloyd's broker* or *underwriting agent* provided that a *member* may acquire an *interest in securities* of another *corporate member* where the acquisition is the consequence of accepting an invitation to participate in a surrender arrangement or share swap arrangement which complies with the requirements made under paragraph (5)(1) of the Conversion and Related Arrangements Byelaw (No. 22 of 1996) for the time being in force
 - (b) a change in the *controller* of the *member*;
 - (c) the appointment of a director of the *member*;
 - (d) a merger between the *corporate member* and another body corporate;
 - (e) the appointment of a *corporate member* as a director of another *corporate member*.

Notification of changes - paragraph 29 of the Membership Byelaw

8. A *member* shall without delay notify the *Council* in writing if any of the following events occur –
- (a) in the case of an *individual member* –
 - (i) a change of his address;
 - (ii) a decision to change his nationality;
 - (b) in the case of a *corporate member* –
 - (iii) a director ceases to be a director;
 - (iv) it becomes aware that a person has ceased or is proposing to cease to be a *controller* of that *member*;
 - (v) the appointment of an auditor;
 - (vi) the auditor of the *corporate member* vacates office, in which case the *corporate member* shall also provide a copy of any notice given or

representations or statements made by the auditor (under the Companies Act 1985 or otherwise) on or in connection with the auditor vacating office;

- (vii) a decision to change the date to which the accounts of the *corporate member* are prepared;
- (viii) any change to the *corporate member's* memorandum and articles of association;
- (ix) any reduction in the *corporate member's* issued share capital;
- (x) a decision to appoint an agent, or terminate the appointment of an agent appointed by the member, for service of notices under paragraph 13 of these requirements;

(c) in the case of any *members* –

- (xi) a material change in the information provided to the *Council* in connection with any application by that *member* for membership or in connection with a review under paragraph 35 of the Membership Byelaw of that *member* and not required to be disclosed under any other provision of this paragraph;
- (xii) an *insolvency event*;
- (xiii) the *member* or director of the *member* or any *controller* or director of or partner in any *controller* of the *member* or, in relation to a *Scottish limited partnership*, a *general partner*, director of a *general partner* or a controller of a *general partner* or a management company being convicted of a *reportable criminal offence* by a court in the United Kingdom or elsewhere, in which case the *member* shall also provide full details of the offence and any sentence that was imposed.

**Corporate Members: Accounting, Audit and
Declarations of Compliance – Part E of the Membership Byelaw**

Audit – paragraph 31 of the Membership Byelaw

9. A person shall be eligible to act as auditor for a *corporate member* if –
- (a) in the case of a *corporate member* to which Part VII of the Companies Act 1985 applies, he has been appointed as the auditor of that *corporate member* in accordance with the provisions of the Companies Act 1985;
 - (b) in the case of a *corporate member* which is incorporated in any member state of the European Community other than the United Kingdom, he is qualified to act as an auditor of a company for the purposes of the legislation of that member state which implements the Eighth Council Directive (84/253/EEC);
 - (c) in any other case, the *Council* has given its prior written consent.

Dispute resolution – Part I of the Membership Byelaw

Dispute resolution – paragraph 51 of the Membership Byelaw

10. The following arrangements and procedures are designed to resolve disputes between a *syndicate* (through the *managing agent* which manages that *syndicate*) and the *Franchise Board* in the event that, as part of the calculation of the *syndicate members'* capital requirements, the *Franchise Board* decides to substitute a higher number for the syndicate ICA submitted by the *managing agent*.

1. *"Minded to" decision*

1.1 Before such a decision (a "*relevant decision*") is taken on behalf of the *Franchise Board* the decision taker will, unless he considers the circumstances make it inappropriate or impractical to do so –

- (a) inform the *managing agent* that the decision taker is minded to decide the matter in that way;
- (b) provide the *managing agent* with the decision taker's reasons for deciding the matter in that way; and
- (c) allow the *managing agent* 5 working days to make representations to the decision taker prior to the *relevant decision* being taken.

2. *Provision of reasons for the decision*

2.1 When a *relevant decision* has been taken the decision taker will, unless he considers the circumstances make it inappropriate or impractical to do so, provide the *managing agent* with his reasons for deciding the matter in that way.

3. *Request to review a relevant decision*

Step 1 – submitting a request for the decision to be reviewed

3.1 Where the *managing agent* reasonably and objectively considers the *relevant decision* to be unreasonable it may request that the decision is reviewed (a "*request*").

3.2 A *request* shall be made in writing within 5 working days of the receipt of the *relevant decision*. The *request* shall include an explanation as to why the *managing agent* considers that the *relevant decision* is unreasonable. The

request shall be made on behalf of the board of directors of the *managing agent* and shall be signed by a director of the *managing agent*. The *request* shall be submitted to the decision taker.

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

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

Step 3 – Review of the decision by the Director, Finance and Risk Management

- 3.4 Where the decision taker does not propose to amend, modify or withdraw the *relevant decision* he shall refer the *request* to the Director, Finance and Risk Management (the “Director”). The *request* shall be reviewed by the Director and where the Director considers appropriate, the *relevant decision* may be amended, modified or withdrawn.

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

- 3.5 If, following the review of the request by the Director, the *managing agent* still reasonably and objectively considers the decision to be unreasonable, the *managing agent* may within 5 working days apply to the Market Supervision and Review Committee (“MSARC”) to review the *request*. The application shall be made on behalf of the board of directors and shall be signed by two directors of the *managing agent*. The application shall be submitted to the Secretary to the *Franchise Board*.
- 3.6 *MSARC* may give such directions as it considers appropriate for the determination of the *request*. *MSARC* shall review the *request* and may, where it considers appropriate, direct that the *relevant decision* is redetermined by the decision taker and may give the decision taker any directions it considers appropriate in respect of that redetermination, or in exceptional circumstances, *MSARC* may amend, modify or withdraw the *relevant decision*.

Miscellaneous and Transitional Provisions – Part J of the Membership Byelaw

Service of notices on members – Paragraph 53 of the Membership Byelaw

11. All notices and other communications by the *Society* which require to be served on or given to an *individual member* of the *Society* shall for all purposes be deemed to be effectively served on such *member* if sent through the post to or left at the address of his *members' agent*. If an *individual member* does not at any time have a *member's agent*, such notices and communications shall be deemed to be effectively served on the *member* if given to him personally or sent to him by post at the latest correspondence address of the *member* shown in the records of the *Society*.
12. Where an *individual member* is deceased or bankrupt, all notices and other communications shall be deemed to have been effectively served on his personal representatives or trustee in bankruptcy if sent through the post to the address supplied to the *Society* by such personal representatives or trustee in bankruptcy or (until such address has been supplied) if sent through the post to the latest correspondence address of the *individual member* shown in the records of the *Society*.
13. Each *corporate member* which is incorporated in a jurisdiction outside the United Kingdom shall at all times maintain an agent for service of process in England which shall be any *member's agent* appointed by the *corporate member* or such other person with a place of business in the United Kingdom as the *corporate member* may have appointed for the purpose of this paragraph and whose name and address has been notified to the *Society*.
14. All notices and communications by the *Society* to be sent to or served on a *corporate member* shall be deemed to have been effectively served on the *corporate member* –
 - (a) if it has a *member's agent*, if it is sent through the post to or left at the address of its *members' agent*;
 - (b) if it has no *members' agent*, in the case of a *corporate member* incorporated in the United Kingdom, if sent through the post to or left at the registered office for the time being and in the case of a *corporate member* incorporated outside the United Kingdom, if sent through the post to or left at the address of the agent appointed under paragraph 13.
15. Any notices or other communications which are –
 - (a) sent to a *member* or its agent by post shall be deemed to have been effectively served by properly addressing, prepaying and posting such proceedings, notice

or communication and shall be deemed to have been received 72 hours from the time of posting;

- (b) left at the address of the *members' agent* or left for collection by the *members' agent* at the address of the *Society* in accordance with arrangements made between the agent and the *Society* shall be deemed to have been received on the date so left;
- (c) left at the address of an agent appointed under paragraph 13 or at the registered office of the *corporate member* shall be deemed to have been received on the date so left.

Chapter 5 Requirements made under the Enforcement Byelaw

Contents

1. INQUIRIES

Conduct of inquiries

2. ENFORCEMENT PROCEEDINGS

2.1 Establishment of Enforcement Committees

Enforcement Board

Composition

Enforcement Tribunals

Composition

Objections to appointment

Role of the Chairman

Revocation and suspension of membership of an Enforcement Committee

Conflicts of interest

Replacement of members

2.2 Commencement of Enforcement Proceedings

Power to bring enforcement proceedings

Joinder and Severance

Discontinuance

Appointment of legal representatives

Settlement before the Enforcement Board

Service of a defence

2.3 Enforcement Proceedings before Enforcement Tribunals

Appointment of an Enforcement Tribunal

Decision in default of a defence

Directions

Change of plea

Settlement before the Enforcement Tribunal
Hearing of the charges
Decision of the Enforcement Tribunal as to misconduct
Submissions as to sanctions and costs
Decision of the Enforcement Tribunal on sanctions and costs
Conclusion of enforcement proceedings

2.4 Procedural and Evidential Matters

Power to determine procedure
Decision making basis
Stay of proceedings
Failure to attend hearings
Time limits
Amendments
Provision of documents
Non-compliance
Burden and standard of proof
Admissions
Admissibility of evidence
Findings of other courts and other bodies

3. APPEALS

3.1 Appeal Tribunal

Composition
Revocation and suspension of membership of an Appeal Tribunal
Conflicts of interest

3.2 Conduct of an Appeal

Commencement of an appeal
Appointment of Appeal Tribunal
Objections to appointment
Applications for permission to appeal
Statement of grounds of appeal
Stay of decision being appealed against
Oral hearings
Decision of the Appeal Tribunal

3.3 Procedural and evidential matters

- Power to determine procedure
- Joinder and Severance
- Default
- Time
- Amendments
- Provision of documents
- Appointment of legal representatives
- Preliminary hearings
- Admissibility of evidence
- Findings of other courts and other bodies

4. COUNCIL STAGE

- Application to the Council
- Special meeting
- Decision of the Council

5. INTERVENTION ORDERS

- Power to make an intervention order
- Duration
- Notice
- Without Notice
- Notification of an intervention order
- Application to review
- Inquiries
- Enforcement Proceedings

6. PUBLICATION

- Confidentiality
- Appeals
- Intervention orders

7. MISCELLANEOUS MATTERS

Human Rights Act 1998

1. **INQUIRIES**

Requirements made under paragraph 6 of the Enforcement Byelaw

Conduct of inquiries

- 1.1 Subject to any terms of reference or any direction or order made or given by the *Council*, any *person* appointed to conduct an *inquiry* may conduct the *inquiry* and determine its procedures as he thinks fit.
- 1.2 The *person* appointed to conduct the *inquiry* shall submit a written report to the *Council* on the matters inquired into and the report may include a recommendation as to any action that should be taken including the institution of *enforcement proceedings*.
- 1.3 Where any *person* subject to the *enforcement jurisdiction* of the *Society* makes available to a *person* conducting an *inquiry* or his agent any information, documents or other materials that is relevant or relates to the subject matter of that *inquiry*, then the information, documents or other materials provided shall not be disclosed other than in accordance with the Information and Confidentiality Byelaw (No. 21 of 1993).

2. ENFORCEMENT PROCEEDINGS

Requirements made under paragraph 12 of the Enforcement Byelaw

2.1 Establishment of Enforcement Committees

Enforcement Board

- 2.1.1 All *enforcement proceedings* shall be determined in accordance with these requirements either by the *Enforcement Board* or, where the proceedings have not been determined by the *Enforcement Board*, by an *Enforcement Tribunal*.

Composition

- 2.1.2 The *Enforcement Board* shall comprise not less than three individuals –

- (a) a *qualified lawyer* who is not a *member* of the *Society*, who shall be the Chairman of the *Enforcement Board*; and
- (b) two or more *members*, one of whom shall be the Deputy Chairman of the *Enforcement Board*,

provided that in making any decision the *Enforcement Board* shall consist of a quorum of at least three members of the *Enforcement Board*.

- 2.1.3 Each member of the *Enforcement Board* shall be appointed for a term not exceeding three years and such appointment may be renewed by the *Council* from time to time.

- 2.1.4 Where a member of the *Enforcement Board* is engaged in the determination of *enforcement proceedings* that have not concluded at the date his appointment expires he may continue to be a member of the *Enforcement Board* for the purposes of determining those *enforcement proceedings*.

Enforcement Tribunals

Requirements made under paragraph 14 of the Enforcement Byelaw

Composition

2.1.5 Each *Enforcement Tribunal* shall comprise three individuals –

- (a) a *qualified lawyer* of at least 10 years standing or a person who holds or has held judicial office in the United Kingdom, who shall be the Chairman of the *Enforcement Tribunal*; and
- (b) two other *members*;

provided that the majority of the members of the *Enforcement Tribunal* shall be *members* of the *Society*.

2.1.6 The *Enforcement Board* shall notify the parties to the *enforcement proceedings* of the composition of the *Enforcement Tribunal* as soon as reasonably practicable.

Objections to appointment

2.1.7 The *defendant* may object to the appointment of any member of an *Enforcement Tribunal* on any reasonable ground including where the *defendant* has grounds to believe that the member has a conflict of interest.

2.1.8 Any objection to the appointment of any member of an *Enforcement Tribunal* by the *defendant* shall be made in writing setting out the reasons for the *defendant's* objection to the relevant appointment and shall be served by the *defendant* on the *Enforcement Board* as soon as reasonably practicable (and shall be copied to the *Representative of the Council*).

2.1.9 Where the *Enforcement Board* upholds the *defendant's* objection, it shall retire that member of the *Enforcement Tribunal* and appoint another *person* in his place.

Role of the Chairman

2.1.10 Before the substantive hearing of the *enforcement proceedings*, the Chairman of the *Enforcement Tribunal* shall be responsible for the conduct of the *enforcement proceedings* and shall exercise all the powers of the *Enforcement Tribunal* except to

the extent that the Chairman considers it appropriate for those powers to be exercised by the members of the *Enforcement Tribunal* together.

Revocation and suspension of membership of an Enforcement Committee

2.1.11 The *Council* shall revoke or suspend the appointment of any member of the *Enforcement Board* and the *Enforcement Board* shall revoke or suspend the appointment of any member of an *Enforcement Tribunal* at any time where the member –

- (a) has been convicted of a crime which, in the opinion of the *Council* or the *Enforcement Board* as appropriate, involves discreditable conduct and such conviction has not to the knowledge of the *Council* or the *Enforcement Board* as appropriate, been set aside on appeal or otherwise;
- (b) has been found liable or admitted liability in civil proceedings in circumstances where such a finding or admission involves gross negligence, dishonesty or fraud;
- (c) has been declared insolvent or bankrupt or has entered into any arrangement with creditors;
- (d) is subject to an adverse finding in any *enforcement proceedings* or proceedings brought by any regulatory or professional body or where any such proceedings are pending;
- (e) was, at the time of his appointment, a *member* of the *Society* but who subsequently ceases to be a *member* of the *Society*.

Conflicts of Interest

2.1.12 The *Council* shall revoke or suspend the appointment of any member of the *Enforcement Board* and the *Enforcement Board* shall revoke or suspend the appointment of any member of an *Enforcement Tribunal* where that member has a conflict of interest or is reasonably perceived to have a conflict of interest.

Replacement of members

2.1.13 Where the appointment of an individual member of an *Enforcement Committee* is revoked or suspended during *enforcement proceedings* whether through resignation or by reason of paragraphs 2.1.11 or 2.1.12 above then –

- (a) where the individual is a member of the *Enforcement Board* and the *Enforcement Board* is left inquorate, the *Council* shall appoint one or more new members as soon as reasonably practicable and the *enforcement proceedings* shall be referred to the reconstituted *Enforcement Board*;
- (b) where the individual is a member of an *Enforcement Tribunal*, the *Enforcement Board* shall appoint a new *Enforcement Tribunal* to hear and determine those *enforcement proceedings* unless each of the parties consents to the appointment of a new member of the original *Enforcement Tribunal*.

2.2 Commencement of Enforcement Proceedings

Requirements made under paragraph 16 of the Enforcement Byelaw

Power to bring enforcement proceedings

- 2.2.1 Where the *Council* institutes *enforcement proceedings* against a *defendant* under paragraph 16 of the Enforcement Byelaw those *enforcement proceedings* shall be instituted and conducted in accordance with these requirements.
- 2.2.2 The *Council* may institute *enforcement proceedings* against two or more *defendants* as part of the same proceedings.
- 2.2.3 The *Council* shall appoint an individual to conduct *enforcement proceedings* on its behalf (the “*Representative of the Council*”) including the conduct of any settlement negotiations. The *Representative of the Council* shall notify the *defendant* and the *Enforcement Board* of his appointment, as soon as reasonably practicable and, if there is a change of appointment after that date, at the time of such change of appointment.
- 2.2.4 All *enforcement proceedings* shall be instituted in the name of the *Council* by means of service on the *defendant* and the *Enforcement Board* of a notice of *enforcement proceedings* (a “*Notice*”) which shall –
 - (a) state by way of charge or charges the alleged *misconduct*;
 - (b) state the facts and matters relied on;
 - (c) state the nature or class of the *sanction* or *sanctions* the *Council* seeks against the *defendant*; and
 - (d) be accompanied by copies of any documents referred to in the *Notice* and a copy of the Enforcement Byelaw (No. 6 of 2005) and these requirements.

- 2.2.5 The *Representative of the Council* may at any time after the *Notice* has been served on the *defendant*, send a copy of the *Notice* to any firm or company of which the *defendant* is, or was at the time of the alleged *misconduct*, a partner, director or employee.

Joinder and Severance

- 2.2.6 Where *enforcement proceedings* are brought separately against two or more *persons* in respect of matters which the *Council* considers to be related, the *Council* may require those proceedings to be determined by one *Enforcement Tribunal* either at a single hearing of the charges or otherwise save that the *Enforcement Tribunal* may order that *enforcement proceedings* against two or more *defendants* shall be heard separately.

Discontinuance

- 2.2.7 The *Representative of the Council* may discontinue any *enforcement proceedings* before a decision giving effect to a settlement is issued or before any decision as to *misconduct* is issued by an *Enforcement Tribunal*. The *enforcement proceedings* shall be discontinued subject to any issue of costs.

Appointment of legal representatives

- 2.2.8 The *Representative of the Council* and the *defendant* may each instruct a *qualified lawyer* to represent them in the *enforcement proceedings*. Where the *Representative of the Council* or the *defendant* instructs a *qualified lawyer* he shall notify the other party and (in the case of contested proceedings) the *Enforcement Tribunal* of the name of the lawyer concerned in writing as soon as reasonably practicable before the commencement of the substantive hearing before the *Enforcement Tribunal*.

Settlement before the Enforcement Board

- 2.2.9 The *Representative of the Council* may serve on the *defendant* at the time of service of the *Notice* written proposals for the settlement of the *enforcement proceedings*. These proposals shall –
- (a) state the *sanction* or *sanctions* which the *Council* considers would be appropriate for the *defendant* to accept in order settle the *enforcement proceedings*; and

- (b) state the amount of costs that the *Council* considers that it would be appropriate for the *defendant* to pay in order to settle the *enforcement proceedings*.
- 2.2.10 Any proposals for the settlement of the *enforcement proceedings* shall not be disclosed to the *Enforcement Board* (save in the case of an agreed proposal pursuant to paragraph 2.2.12 hereof) or to an *Enforcement Tribunal* except in relation to costs.
- 2.2.11 The *defendant* may enter into negotiations with the *Representative of the Council* regarding the settlement of the *enforcement proceedings* before the *Enforcement Board* within the time allowed for the service of the *Defence*.
- 2.2.12 Any agreement that the *Representative of the Council* and the *defendant* may reach regarding the proposed settlement of the *enforcement proceedings* shall be recorded in writing and shall –
- (a) state the charge or charges admitted by the *defendant*;
 - (b) state the facts agreed;
 - (c) state the *sanctions* which the parties agree that the *Enforcement Board* may impose on the *defendant* (including the terms of any notice of censure); and
 - (d) contain a draft order for costs which the parties agree that the *Enforcement Board* may make.
- 2.2.13 Where the terms of a proposed settlement of the *enforcement proceedings* have been agreed in accordance with paragraph 2.2.12 above, the *Representative of the Council* shall submit the terms of a proposed settlement to the *Enforcement Board*.
- 2.2.14 Where a proposed settlement is submitted to the *Enforcement Board* under paragraph 2.2.13 above, it may approve, reject or suggest modifications to the settlement proposals submitted. It may also require both parties to attend before it.
- 2.2.15 If the *Enforcement Board* decides to approve any proposed settlement submitted then it shall issue a decision as to *misconduct*, *sanctions* and costs which gives effect to the agreed settlement and it shall notify the parties accordingly. The decision of the *Enforcement Board* shall take effect immediately unless otherwise stated.
- 2.2.16 If the *Enforcement Board* rejects any proposed settlement submitted then it shall notify the parties accordingly and the proceedings shall continue as *enforcement proceedings* before an *Enforcement Tribunal* and all proceedings before the *Enforcement Board* shall, in such circumstances, remain confidential from the *Enforcement Tribunal* except in relation to costs

Service of a defence

2.2.17 Within 28 days of the service of the *Notice* or such further period as the *Enforcement Board* may permit, the *defendant* shall serve on the *Enforcement Board* and the *Representative of the Council* –

- (a) a written statement admitting each charge and the facts and matters alleged in the *Notice*; or
- (b) a written *defence* which shall –
 - (i) state which of the charges are admitted and which are denied;
 - (ii) state which of the facts and matters alleged in the *Notice* are disputed;
 - (iii) state any other facts and matters relied on; and
 - (iv) be accompanied by copies of any documents referred to in the *defence* except any documents previously served under paragraph 2.2.4 (d) above.

2.3 Enforcement Proceedings before Enforcement Tribunals

Appointment of an Enforcement Tribunal

2.3.1 As soon as reasonably practicable after time for service of the *defence* has expired the *Enforcement Board* shall appoint the Chairman and the other members of the *Enforcement Tribunal*, to hear and determine the *enforcement proceedings* if proceedings have not been concluded before the *Enforcement Board* by agreement.

Decision in default of a defence

2.3.2 Where a *defendant* fails to serve a *defence* within 28 days of service of the *Notice* or any further period as the *Enforcement Board* may permit, every charge and every fact and matter alleged in the *Notice* shall be deemed to have been admitted by the *defendant* and the *Enforcement Tribunal* shall issue a decision as to *misconduct* to the parties.

2.3.3 Within 7 days of the date of service on the *defendant* of the decision as to *misconduct* under paragraph 2.3.2 above, a *defendant* may apply to the *Enforcement Tribunal* –

- (a) to set aside any decision as to *misconduct*; and

- (b) for permission to serve a *defence*.
- 2.3.4 The *Enforcement Tribunal* may grant the *defendant's* application under paragraph 2.3.3 if it is satisfied that the interests of justice require it to do so.
- 2.3.5 Within 14 days of the service of the decision as to *misconduct* or the *Enforcement Tribunal's* notification of its refusal to set aside the decision, whichever is later, each party may serve on the *Enforcement Tribunal* and the other party written submissions on *sanctions* and costs. Either party may serve written submissions in reply within 7 days.
- 2.3.6 Either party may in making their written submissions as to *sanctions* and costs request that the *Enforcement Tribunal* convene an oral hearing for the purpose of making additional submissions on *sanctions* and costs. The *Enforcement Tribunal* shall convene such a hearing as soon as reasonably practicable.
- 2.3.7 Either party may refer in its submissions on *sanctions* and costs to any previous *misconduct* that has been admitted by or otherwise proved against the *defendant*, and to any finding regarding the *defendant* made by any regulatory body or any Court of competent jurisdiction, whether in the United Kingdom or elsewhere, and the *Enforcement Tribunal* may take into account such matters as it considers appropriate in determining *sanctions* and costs.
- 2.3.8 Either party may refer in its submissions as to costs to any written settlement proposals but neither party may otherwise refer to any thing that was allegedly said or done during the course of settlement negotiations in its submissions as to *misconduct* or *sanctions*.
- 2.3.9 The *Enforcement Tribunal* shall notify the parties of its decision as to *sanctions* and costs as soon as reasonably practicable in accordance with paragraph 2.3.25.

Directions

- 2.3.10 The *Enforcement Tribunal* shall give directions for the conduct of the *enforcement proceedings* as soon as reasonably practicable and may hold a preliminary hearing for that purpose. The *Enforcement Tribunal* shall make an order for directions which may include directions that the parties –
- (a) disclose copies of all documents which are or have been in their control upon which they rely in support of their case and the documents which adversely

affect their own case, adversely affect another's party's case or support another party's case;

- (b) provide each other with the names of all witnesses whose evidence is to be relied on at the hearing;
- (c) exchange copies of written witness statements setting out the substance of the evidence such witnesses will give which is signed and accompanied by a statement of truth;
- (d) comply with any of the other matters set out in the standard order for directions attached at Schedule 3.

2.3.11 The *Enforcement Tribunal* may hold further preliminary hearings at its discretion for the purpose of monitoring and giving further directions regarding the conduct of the *enforcement proceedings* and also for the purpose of determining applications made to it by the *defendant* or the *Council*.

Change of plea

2.3.12 The *defendant* may admit a charge that he has denied in the *defence* at any time prior to the conclusion of the hearing of the charges. Where the *defendant* admits a charge on a different basis from that alleged in the *Notice* the *Representative of the Council* shall indicate whether he wishes the *Enforcement Tribunal* to determine the charge as alleged in the *Notice*.

2.3.13 Where the *defendant* admits a charge and that admission is accepted by the *Representative of the Council* and by the *Enforcement Tribunal* that charge shall be deemed to be proved and, unless there are other charges to be determined, the *Enforcement Tribunal* shall issue a decision as to *misconduct* against the *defendant* in respect of that charge in accordance with paragraph 2.3.21.

Settlement before the Enforcement Tribunal

2.3.14 The *Representative of the Council* and *defendant* may agree proposed terms for the settlement of the *enforcement proceedings* at any time after the appointment of the *Enforcement Tribunal* and before the commencement of the hearing of the charges.

2.3.15 Any agreement that the *Representative of the Council* and the *defendant* may reach regarding the proposed settlement of the *enforcement proceedings* shall be recorded in writing and shall –

- (a) state the charge or charges admitted by the *defendant*;

- (b) state the facts agreed;
 - (c) state the *sanction* or *sanctions* which the parties agree that the *Enforcement Tribunal* may impose on the *defendant* (including the terms of any notice of censure); and
 - (d) contain a draft order for costs which the parties agree that the *Enforcement Tribunal* may make.
- 2.3.16 Where the terms of a proposed settlement of the *enforcement proceedings* have been agreed in accordance with paragraph 2.3.15 above, the *Representative of the Council* shall submit the terms of a proposed settlement to the *Enforcement Tribunal* that has been appointed to determine the *enforcement proceedings*.
- 2.3.17 Where a proposed settlement is submitted to the *Enforcement Tribunal* under paragraph 2.3.16 above, it may approve, reject or suggest modifications to the settlement proposals submitted. It may also require both parties to attend before it.
- 2.3.18 If the *Enforcement Tribunal* decides to approve any proposed settlement submitted then it shall issue a decision as to *misconduct*, *sanctions* and costs which gives effect to the agreed settlement and it shall notify the parties accordingly. The decision of the *Enforcement Tribunal* shall take effect immediately unless otherwise stated.
- 2.3.19 If the *Enforcement Tribunal* rejects any proposed settlement submitted then it shall notify the parties and the *Enforcement Board* accordingly. The *Enforcement Board* shall appoint a new *Enforcement Tribunal* as soon as reasonably practicable for the purpose of determining the *enforcement proceedings* except that –
- (a) Any admission made by the *defendant* (other than an admission made in the course of a proposed settlement) which was accepted by the previous *Enforcement Tribunal* shall stand before the new *Enforcement Tribunal* unless the latter considers it to be unsound in law.
 - (b) Any concession made by the *Representative of the Council* or the *defendant* (other than a concession made in the course of a proposed settlement) which was accepted by the previous *Enforcement Tribunal* shall stand unless the new *Enforcement Tribunal* allows it to be withdrawn or varied.
 - (c) Each direction and ruling made by the previous *Enforcement Tribunal* shall stand unless and until it is revoked or varied by the new *Enforcement Tribunal* subject to the proviso that the hearing of the charges shall be adjourned pending further direction by the new *Enforcement Tribunal*.

Hearing of the charges

- 2.3.20 The charge or charges shall be determined following an oral hearing before the *Enforcement Tribunal*, unless the Enforcement Tribunal has directed that, on the request of all parties, that some or all of the charges may be determined on the basis of written submissions and documents. The hearing shall be in private unless the *defendant* requests a public hearing. In such a case the *Enforcement Tribunal* may in its discretion direct that any part of the hearing shall take place in private if in its opinion this is necessary in the interests of justice.

Decision of the Enforcement Tribunal as to misconduct

- 2.3.21 The *Enforcement Tribunal* shall serve on the *defendant* and the *Representative of the Council* its decision as to *misconduct* as soon as reasonably practicable and if possible, no later than 1 month after the conclusion of the hearing. The decision of the *Enforcement Tribunal* as to *misconduct* shall include –
- (a) the decision in relation to each charge; and
 - (b) its findings of fact and reasons.

Submissions as to sanctions and costs

- 2.3.22 Within 14 days of the service of the *Enforcement Tribunal's* decision as to *misconduct* the *Representative of the Council* and the *defendant* shall serve on the *Enforcement Tribunal* and each other –
- (a) written submissions as to the *sanction* or *sanctions* to be imposed in relation to each charge which has been admitted by or otherwise proved against the *defendant*;
 - (b) written submissions as to the order of costs that the *Enforcement Tribunal* should make; and
 - (c) written notification of any request to make supplementary oral submissions to the *Enforcement Tribunal* as to *sanctions* and costs.
- 2.3.23 Within 7 days of the date of service of any submissions under paragraph 2.3.22(a) and (b) the parties may serve written submissions in reply on the *Enforcement Tribunal* and each other.

2.3.24 Where the *defendant* or the *Representative of the Council* requests an opportunity to make oral submissions as to *sanctions* and costs the *Enforcement Tribunal* shall hold a hearing for this purpose.

Decision of the Enforcement Tribunal on sanctions and costs

2.3.25 The *Enforcement Tribunal* shall serve on the *defendant* and the *Representative of the Council* its decision on *sanctions* and costs as soon as reasonably practicable, if possible, within 1 month. The decision of the *Enforcement Tribunal* on *sanctions* and costs shall include –

- (a) any *sanction* including any terms and conditions in connection with the implementation of, or for the operation of, that *sanction*; and
- (b) any order as to costs; and
- (c) its reasons.

2.3.26 Unless it states otherwise and subject to paragraph 2.3.27, the decisions of the *Enforcement Tribunal* on *misconduct*, *sanctions* and costs shall take effect 14 days after the latest of –

- (a) the date of service of the *decisions* of the *Enforcement Tribunal*; and
- (b) the date of the service on the *defendant* of a decision of the *Appeal Tribunal* to refuse the *defendant* permission to appeal.

2.3.27 Where the *defendant* exercises any right of appeal or right to make a request to the *Council* under the Enforcement Byelaw the decision of the *Enforcement Tribunal* shall not take effect before the determination of the *defendant's* appeal or request to the *Council* as the case may be.

Conclusion of enforcement proceedings

2.3.28 *Enforcement proceedings* shall not be treated as concluded until the decision of the *Enforcement Board* or the *Enforcement Tribunal* takes effect.

2.4 Procedural and Evidential Matters

Power to determine procedure

- 2.4.1 Subject to these requirements, an *Enforcement Committee* shall have the power to determine the conduct of *enforcement proceedings* as it considers appropriate.

Decision making basis

- 2.4.2 The decisions of an *Enforcement Committee* shall be by a majority.

Stay of proceedings

- 2.4.3 An *Enforcement Tribunal* may order that its determination of one or more issues may be stayed until the determination of another issue and that the hearing of the charges against one *Defendant* may be stayed until the determination of the charges against another *Defendant*.

Failure to attend hearings

- 2.4.4 If a party to *enforcement proceedings* fails to attend any hearing or any part of a hearing before an *Enforcement Committee* it may proceed in his absence unless the *Enforcement Committee* is satisfied that that party has a reasonable excuse for his absence.

Time Limits

- 2.4.5 An *Enforcement Committee* may, if it considers it appropriate, extend any period within which a party is required by these requirements to do any act in connection with the *enforcement proceeding* before it. If any period specified in these requirements expires on a Saturday, Sunday, bank holiday, Christmas Day or Good Friday, then that period shall be extended to the next day which is not such a day. Any document that requires service must be served in accordance with Schedule 4 to these requirements.

Amendments

- 2.4.6 An *Enforcement Tribunal* may permit a party to amend any *Notice*, defence to the *enforcement proceedings* (“*defence*”) or other written submission that has been provided to or served on the *Enforcement Tribunal* on such terms as it thinks fit.

Provision of documents

- 2.4.7 An *Enforcement Tribunal* may require any party to the *enforcement proceedings* or any *person* subject to the *enforcement jurisdiction* of the *Society*, whom it considers may provide information or documents connection with any *enforcement proceedings*, to make such documents or information available to it and to the parties in such manner as it considers appropriate.

Non-compliance

- 2.4.8 Where a party fails to comply with the *Enforcement Byelaw* or these requirements or any direction or order of an *Enforcement Tribunal*, the *Enforcement Tribunal* may take such action as it considers appropriate, including awarding costs against that party.

Evidence

Burden and standard of proof

- 2.4.9 The burden of proof in all contested *enforcement proceedings* shall be on *the Council* unless otherwise provided for in these requirements or in any of the *requirements of the Council*.
- 2.4.10 The standard of proof applicable to *enforcement proceedings* is the standard applicable to civil proceedings in England and Wales.

Admissions

- 2.4.11 Any fact or matter which is admitted by a *defendant* shall be treated as proven against him.

Admissibility of evidence

- 2.4.12 An *Enforcement Committee* shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before any Court of Law. Without prejudice to the generality of the foregoing an *Enforcement Committee* may admit in evidence –
- (a) the transcript of any evidence given by a *defendant* in any *inquiry*;
 - (b) the written evidence of any *person* who is not called to give oral evidence at the hearing of the charges provided that it is signed and accompanied by a statement of truth.

Findings of other courts and other bodies

- 2.4.13 The findings of fact of any court of competent jurisdiction or of any committee or tribunal of any statutory or professional body exercising a regulatory or enforcement function, which have not been set aside on appeal or otherwise shall be prima facie evidence of the facts so found and may be used as evidence in the substantive hearing or in submissions as to *sanctions* and costs.
- 2.4.14 A criminal conviction of a defendant by any court of competent jurisdiction which has not been set aside on appeal or otherwise shall be conclusive evidence of the commission of the offence in question and may be used as evidence in the substantive hearing or in submissions as to *sanctions* and costs.

3. APPEALS

Requirements made under paragraph 24 of the Enforcement Byelaw

3.1 Appeal Tribunal

3.1.1 All appeals shall be determined in accordance with these requirements by one member of the *Appeal Tribunal*.

Composition

3.1.2 The *Appeal Tribunal* shall comprise a President, a Deputy President and any other member of the *Appeal Tribunal* as the *Council* may from time to time appoint.

3.1.3 Each member of the *Appeal Tribunal* shall be a *qualified lawyer* of at least ten years' standing or a *person* who holds or has held high judicial office except that no *person* shall be appointed to the *Appeal Tribunal* who is a –

- (a) *person* subject to the *enforcement jurisdiction* of the *Society*;
- (b) member of the *Council* or the *Franchise Board*;
- (c) member of the *Enforcement Board*; or
- (d) member of a *Enforcement Tribunal* that has been involved in the matter referred to the *Appeal Tribunal*.

3.1.4 Any *person* appointed to the *Appeal Tribunal* shall be appointed for a term of not less than 3 years and such appointment may be renewed by the *Council* from time to time. Where that *person* is engaged in the determination of an appeal which has not been concluded at the date that his appointment expires, he may continue to be a member of the *Appeal Tribunal* for purpose of determining that appeal.

Revocation and suspension of membership of an Appeal Tribunal

3.1.5 The *Council* shall revoke or suspend the appointment of any member of the *Appeal Tribunal* at any time where the member of the *Appeal Tribunal* –

- (a) has been convicted of a crime which, in the opinion of the *Council*, involves discreditable conduct and such conviction has not to the *Council's* knowledge been set aside on appeal or otherwise;
- (b) has been found liable in civil proceedings for gross negligence, dishonesty or fraud;

- (c) has been declared insolvent or bankrupt or has entered into any arrangement with creditors; or
- (d) is subject to an adverse finding in any proceedings brought by any regulatory or professional body or where any such proceedings are pending.

Conflicts of interest

- 3.1.6 The *Council* shall revoke or suspend the appointment of any member of an *Appeal Tribunal* where that member has a conflict of interest or is reasonably perceived to have a conflict of interest.

3.2 Conduct of an Appeal

Commencement of an appeal

- 3.2.1 Where an appeal is brought by any *person* having a right of appeal under paragraphs 25, 29 and 30 of the Enforcement Byelaw (the “*appellant*”), the appeal shall be instituted by the *appellant* serving on the Secretary to the *Appeal Tribunal* and the other party to the *appeal proceedings* (“the *respondent*”) a Notice of Appeal (a “*Notice of Appeal*”), which must be served –
 - (a) in the case of an appeal from an *Enforcement Tribunal* within 14 days of the latest of –
 - (i) the date of service on the appellant of the decision of the *Enforcement Tribunal* appealed from; or
 - (ii) if permission to appeal is required under paragraph 28 of the Enforcement Byelaw, the date on which permission to appeal was granted by the *Appeal Tribunal*;
 - (b) in the case of an appeal against an *intervention order* within 14 days of the date of service of the *intervention order*;
 - (c) in the case of an appeal under paragraph 23(c) of the Enforcement Byelaw within 14 days of the decision of the *Council* appealed from.

Appointment of Appeal Tribunal

- 3.2.2 The Secretary to the *Appeal Tribunal* shall notify the parties to the *appeal proceedings* of the member of the *Appeal Tribunal* who shall hear and determine the appeal as soon as reasonably practicable after receipt of the *Notice of Appeal*.

Objections to appointment

- 3.2.3 The parties to the *appeal proceedings* may object to the appointment of any member of the *Appeal Tribunal* on any reasonable ground including where the party has grounds to believe that the member appointed has a conflict of interest.
- 3.2.4 An objection to the appointment of the member of the *Appeal Tribunal* shall be made in writing setting out the reasons for the objection to the relevant appointment and shall be served by the party on the Secretary to the *Appeal Tribunal* as soon as reasonably practicable (and shall be copied to the other party to the *appeal proceedings*).
- 3.2.5 Where the *Appeal Tribunal* upholds the party's objection, it shall retire that member of the *Appeal Tribunal* and appoint another person in its place, and the parties shall be notified accordingly.

Applications for permission to appeal

- 3.2.6 An application to the *Appeal Tribunal* for permission to appeal under paragraph 28 of the Enforcement Byelaw shall be made within 14 days of the date of service on the *appellant* of the decision of the *Enforcement Tribunal*.
- 3.2.7 An application for permission to appeal shall be made in writing and shall set out the reasons why permission should be granted. The application shall be served on the *Representative of the Council* and the Secretary to the *Appeal Tribunal* and shall be accompanied by a copy of the decision of the *Enforcement Tribunal*, and if applicable, the *Enforcement Tribunal's* written reasons for its decision.
- 3.2.8 Within 14 days of the date of service of an application, the *Council* may serve written submissions in reply on the *appellant* and the *Appeal Tribunal*.
- 3.2.9 The *Appeal Tribunal* may decide an application on the basis of the *applicant's* written submissions or may hold a hearing for this purpose as it considers appropriate.

- 3.2.10 At any time after service of an application for permission to appeal, the *Appeal Tribunal* may, upon the application of any party, stay the implementation of the decision of the *Enforcement Tribunal*, either in whole or in part.

Statement of grounds of appeal

- 3.2.11 Within 14 days of service of a *Notice of Appeal* or such further period as the *Appeal Tribunal* may permit, the *appellant* shall serve on the *respondent* and the Secretary to the *Appeal Tribunal*, a written statement which shall –
- (a) state the grounds of appeal;
 - (b) state any facts or matters relied on; and
 - (c) be accompanied by copies of any documents referred to in the written statement.

- 3.2.12 Within 14 days of service by the *appellant* of the written statement referred to in paragraph 3.2.11 above, the *respondent* may serve on the *appellant* and the *Appeal Tribunal* a reply.

Stay of decision being appealed against

- 3.2.13 At any time after service of a *Notice of Appeal* against an *intervention order* or from a decision of the *Council*, the *Appeal Tribunal* may, upon the application of any party to such appeal, stay the implementation of the decision appealed against, either in whole or in part.

Oral hearings

- 3.2.14 There shall be an oral hearing before the *Appeal Tribunal* unless the *Appeal Tribunal* has directed that, on the request of all parties, the appeal may be determined on the basis of written submissions and documents.
- 3.2.15 The hearing shall be in private unless the *appellant* or the other party (other than where the *appellant* is the *Council* under paragraph 26(a) and (b) of the Enforcement Byelaw) requests a public hearing. In such a case the *Appeal Tribunal* may in its discretion direct that any part of the hearing shall take place in private if in its opinion this is necessary in the interests of justice.

Decision of the Appeal Tribunal

- 3.2.16 The *Appeal Tribunal* shall serve on the parties to the *appeal proceedings* its decision and reasons as soon as reasonably practicable. The decision shall take effect immediately.
- 3.2.17 If the *Appeal Tribunal* has exercised its power under paragraph 3.3.11 of these requirements to preserve the confidentiality of information, the written statement of its decision and reasons shall disclose the fact that it has done so but need give no further particulars.

3.3 Procedural and Evidential Matters

Power to determine procedure

- 3.3.1 Subject to these requirements, the *Appeal Tribunal* shall have power to determine the conduct of appeals as it considers appropriate

Joinder and Severance

- 3.3.2 The *Appeal Tribunal* may direct that appeals by two or more *appellants* shall be heard separately, or at the same time, or that a hearing of a particular issue be stayed until the determination of another issue.

Default

- 3.3.3 If a party fails to attend any hearing before the *Appeal Tribunal* and the *Appeal Tribunal* is not satisfied that he has a reasonable excuse for his absence, it may proceed in his absence. The *Appeal Tribunal* may, in the event of the failure of the party to comply with any direction of the *Appeal Tribunal*, take any action it considers appropriate, including making an order as to costs against that party.

Time

- 3.3.4 An *Appeal Tribunal* may, if it considers it appropriate, extend any period within which an appellant is required by these requirements to do any act in connection

with the appeal relating to the *enforcement proceedings*. If any period specified in these requirements expires on a Saturday, Sunday, bank holiday, Christmas Day or Good Friday, it will be extended to the next day which is not such a day. Any document that requires service must be served in accordance with Schedule 4 to these requirements.

Amendments

- 3.3.5 The *Appeal Tribunal* may permit the amendment of any document served by the parties on such terms as it thinks fit.

Provision of documents

- 3.3.6 The *Appeal Tribunal* may require any party to the appeal or any other *person* subject to the *enforcement jurisdiction* of the *Society* whom it considers should provide any information or documents in connection with the appeal, to make such information or documents available to it and to the parties in such manner as it considers appropriate.

Appointment of legal representatives

- 3.3.7 The *Council* shall appoint a *Representative of the Council* to conduct the *appeal proceedings* on its behalf. The Secretary to the *Appeal Tribunal* (and the other party) shall be informed of the name of the *Representative of the Council* and of any subsequent change in that appointment
- 3.3.8 Each party to the *appeal proceedings* may instruct a *qualified lawyer* to represent them. Where a party instructs a *qualified lawyer* he shall notify the Secretary to the *Appeal Tribunal* (and the other party) of the name of the lawyer concerned in writing as soon as reasonably practicable and in any event not less than 14 days before the commencement of the substantive hearing before the *Appeal Tribunal*.

Preliminary hearings

- 3.3.9 The *Appeal Tribunal* may hold preliminary hearings for the purpose of –
- (a) giving any directions which it considers appropriate for the conduct of the appeal; or

(b) determining applications made to it by the parties to the *appeal proceedings*.

Admissibility of evidence

- 3.3.10 The *Appeal Tribunal* shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before any Court of Law.
- 3.3.11 When hearing an appeal brought under paragraph 23(b) or (c) of the Enforcement Byelaw, the *Appeal Tribunal* shall be entitled to consider information or documents which were before the body being appealed against without revealing either the information or documents or their source.

Findings of other courts and other bodies

- 3.3.12 The findings of fact of any court of competent jurisdiction or of any committee or tribunal of any statutory or professional body exercising a regulatory or enforcement function, which have not been set aside on appeal or otherwise shall, be prima facie evidence of the facts so found and may be used as evidence in the appeal hearing relating to the *enforcement proceedings* or in submissions as to *sanctions* and costs.
- 3.3.13 A criminal conviction of a *defendant* by any court of competent jurisdiction which has not been set aside on appeal or otherwise shall be conclusive evidence of the commission of the offence in question and may be used as evidence in the appeal hearing relating to the *enforcement proceedings* or in submissions as to *sanctions* and costs.

4. COUNCIL STAGE

Requirements made under paragraph 36 of the Enforcement Byelaw

- 4.1 All proceedings relating to *enforcement proceedings* before the *Council* shall be determined in accordance with these requirements.

Application to the Council

- 4.2 An application to the *Council* under the Enforcement Byelaw to consider a *sanction* imposed on a *person* (“applicant”) in *enforcement proceedings* shall be made to the Secretary of the *Council* by the latest of –

- (a) the expiry of the time permitted for serving a *Notice of Appeal* on the *Appeal Tribunal*; or
- (b) 14 days of the decision of the *Appeal Tribunal* on an appeal.

- 4.3 The application shall made be in writing and –

- (a) identify the *enforcement proceedings* and the *sanction* concerned;
- (b) be accompanied by a copy of the decision imposing the *sanction*, any written reasons given for that decision and, where applicable, any decision of the *Appeal Tribunal*; and
- (c) set out the *applicant’s* written representations regarding the *sanction*.

Special meeting

- 4.4 The Chairman or a Deputy Chairman of Lloyd’s shall convene a special meeting of the *Council* to consider the *sanction* and shall give the *applicant* at least 14 days’ written notice of the special meeting.

- 4.5 The *applicant* may appear at the special meeting either in person or by a *qualified lawyer* instructed by him and may make oral representations regarding the *sanction* imposed. If the *applicant* wishes to make oral representations, he shall inform the *Council* in writing of this and of the name of any representative at least 3 days before the hearing.

- 4.6 If the *applicant* appears at the special meeting, the *Council* may invite the *Representative of the Council* to attend either in person or by a *qualified lawyer*

instructed by him and to take such part in the meeting as the *Council* considers appropriate.

Decision of the Council

- 4.7 The *Council* may, having considered the *sanction* imposed and any representations –
- (a) confirm, modify or grant dispensation in respect of the *sanction*;
 - (b) give any directions necessary for the enforcement of any *sanction* which has been confirmed or modified by the *Council*; and
 - (c) give such directions as it considers fit regarding publication of its decision.
- 4.8 The *Council* shall notify the *applicant* of its decision as soon as reasonably practicable in writing and the *Council's* decision shall take effect immediately.

5. INTERVENTION ORDERS

Requirements made under paragraph 39 of the Enforcement Byelaw

Power to make an intervention order

- 5.1 The *Council* may by the Market Supervision and Review Committee make an order under paragraph 37 of the Enforcement Byelaw restricting or suspending the permission, consent, registration or right of any *person* subject to the *enforcement jurisdiction* of the *Society* to transact, or be concerned or interested in the transaction of insurance business at Lloyd's (an "*intervention order*").
- 5.2 The Market Supervision and Review Committee shall only make an *intervention order* where it considers that the making of such an order is required in order to prevent or reduce the risk of serious harm being caused to the interests of the *Society, members, underwriting agents* or Lloyd's policyholders.
- 5.3 The Market Supervision and Review Committee may make an *intervention order* under paragraph 5.1 above on such terms and conditions as it thinks fit.

Duration

- 5.4 An *intervention order* may be for a period not exceeding six months and the Market Supervision and Review Committee may make one or more further *intervention orders* to commence from the date of expiry of any previous *intervention order*.

Notice

- 5.5 Save as provided in paragraph 5.9 below, the Market Supervision and Review Committee shall serve on any *person* written notice where it is considering making an *intervention order*.
- 5.6 Where notice is given, the notice shall –
- (a) state the terms and conditions; and
 - (b) state the reasons why an *intervention order* is being considered.
- 5.7 Any *person* on whom that notice is served, may –

- (a) make written representations to the Market Supervision and Review Committee regarding the proposed *intervention order* within 14 days; and
- (b) request an opportunity to make oral representations within such period as the Market Supervision and Review Committee may determine.

5.8 The *intervention order* shall take effect at the end of the 14 day period unless written representations are made to the Market Supervision and Review Committee under paragraph 5.7 above.

Without notice

5.9 Where the Market Supervision and Review Committee considers it appropriate to do so, it may make an *intervention order* without the notice specified under paragraph 5.5 above and the *intervention order* shall take effect immediately.

Notification of an Intervention Order

5.10 Where the Market Supervision and Review Committee makes an *intervention order*, it shall notify the *person* on whom the *intervention order* is imposed as soon as reasonably practicable in writing of –

- (a) the terms and conditions of an *intervention order*; and
- (b) the reasons why the *intervention order* has been made.

5.11 Where notice has been given under paragraph 5.5 above and the Market Supervision and Review Committee decides not to make an *intervention order*, it shall notify the *person* concerned of its decision in writing as soon as reasonably practicable.

Application to Review

5.12 Any *person* on whom an *intervention order* has been imposed may at any time apply in writing to the Market Supervision and Review Committee to have the *intervention order* amended or set aside on the basis that there has been a material change in relevant circumstances. An application shall –

- (a) identify the material change in circumstances;
- (b) contain written representations in support of the application;
- (c) request an opportunity to make oral representations within such period as the Market Supervision and Review Committee may determine.

Inquiries

- 5.13 Where an inquiry is ordered under part D of the Enforcement Byelaw to inquire into matters connected with the intervention order or the reasons for the intervention order, then at the conclusion of the inquiry the Market Supervision and Review Committee shall determine whether the intervention order is to be upheld, amended or set aside in accordance with these requirements.

Enforcement Proceedings

- 5.14 Where *enforcement proceedings* are commenced under part F of the Enforcement Byelaw in respect of a *person* on whom an *intervention order* has been imposed, then the Market Supervision and Review Committee shall determine whether the *intervention order* shall expire on the conclusion of *enforcement proceedings* but without prejudice to any sanction or costs order imposed in the *enforcement proceedings*.

6. PUBLICATION

Requirements made under paragraph 43 of the Enforcement Byelaw

Confidentiality

6.1 The *Council* shall not disclose the decision of an *Enforcement Committee* before that decision takes effect other than –

- (a) to the Secretary of State where such disclosure is made in the public interest;
- (b) to a police officer for the purpose of facilitating or supporting the institution of criminal proceedings;
- (c) to any regulator or professional body for the purpose of assisting it to discharge its lawful functions, whether in facilitating or supporting the institution of proceedings or otherwise; or
- (d) where *enforcement proceedings* are held in public.

6.2 The *Council* shall publish the decision of the *Enforcement Board* or an *Enforcement Tribunal* if –

- (a) the decision incorporates a finding of *misconduct*;
- (b) the hearing of the charges was conducted in public; or
- (c) the defendant requests such publication,

on such terms as the *Council* sees fit unless in the opinion of the *Council* –

- (i) the interests of justice do not require publication;
- (ii) it is not in the interests of the *Society*, *members*, *underwriting agents* or Lloyd's policyholders for such action to be taken; or
- (iii) the *enforcement proceedings* concerned *misconduct* of an administrative nature.

6.3 The *Council* may direct a *defendant* to disclose to a third party or third parties information about a decision as to *misconduct* made against him by the *Enforcement Board* or an *Enforcement Tribunal* in such form and manner as the *Council* considers appropriate.

Appeals

6.4 The *Council* shall publish a decision of the *Appeal Tribunal* if –

- (a) the hearing was held in public;
- (b) the appellant requests the *Council* to do so; or
- (c) the decision upholds the decision of the *Enforcement Tribunal*.

on such terms as the *Council* sees fit unless in the opinion of the *Council* –

- (i) the interests of justice do not require publication; or
- (ii) it is not in the interests of the *Society, members, underwriting agents* or Lloyd's policyholders for such action to be taken.

Intervention Orders

6.5 Where an *intervention order* is made, amended or set aside the *Council* shall publish that matter on such terms as the *Council* sees fit.

7. MISCELLANEOUS MATTERS

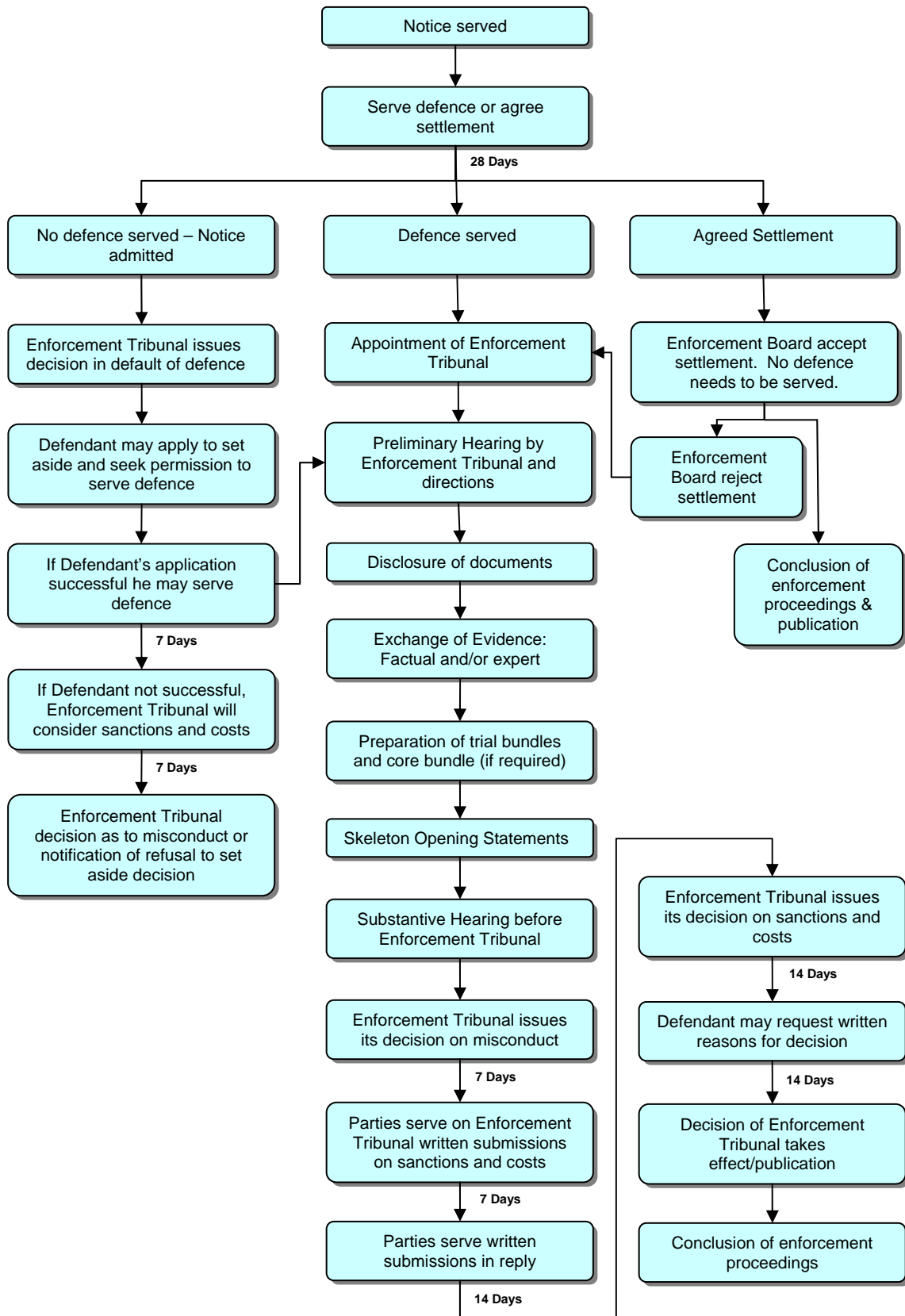
Human Rights Act 1998

- 7.1 The *Enforcement Board*, each *Enforcement Tribunal* and the *Appeal Tribunal* may adapt or waive any of these requirements to the extent necessary to give effect to the Human Rights Act 1998 in any *enforcement proceedings* where in the reasonable opinion of the *Enforcement Board*, each *Enforcement Tribunal* and the *Appeal Tribunal* that Act is considered to apply to it.

Schedule 1

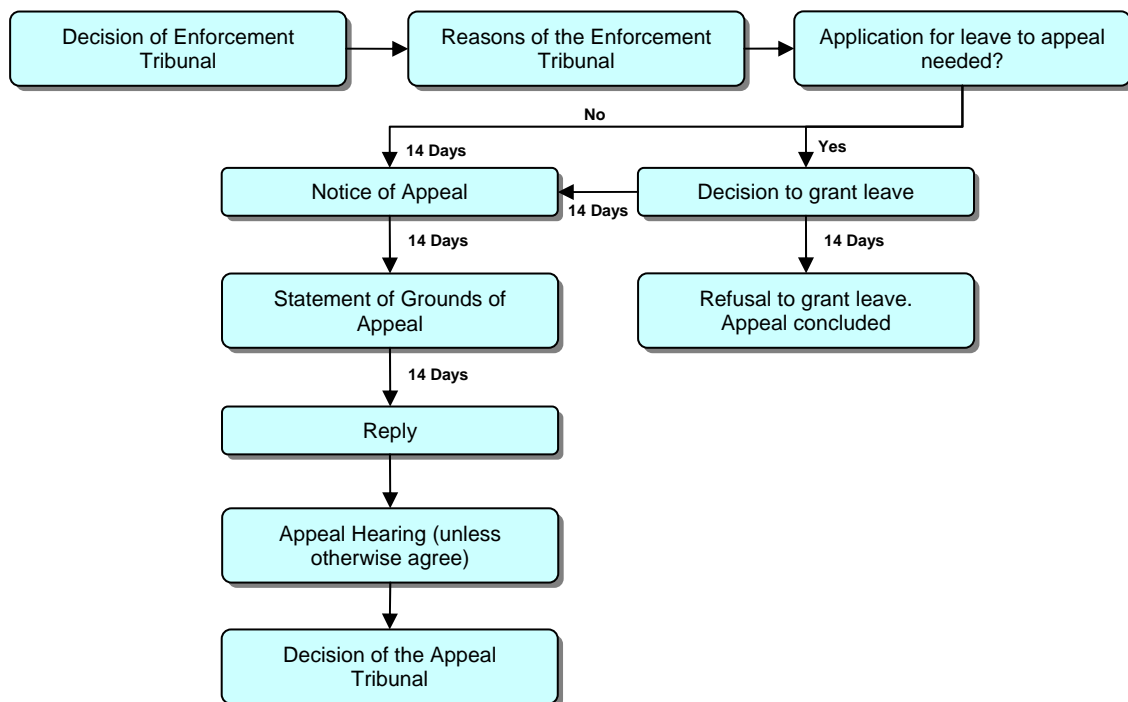
Enforcement Proceedings

Flowchart of key stages and timetable, please refer to the Enforcement Byelaw and requirements for detailed information relating to each step. This flow chart is for information only and does not form part of these requirements.



Schedule 2
Appeals
(against decision of an Enforcement Tribunal)

Flowchart of key stages and timetable, please refer to the Enforcement Byelaw and requirements for detailed information relating to each step. This flow chart is for information only and does not form part of these requirements



Schedule 3

Note – The following draft order for directions may be varied, amended or adapted by the Enforcement Tribunal as it considers appropriate in the circumstances of the enforcement proceedings.

Before the Lloyd's Enforcement Tribunal

Case No. [LDB/]

In the matter of:

The Council of Lloyd's

-v-

[Defendant]

DRAFT ORDER FOR DIRECTIONS
GIVEN BY THE ENFORCEMENT TRIBUNAL
AT A PRELIMINARY HEARING
ON [DATE] AT [TIME] A.M.

Amended Notice

1. The Council shall serve the proposed amended Notice of Formal Enforcement Proceedings no later than [].

Reply

2. The Council may serve any reply to the Defence or Amended Defence no later than [].

Disclosure

3. The Council and the Defendant shall serve on each other no later than [] a list of the following documents –
 - a) Documents on which each party relies;
 - b) Documents of which either party is aware which –
 - i) Adversely affect each party's own case; or

- ii) Support the other party's case.

The list must identify the documents in a convenient order and manner and as concisely as possible. It must indicate –

- a) those documents in respect of which the party claims a right or duty to withhold inspection; and
- b) those documents which are no longer in the party's control and what has happened to those documents.

The list must include a disclosure statement containing the information set out in Practice Direction 31, paragraph 4.1 to 4.6 of Part 31 of the Civil Procedure Rules.

The duty of disclosure continues until the enforcement proceedings are concluded. If documents to which that duty extends comes to a party's notice at any time during the proceedings, he must immediately notify every other party.

4. All documents listed as being disclosable must be made available for inspection and copying no later than []. The reasonable costs of copying documents shall be incurred by the party requiring the documents to be copied.

Core Bundle

5. The Council shall serve on the Defendant and the Secretary of the Enforcement Tribunal a chronological paginated bundle of documents, agreed as far as possible with the Defendant comprising those documents to which the Council and the Defendant intend to refer when presenting their respective cases at the substantive hearing no later than [].

Factual and Expert Evidence

6. The Council and the Defendant shall provide each other with the names of all witnesses (including expert witnesses) they intend to call at the hearing and shall exchange copies of written witness statements (including expert reports) setting out the substance of the evidence such witnesses shall give, signed by the witness and verified by a statement of truth no later than []. All witness statements referring to documents shall refer to the pagination of those documents in the chronologically paginated bundle served by the Council under direction 5 above. Copies of all such witness statements shall also be served on the Secretary to the Enforcement Tribunal at the same time.
7. All witness statements to stand as evidence in chief of the witness concerned unless otherwise ordered by the Enforcement Tribunal save where a witness touches on issues of good faith or

honesty the witness shall give that part of his evidence in chief in full and not merely to attest to those matters.

8. The Council and the Defendant shall notify each other and the Secretary to the Enforcement Tribunal of the identity of those witnesses required to attend the hearing for the purposes of cross-examination no later than [].

Skeleton Opening Statements

9. The Council shall serve on the Defendant and the Secretary to the Enforcement Tribunal a written skeleton opening statement by []. The Defendant shall serve on the Council and the Secretary to the Enforcement Tribunal a written skeleton opening statement by [].

Substantive Hearing

10. The hearing of the proceedings and any preliminary hearings will be held in [private or public, either totally or in part].
11. The hearing of the proceedings will be transcribed and will commence on [] at 10.30 a.m. at [location]. The hearing is presently estimated to last no more than [] days but if any party should consider this estimate to require revision it shall give notice in writing of this and of the reasons as soon as possible to the other party and to the Secretary of the Enforcement Tribunal. The Enforcement Tribunal will sit between 10.30 a.m. – 4.00 p.m. each day (or as may be required).
12. The Council and the Defendant shall have the right to apply to the Chairman of the Enforcement Tribunal for further directions or a variation of any of the above directions.

.....
[Name] QC
Chairman

Further Directions referred above may include –

- (a) A direction that the enforcement proceedings or any part of them should be determined solely on the basis of written submissions and supporting documents.
- (b) A direction for the service of written submissions on a point of law and supporting documents.
- (c) A direction requiring the parties to exchange on the same day or different days copies of all documents to be referred to at the hearing of the charges.
- (d) A direction requiring the parties to exchange on the same day or different days copies of all documents in their possession, power or custody which to a material extent adversely affect their own case or support the other party's case as disclosed in their respective written statements.

Schedule 4

Service of documents

1. Any document that requires to be served in accordance with these requirements shall be served effectively by –
 - (a) post to the proper address;
 - (b) fax;
 - (c) leaving the document at the proper address;
 - (d) personal service; or
 - (e) any alternative means permitted by any of the requirements of the Council for the service of legal process on a person.

2. The proper address is –
 - (a) in the case of an individual, his business address or his usual or last known home address;
 - (b) in the case of a partnership, its principal or its last known place of business;
 - (c) in the case of a body corporate, its registered office or principal office in the United Kingdom;
 - (d) in the case of the Council, the business address of the Representative of the Council;
 - (e) in the case of the Enforcement Board or the Enforcement Tribunal the Secretary of the Enforcement Committees; and
 - (f) in the case of any party's qualified lawyer, the business address of that qualified lawyer.

3. The effective time of service of a document that is served in accordance with these requirements shall be deemed to be –
 - (a) in the case of a document that is posted, 72 hours after the time of posting;
 - (b) in the case of a document that is sent by fax before 1800 hours, the date of confirmation of transmission provided that a copy of the faxed document is posted or delivered to the person to be served at his proper address;
 - (c) in the case of a document that is sent by fax after 1800 hours, the next day following the date of confirmation of transmission provided that a copy of the faxed document is posted or delivered to the person to be served at his proper address; and
 - (d) in the case of a document that is left at the proper address of the person to be served, the date on which the document was left at such address.

Schedule 5

The “Principles of Enforcement Action” set out in this Schedule were published by Market Bulletin Y4202 on 5 November 2008. The Market Bulletin can be found at:

<http://www.lloyds.com/NR/rdonlyres/CE12EB48-78AF-4945-8854-33609AA3F703/0/Y4202.pdf>

Principles of Enforcement Action

1. Enforcement proceedings may be brought in respect of conduct that may be regarded as: (i) discreditable; (ii) detrimental to the interests of the Society, members, underwriting agents or Lloyd’s policyholders or others doing business at Lloyd’s; or (iii) a breach of: the Lloyd’s Acts or Byelaws; a requirement of the Council; or a direction or order of the Enforcement Board, an Enforcement Tribunal or the Appeal Tribunal.
2. Lloyd’s enforcement jurisdiction includes members, managing agents, members’ agents and their directors, partners and workers with the following sanctions being available: permanent or temporary ban from the Lloyd’s market; public censure; and/or a fine. The FSA has responsibilities for supervising managing agents, members’ agents, coverholders, brokers, individual controllers and approved persons. The FSA will use its enforcement powers in some cases according to the FSA’s policy set out in their Decision Procedure and Penalties manual (<http://fsahandbook.info/FSA/html/handbook/DEPP>) and the Enforcement Guide (<http://fsahandbook.info/FSA/html/handbook/EG>).
3. Lloyd’s and FSA entered into “Co-operation Arrangements” in August 2007 (http://www.fsa.gov.uk/pubs/other/fsa_lloyds.pdf) in order to ensure that, where FSA and Lloyd’s are both responsible for regulation, an effective working relationship is maintained. These Arrangements, *inter alia*, provide for: the sharing of information; the avoidance of unnecessary duplication; and the factors for deciding who should take the lead, in respect of the investigation of and enforcement against, firms and individuals working in the Lloyd’s market.
4. The Market Supervision and Review Committee (“MSARC”) is the committee responsible for the investigation and enforcement of disciplinary matters by Lloyd’s in the Lloyd’s market. In determining whether the facts and matters in any particular case should be the subject of proceedings, MSARC will have regard to all relevant matters including any previous guidance given by the Lloyd’s Appeal or Disciplinary Tribunal, for example as to the meaning of misconduct.
5. The principles set out below, whilst not a comprehensive list of the circumstances in which Lloyd’s might take enforcement action, describe types of conduct that are likely to result in such action. Previous Lloyd’s disciplinary cases (cited by reference to their Lloyd’s Case numbers) are also mentioned ¹, providing examples of each of these types of conduct. It should be noted that the cases are for illustrative purposes only and a decision to take enforcement action in any particular circumstances will take into account all the relevant facts.

¹ The descriptions of cases below are not intended to be a substitute for the full facts and matters as provided in the relevant case bulletins or tribunal decisions.

Principle 1 Any act of dishonesty.

It has been made clear in a number of previous Appeal Tribunal and Disciplinary Tribunal cases that Lloyd's is satisfied that dishonesty has no place in the Lloyd's market. For example, the President of the Appeal Tribunal has stated – "the message must go out again from the Lloyd's Appeal Tribunal that dishonesty will never be tolerated in the Lloyd's market" (Case no. LDB/9712/38).

Principle 2 The misappropriation, or causing or permitting the misappropriation, of money or other property (especially for direct or indirect personal gain).

This principle is demonstrated in the cases below:

- *In Cases no. LDB/9702/2 MLP and LDB/9902/06, two underwriters who had misappropriated stolen cars recovered by their syndicates were banned from the Lloyd's market.*
- *Disciplinary cases of discreditable conduct against Brokers often involved the misappropriation of funds for indirect personal gain. For instance, in Case no. LDB/9708/18, premiums were retained for reinsurances that had not been placed with underwriters. The Broker was banned from Lloyd's.*
- *An example of direct gain in a Broker case is provided by Case no. LDB/9810/17. The Broker was found guilty of discreditable conduct and banned from Lloyd's for misappropriating funds in an Insurance Broking Account.*

Principle 3 The creation or use, or causing or permitting the creation or use, of false or misleading documents or other information.

This principle is demonstrated in the cases below:

- *In Case no. LDB/9401/4, an active underwriter was found guilty of discreditable conduct, publicly censured and fined, for providing misleading documents to syndicate auditors and approving misleading syndicate accounts.*
- *The use of false or misleading cover notes/slips/debit or credit notes etc for indirect gain was a common theme in many discreditable conduct Broker cases. For example in Case no. LDB/9708/18, a Broker who issued false cover notes, was banned from the Lloyd's market.*

Principle 4 Breach or causing or permitting a breach of a person's fiduciary or agency obligations related to the conduct of business in the Lloyd's market (for example, by making or permitting the making of a secret profit or failing to account for monies).

This principle is demonstrated in the cases below:

- *In Case no. LDB/0511/01, an active underwriter was found guilty of discreditable conduct in that he accepted personal inducements which he failed to disclose to his employer. He was banned from the Lloyd's market.*
- *In Case no. LDB/0105/03, a deputy active underwriter failed to disclose relevant interests, in this case in a coverholder, and to account for secret profits. As a result he was banned from the Lloyd's market.*
- *The making of a secret profit was commonly the basis for disciplinary action against Brokers. In Case no. LDB/9705/13, the Chairman of a Lloyd's Broker, admitted discreditable conduct, being his knowledge that a secret profit had been taken and he was banned from the Lloyd's market for 6 months.*

Principle 5 Failure or causing or permitting a failure to deal openly and honestly with, or provide clear and accurate information to, members, policyholders, counterparties or other relevant parties.

This principle is demonstrated in the cases below:

- *In Cases no LDB/0805A and LDB/0805B there was a failure by the directors of a Managing Agent to provide external parties i.e. capital providers with necessary information. They were banned from the Lloyd's market and subject to a fine and censure.*
- *In Case no. LDB/0112/09, a Managing Agent failed to disclose relevant information to members about imminent transactions of potential financial consequence and admitted discreditable conduct. A fine and censure were imposed.*
- *In Case no. LDB/9705/11, a Managing Agent admitted misconduct for failing to inform members of an increase in syndicate stamp. The Managing Agent was publicly censured.*
- *In Case no. LDB/9712/40, a Managing Agent failed to produce the required information in its syndicate accounts and was found guilty of breaches of the Syndicate Accounting Byelaw. It was banned from acting as a Managing Agent.*

Principle 6 Any act or omission, or the causing or permitting of any act or omission, capable of damaging Lloyd's brand, licences or the Central Fund or otherwise likely to bring Lloyd's or the Lloyd's market into disrepute.

This principle is demonstrated by the following:

- *In Case no. LDB/0310/05, the director of a Managing Agent was fined for agreeing to pay to a Lloyd's Broker a sum in excess of that which might otherwise have been paid by way of brokerage in order to secure the employment of one of the Broker's employees. The director's conduct was considered to present "a risk of harm to Lloyd's policyholders, the Society its members or others doing business at Lloyd's".*

- *The Co-operation Arrangements between FSA and Lloyd's dated August 2007 provide that the factors which would tend towards a disciplinary case being conducted by Lloyd's, rather than FSA, include cases where the conduct in question poses significant risks to Lloyd's reputation, licences and the Central Fund.*

Principle 7 Failure or causing or permitting a failure to manage or safeguard properly, honestly or prudently monies or other assets held on behalf of policyholders or members in accordance with the terms of any applicable trust or agreement.

This principle is demonstrated in the cases below:

- *In Cases no LDB/0805A and LDB/0805B, although not the subject of the settled cases, the Lloyd's notices of censure explained that the proper safeguarding of PTF assets was of fundamental importance" and that the use of PTF assets for the purposes of funding capital raising is an improper use of such assets".*
- *The misuse of accounts was commonly the basis for disciplinary action against Brokers. For example in Case no. LDB 9711/37/B, the Managing Director of a Broker dishonestly misused funds held in an Insurance Broking Asset account as an incentive to obtain business and was banned from the Lloyd's market for one year.*

Principle 8 Failure or causing or permitting a failure to deal with Lloyd's in an open, honest and transparent manner or to ensure that Lloyd's is promptly informed of any matter which it reasonably ought to know.

This principle is demonstrated in the case below:

- *In Case no. LDB/0112/09, a Managing Agent failed to disclose to Lloyd's important information about the prospective sale of the issued share capital of its parent company and was publicly censured and fined.*

Principle 9 Failure or causing or permitting a failure to organise and control the business of an underwriting agent in a responsible manner or to maintain proper records and systems for the conduct of its business and the management of risk.

This principle is demonstrated in the cases below:

- *In Case no. LDB/0205/08, a Managing Agent was publicly censured and fined. The Managing Agent admitted a number of failures to manage responsibly and control its business, including: lack of proper records and systems in relation to its US credit life business; inadequate controls over coverholders; inadequate systems for monitoring premium receipts; inadequate checks as to business written by reference to its business plan etc.*
- *In Case no. LDB/0103/02, misconduct was admitted by the Managing Agent, which was publicly censured and fined, for failing to prevent an unauthorised third party from conducting Lloyd's business as an unapproved coverholder.*