

2005 FET CLOSING AGREEMENT

Between

LLOYD'S,

UNDERWRITERS AT LLOYD'S, LONDON

and

UNITED STATES COMMISSIONER OF

INTERNAL REVENUE

Effective 1st January 2005

CLOSING AGREEMENT ON FINAL DETERMINATION COVERING SPECIFIC EXCISE
TAX MATTERS

Under section 7121 of the Internal Revenue Code of 1986, as amended (the "Code"), the Society incorporated by Lloyd's Act 1871 by the name of Lloyd's ("Lloyd's"), the taxpayers who are Underwriters at Lloyd's, London ("Taxpayers") and the Commissioner of Internal Revenue (the "Commissioner") make the following closing agreement (this "2005 FET Closing Agreement"):

WHEREAS, Lloyd's, the Taxpayers and the Commissioner previously entered into a closing agreement dated November 18, 1968, which was superseded by a subsequent closing agreement dated April 1, 1980, which was superseded by a subsequent closing agreement dated April 6, 1990 (the "1990 Closing Agreement"), which was supplemented by a subsequent closing agreement covering Eligible Corporate Underwriters at Lloyd's dated April 3, 1995 (the "1995 Closing Agreement"), all of which addressed the treatment of Lloyd's Income (or Loss) of Taxpayers for United States federal income tax purposes and for purposes of the federal excise tax imposed by section 4371 *et seq.* of the Code on insurance and reinsurance (the "Insurance Excise Tax") and the Treasury regulations promulgated thereunder (the "Excise Tax Regulations");

WHEREAS, the parties have entered into a new closing agreement dated [] which is effective for taxable years beginning after December 31, 2004 (the "2005 Closing Agreement"), which superseded the 1990 and 1995 Closing Agreements and which provides in Article X thereof for the payment of the Insurance Excise Tax by Taxpayers on certain insurance and reinsurance;

WHEREAS, the Business Profits article of the applicable income tax conventions between the United States and the countries of residence of certain Taxpayers, under which benefits are being claimed, exempts insurance or reinsurance premiums paid to a resident of such countries from the Insurance Excise Tax only to the extent that (i) such Taxpayers do not reinsure such risks with a person not entitled to exemption from such tax under an income tax convention to which the United States is a party (such an exemption hereinafter referred to as a "Qualified Exemption"), (ii) the premium was a receipt of a business of insurance carried on by an enterprise of such treaty countries, and (iii) Taxpayers qualify under the Limitation on Benefits article of the applicable income tax convention;

WHEREAS, the Business Profits article of the applicable income tax conventions between the United States and the country(ies) of residence of certain Taxpayers, under which benefits are being claimed, exempts insurance or reinsurance premiums paid to a resident of such countries from the Insurance Excise Tax only to the extent that (i) the policy was not entered into as part of a "Conduit Arrangement" (as defined in the income tax convention between the United States and the United Kingdom or any other convention with a similar exemption from the Insurance Excise Tax)(such limitation hereinafter referred to as an "Anti-Conduit Arrangement Limitation"), (ii) the premium was a receipt of a business of insurance carried on by an enterprise of such treaty countries, and (iii) Taxpayers qualify under the Limitation on Benefits article of the applicable income tax convention;

WHEREAS, section 3.01 of Rev. Proc. 2003-78 provides that the person otherwise required to remit the Insurance Excise Tax on account of premiums paid to a foreign insurance or reinsurance company may consider the premium exempt from the Insurance Excise Tax under an income tax convention if premiums are paid to an insurer or reinsurer that is a resident for treaty

purposes of a country with which the United States has an income tax convention containing an excise tax exemption and, prior to filing the return for the taxable period, such person has knowledge that such Taxpayers have in effect for such taxable period a closing agreement with the Internal Revenue Service ("IRS") to be liable as a United States taxpayer for the Insurance Excise Tax pursuant to section 4371 *et seq.* of the Code, subject to an applicable exemption under an income tax convention from the Insurance Excise Tax; and

WHEREAS, certain Taxpayers that are residents of countries with which the United States has an income tax convention containing an excise tax exemption represent that they are and anticipate continuing to be eligible for benefits under the applicable convention.

IT IS HEREBY DETERMINED AND AGREED THAT:

(1)(a) Each Taxpayer that is entitled to the benefits of an income tax convention to which the United States is a party that contains a Qualified Exemption shall, for purposes of this 2005 FET Closing Agreement, be liable as a United States taxpayer for the Insurance Excise Tax pursuant to section 4371 *et seq.* of the Code, on premiums from policies that are reinsured with reinsurers that are not entitled to exemption from the Insurance Excise Tax under an income tax convention to which the United States is a party.

(b) Each Taxpayer that is entitled to the benefits of an income tax convention to which the United States is a party that contains an exemption to the Insurance Excise Tax subject to an Anti-Conduit Arrangement Limitation shall, for purposes of this 2005 FET Closing Agreement, be liable as a United States taxpayer for the Insurance Excise Tax pursuant to section 4371 *et seq.* of the Code, on premiums from policies that were entered into as part of a Conduit Arrangement.

(c) Each Taxpayer that reinsures, in whole or in part, a policy of insurance or reinsurance with a foreign reinsurer not entitled to exemption from the Insurance Excise Tax under an income tax convention between the United States and such foreign reinsurer's country of residence and the premium paid for such reinsurance policy is not exempt from the Insurance Excise Tax pursuant to section 4373(1) of the Code shall report and remit the tax, if any, imposed by section 4371(3) on the premium paid for such policy of reinsurance in accordance with subtitle F of the Code and the regulations thereunder.

(2)(a) Returns of Insurance Excise Tax due under and pursuant to this 2005 FET Closing Agreement and section 4371 *et seq.* of the Code shall be made by and on behalf of all Taxpayers by filing a single, aggregate Form 720, *Quarterly Federal Excise Tax Return* (the "Lloyd's Form 720") for each return period covered by this 2005 FET Closing Agreement.

(b) The tax reportable on the Lloyd's Form 720 shall be computed as provided in the 2005 FET Agreement of Understanding.

(c) The Lloyd's Form 720 shall be filed with the Internal Revenue Service Center, Cincinnati, OH 45999-0009.

(d) The required federal tax deposits of the Insurance Excise Tax shall be made as provided in the 2005 FET Agreement of Understanding.

(3) Taxpayers agree that neither this 2005 FET Closing Agreement nor the 2005 FET Agreement of Understanding is intended to modify the liability for the Insurance Excise Tax under section 4371 *et seq.* of the Code.

(4) Taxpayers have agreed, for purposes of determining their Insurance Excise Tax liability pursuant to this Closing Agreement and for purposes of verifying Taxpayers' entitlement to benefits under an income tax convention to which the United States is a party, to examination by the IRS as provided in the 2005 FET Agreement of Understanding and to the retention of records necessary to fulfill such examination as provided in paragraph B of Article VIII of the 2005 Agreement of Understanding, or as provided in any subsequent agreements.

(5) If it is determined that there is an underpayment in respect of any Insurance Excise Tax determined to be due pursuant to this 2005 FET Closing Agreement, the 2005 FET Agreement of Understanding and section 4371 *et seq.* of the Code, the IRS shall issue a single statement of notice and demand for the tax due plus any interest and applicable penalties. Notice of any underpayment shall be sent to Taxpayers at the name and address shown on the Lloyd's Form 720 for the period for which such underpayment is determined if a Lloyd's Form 720 was filed for the period for which an underpayment is determined by the IRS, or otherwise to the Director, Finance, Lloyd's at the address set forth in paragraph 8(c) hereof. Payment of all additional amounts due shall be made in accordance with the terms specified in the statement of notice and demand. Collection of such additional amounts not paid per notice and demand shall be in accordance with paragraph (6)(a) hereof.

(6)(a) As security for payment of tax, Taxpayers shall cause an irrevocable letter of credit to be issued by Citibank NA, New York, NY (or another United States bank that is a member of the Federal Reserve System, or by a United States branch or agency of a foreign bank that is on the National Association of Insurance Commissioners list of banks from which letters of credit may be accepted), in favor of the IRS in the amount of \$1,000,000, unless the IRS and Taxpayers determine that circumstances warrant a letter of credit in an increased amount. Such letter of credit shall be effective as of the date that this 2005 FET Closing Agreement is signed by the Commissioner or his or her delegate.

(b) The IRS may issue a statement of notice and demand with respect to:

(i) Any tax shown on a Lloyd's Form 720 (original, amended, or substitute for return) that is not paid with such return; or

(ii) Any proposed additional liability for the Insurance Excise Tax sustained by the Internal Revenue Service Regional Director of Appeals having jurisdiction over such matter, if the time for filing a protest of such proposed liability has expired, provided that the statement of notice and demand has been issued as provided in paragraph (5) hereof.

(c) If, after the conditions in paragraph (6)(b) hereof have been met, the tax, interest, and any applicable penalties are not paid in accordance with the terms of the statement of notice and demand, collection of such amounts will be made by resorting to such letter of credit, to the extent thereof, before any levy or proceeding in court for collection is instituted against Taxpayers.

(d) If such letter of credit is drawn upon, it must be reinstated to \$1,000,000, unless the IRS and Taxpayers determine that circumstances warrant a letter of credit in an increased amount pursuant to paragraph (6)(a) of this 2005 FET Closing Agreement, within 60 days after the date drawn upon.

(7)(a) Solely by reason of the execution by Taxpayers, Lloyd's and the Commissioner of this 2005 FET Closing Agreement, any person otherwise required to remit the Insurance Excise Tax on insurance or reinsurance premiums pursuant to section 46.4374-1(c) of the Excise Tax Regulations may consider premiums paid to Taxpayers after the effective date of this 2005 FET

Closing Agreement as exempt under the applicable income tax convention from the Insurance Excise Tax. The provision of a copy of this 2005 FET Closing Agreement to any person otherwise required to remit the Insurance Excise Tax shall be considered sufficient evidence of the execution of this 2005 FET Closing Agreement and exemption of premiums paid to Taxpayers from the Insurance Excise Tax. Taxpayers shall not be required to provide a copy of any other agreement among Taxpayers, Lloyd's and the Commissioner, including, but not limited to, the 2005 Closing Agreement, the 2005 Agreement of Understanding and the 2005 FET Agreement of Understanding, to any person otherwise required to remit the Insurance Excise Tax in order to establish exemption from such tax.

(b) Taxpayers agree that the Commissioner or his or her authorized delegate may disclose, by publication or otherwise, that Underwriters at Lloyd's, London have entered into a closing agreement under Rev. Proc. 2003-78.

(8) Taxpayers agree to provide information each year to the IRS setting forth the name, taxpayer identification number (social security account number, individual taxpayer identification number or employer identification number, as appropriate) of each of the Taxpayers that is a party to this 2005 FET Closing Agreement along with the country of residence of each such Taxpayer and the applicable income tax convention under which each such Taxpayer is claiming benefits. Taxpayers shall be considered to satisfy the requirements of this paragraph by satisfying the data production requirements set forth in paragraph A of Article VI of the 2005 Agreement of Understanding.

(9)(a) This 2005 FET Closing Agreement shall be effective for taxable periods of Taxpayers beginning after December 31, 2004, shall have an initial term of five years and shall thereafter continue in effect unless terminated as provided in subparagraph (b) of this paragraph.

(b) For taxable years beginning after December 31, 2009, this 2005 FET Closing Agreement may be terminated by giving notice, not less than 180 days prior to the beginning of the taxable year to which the notice of termination applies, of the notifying party's desire to so terminate. The decision to terminate is solely at the discretion of the party giving such notice. Notice shall be given for Taxpayers by the Chairman or a Deputy Chairman of Lloyd's. This 2005 FET Closing Agreement shall, in the case of a notice of termination, terminate upon December 31 of the year in which the notice of termination is given. The parties may by mutual agreement extend the date of termination if negotiations to consider the terms of a new agreement are proceeding but cannot be completed by the termination date.

(c) Taxpayers hereby agree to file a Lloyd's Form 720, marked "Final Return" for the taxable period within which this 2005 FET Closing Agreement terminates pursuant to subparagraph (b) of this paragraph, in accordance with rules provided in the federal tax regulations and the instructions for Form 720 if the Taxpayers have not entered into a subsequent closing agreement which agreement supersedes this 2005 FET Closing Agreement. Taxpayers also agree to furnish a duplicate of such Final Return to the address set forth in subparagraph (e) of this paragraph.

(d) Taxpayers agree that the letter of credit issued pursuant to paragraph (6) hereof shall remain in effect for a period of not less than 60 days after the Final Return has been filed in accordance with subparagraph (c) hereof, or until the examination of Taxpayers' return is completed and any additional tax due has been paid, whichever is later.

(e) Notices provided under this paragraph shall be directed to the parties as follows:

To the Commissioner of Internal Revenue:

Internal Revenue Service
Attn: LM:IN:FP
1111 Constitution Avenue, NW
Washington, DC 20224

To Underwriters at Lloyd's, London:

Director, Finance
Lloyd's
One Lime Street
London, EC3M 7HA
England

(10) Recognizing the fact that from time to time new Underwriters will become members of Lloyd's, each new Underwriter shall become a party to this 2005 FET Closing Agreement and shall furnish a power of attorney, duly executed by such Underwriter, granting certain employees of Lloyd's approved by the IRS the power to authorize Lloyd's United States Counsel to make such Underwriter a party to this 2005 FET Closing Agreement which power of attorney shall be filed with the IRS. A new Underwriter shall be deemed to become a party to this 2005 FET Closing Agreement on the date such Underwriter becomes a member of Lloyd's.

WHEREAS, the determinations set forth above are hereby agreed to by Taxpayers and Lloyd's:

This 2005 FET Closing Agreement is final and conclusive except:


- (1) the matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of material fact;
- (2) it is subject to the Code sections that expressly provide that effect be given to their provisions (including any stated exception for Code section 7122) notwithstanding any other law or rule of law; and
- (3) if it relates to a tax period ending after the date of this agreement, it is subject to any change or modification of applicable statutes or tax conventions that apply to that tax period.

IN WITNESS WHEREOF, the above parties have subscribed their names to these presents, in triplicate.

Signed this 30th day of June 2005




Chairman of Lloyd's



Jeffrey H. Mace
Lloyd's United States Counsel, on behalf of, and
pursuant to, powers of attorney from the
Underwriters


Commissioner of Internal Revenue

By 

Industry Director, Financial Services
Large & Mid-Size Business Division

6/30/05

(Date)

By 

Associate Chief Counsel (International)

6/30/05

(Date)