

# MARKET BULLETIN

REF: Y4565

<b>Title</b>	Currency Conversion Service Operating Agreement - Draft
<b>Purpose</b>	Attached is a draft of the new Agreement for Managing Agents review and comment by 16 <sup>th</sup> March 2012.
<b>Type</b>	Event
<b>From</b>	Tony Cullum, Manager, Lloyd's Treasury & Investment Management. Finance, Risk Management & Operations email address: <a href="mailto:tony.cullum@lloyds.com">tony.cullum@lloyds.com</a> Direct telephone number: 0207 327 6130
<b>Date</b>	17 <sup>th</sup> February 2012
<b>Deadline</b>	Questions and Comments by Friday 16 <sup>th</sup> March 2012
<b>Related links</b>	None

The Lloyd's Currency Conversion Service (CCS) has operated since 1999, converting settlement amounts between sterling and other currencies, on behalf of syndicates, within Lloyd's standard settlement processes. The foreign exchange activity to facilitate the operation of the CCS is carried out by Lloyd's Treasury & Investment Management Department. All agents utilising the CCS are required to execute the Currency Conversion Service Operating Agreement. The Agreement describes the CCS and provides some protection to the Society for credit and market risk. The CCS Operates for the following currencies:

Currency	Abbreviation
Australian Dollar	AUD
Swiss Franc	CHF
Danish Krone	DKK
Euro	EUR
Hong Kong Dollar	HKD
Japanese Yen	JPY
Norwegian Krone	NOK
New Zealand Dollar	NZD
Swedish Krona	SEK
Singapore Dollar	SGD
South African Rand	ZAR

Agents are free to select whether and in which currencies, syndicates will participate in the CCS. However, in the event that settlement amounts previously settled via the CCS are adjusted, all such related adjustments will also be processed via the CCS. Consequently, nearly all syndicates could potentially utilise the CCS, in respect of all syndicates having open years of account. The only syndicates expected to be outside the CCS are those which operate solely in sterling, US or Canadian dollars or have all of the relevant currency bank accounts set up and funded.

A draft of the Agreement is attached to this bulletin. As previously, we are holding a one month consultation period and Agents are asked to review the draft Agreement and to forward questions or comments to Tony Cullum, using the email contact details below, by 16<sup>th</sup> March 2012. Following this consultation period Lloyd's will consider the comments received, and the finalised Agreement will be distributed in March for execution. All Managing Agents wishing to use the CCS will need to have a signed Agreement in place.

Unlike previous Agreements, the attached draft Agreement has been drafted on the basis that it remains in force going forward year after year unless terminated under the terms of the Agreement. Managing Agents will be required to list syndicates in Schedule 1 which are to participate in the CCS. Later changes to participants can be made by updating the Schedule.

Any queries concerning this bulletin should be addressed to Tony Cullum, by e-mail: [tony.cullum@lloyds.com](mailto:tony.cullum@lloyds.com), or by email to Stuart Simpson [Stuart.Simpson@lloyds.com](mailto:Stuart.Simpson@lloyds.com).

**CURRENCY CONVERSION SERVICE OPERATING AGREEMENT - DRAFT**

This Agreement is made the                    day of                    20 .

**BETWEEN:**

**THE SOCIETY** incorporated by Lloyd's Act 1871 by the name of Lloyd's of One Lime Street, London EC3M 7HA (**Lloyd's**); and

[Managing Agent] of (registered no. [                    ]) whose registered office address is at [                    ] on behalf of each of the Syndicates (as defined hereafter) (the **Agent**).

**WHEREAS**

- (A) Lloyd's has agreed to enter into foreign exchange transactions with Agents on behalf of insurance syndicates in order to enable Agents to purchase or sell amounts of currencies to settle insurance transactions and other syndicate obligations denominated in currencies other than sterling.
- (B) This Agreement sets out the terms that will apply to such foreign exchange transactions.

**IT IS HEREBY AGREED AS FOLLOWS:**1. Definitions

Unless otherwise required by the context, the following terms shall have the following meanings:

- 1.1 **Agent Receipt** means any payment to be made to the Agent under a CCS Transaction;
- 1.2 **Agent Payment** means any payment to be made by the Agent under a CCS Transaction;
- 1.3 **Business Day** means any day on which Lloyd's is providing the currency conversion services;
- 1.4 **Central Accounting System** means the service for the accounting, netting and settlement of insurance transactions and related transactions provided by Lloyd's;
- 1.5 **CCS Currency** means any currency for which Lloyd's is offering a sterling conversion service and in respect of which the Agent has requested Lloyd's in writing to provide such sterling conversion service;
- 1.6 **CCS Currency/Sterling Bid Rate** means the rate on any Business Day at which Lloyd's will purchase the relevant CCS Currency and sell sterling for delivery on the relevant Value Date;
- 1.7 **CCS Currency/ Sterling Offer Rate** means the rate on any Business Day at which Lloyd's will sell the relevant CCS Currency and purchase sterling for delivery on the

relevant Value Date;

- 1.8 **CCS Transaction** means any insurance transaction entered into by the Agent on behalf of a Syndicate, payment in respect of which is to be processed through the Lloyd's Central Accounting System and which payment is denominated in a CCS Currency;
- 1.9 **Close-Out Amount** has the meaning given to it in clause 5;
- 1.10 **Close-Out Date** means a day on which, pursuant to the provisions of clause 3, Lloyd's closes out and liquidates Currency Obligations;
- 1.11 **Currency Obligation** means any obligation of a Party to deliver a currency pursuant to an FX Transaction governed by this Agreement or pursuant to the application of clause 5;
- 1.12 **Effective Date** means the date of this Agreement;
- 1.13 **Event of Default** means the occurrence of any of the following:
- (a) the Agent defaults in any payment to Lloyd's with respect to any sum when due under this Agreement and such failure shall continue for two (2) Business Days;
  - (b) any Insolvency Event occurs in respect of the Agent or any Syndicate Member;
  - (c) Lloyd's believes (acting reasonably) that either (a) or (b) above may occur;
  - (d) any representation or warranty made or deemed made by the Agent pursuant to this Agreement shall prove to have been false or misleading;
- 1.14 **FX Transaction** means a foreign exchange transaction entered into pursuant to clause 2.3 or 2.4;
- 1.15 **Insolvency Event** means:
- (a) in relation to any individual or partnership, the making of a receiving order in bankruptcy against such individual 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 bankrupt or adjudicated or declared insolvent by the due process of law of any country;
  - (b) in relation to any body corporate, its making or proposing any composition with its creditors or otherwise acknowledging its insolvency, a proposal being made in respect of it under section 2 of the Insolvency Act 1986, 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, an administration order being made in respect of it under section 9 of the Insolvency Act 1986, a receiver, trustee or analogous officer being appointed

in respect of the whole or any material part 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; and

- (c) in relation to any partnership, any event occurring which is contemplated and governed by the Insolvent Partnerships Order 1994 and which is in Lloyd's opinion analogous to any of the events set out at paragraph (b) above in relation to a body corporate;

1.16 **Parties** means the parties to this Agreement;

1.17 **Purchase Date** means the date on which the Parties enter into a FX Transaction pursuant to clause 2;

1.18 **Sterling Bid Equivalent Amount** means the amount of sterling which is equivalent to any relevant CCS Currency amount, determined by calculating the amount of sterling which could be sold by the Agent in exchange for the relevant CCS Currency amount at the relevant CCS Currency/Sterling Bid Rate, both such amounts being deliverable on the relevant Value Date;

1.19 **Sterling Offer Equivalent Amount** means the amount of sterling which is equivalent to any relevant CCS Currency amount, determined by calculating the amount of sterling which could be purchased by the Agent with the relevant CCS Currency amount at the relevant CCS Currency/Sterling Offer Rate, both such amounts being deliverable on the relevant Value Date;

1.20 **Syndicates** means the insurance syndicates specified in Schedule 1 of this Agreement and subject to clause 2.1, **Syndicate** means any one of them;

1.21 **Syndicate Members** means, in relation to any FX Transaction entered into by the Agent on behalf of a particular Syndicate and referable to a particular year of account, all the members of the relevant Syndicate in respect of that year of account;

1.22 **Value Date** means, with respect to any FX Transaction, the day on which the corresponding Agent Payment or Agent Receipt is due to be paid into the Central Accounting System.

## 2. FX Transactions

### Scope and Nature of this Agreement

**2.1** Unless otherwise agreed in writing by the Parties, each FX Transaction entered into between the Parties on or after the Effective Date shall be governed by this Agreement. This Agreement shall take effect and be construed as if it were a series of separate agreements, on identical terms, entered into between Lloyd's and the Agent, acting as agent for one of the Syndicates, there being one such agreement for each of the Syndicates. However, any Event of Default falling within paragraph (a) of the definition of that term which occurs in relation to one Syndicate shall entitle Lloyd's to

terminate all the separate agreements with the Agent. References to the Agent shall, where the context so admits, be construed as references to the Agent in its capacity as agent of the Syndicate with which the particular FX Transaction or other circumstance is associated.

#### Single Agreement

- 2.2 Subject to clause 2.1, this Agreement, and the terms of each FX Transaction and all amendments to any of such items shall together form the agreement between the Parties (the Agreement) and shall together constitute a single agreement between the Parties. The Parties acknowledge that all FX Transactions governed by this Agreement are entered into in reliance upon the fact that all such items constitute a single agreement between the Parties.

#### Sterling Sale Transactions

- 2.3 The Parties acknowledge and agree that at the time at which an Agent Receipt is processed through Lloyd's Central Accounting System, the Parties shall, subject to clause 5, and whether or not such Agent Receipt is due or subsequently paid, enter into a foreign exchange transaction for the purchase by Lloyd's of an amount of such CCS Currency equal to the Agent Receipt and the sale by Lloyd's of the Sterling Offer Equivalent Amount of such Agent Receipt, the delivery of each Currency Obligation of the Parties to be made on the relevant Value Date.

#### Sterling Purchase Transactions

- 2.4 The Parties acknowledge and agree that at the time at which an Agent Payment is processed through Lloyd's Central Accounting System, the Parties shall subject to clause 5, and whether or not such Agent Payment is due or subsequently paid, enter into a foreign exchange transaction for the sale by Lloyd's of an amount of such CCS Currency equal to the Agent Payment and the purchase by Lloyd's of the Sterling Bid Equivalent Amount of such Agent Payment, the delivery of each Currency Obligation of the Parties to be made on the relevant Value Date.

### 3. Settlement and netting

#### Settlement

- 3.1 Each Party shall deliver to the other Party the amount of the currency to be delivered by it under each Currency Obligation on the Value Date for such Currency Obligation. No term of this Agreement is intended to, nor shall alter in any respect the obligations of the Agent to make payments under any CCS Transaction.
- 3.2 For so long as both Parties remain participants in the Central Accounting System the Parties hereby agree that the Currency Obligations of each of them will be netted and settled in accordance with the terms of the Central Accounting System.

General

3.3 The provisions of clauses 2.2 - 2.4 and 3.1 shall not apply if a Close-Out Date has occurred.

4. Representations, warranties and covenants

Representations and Warranties

4.1 The Agent represents and warrants to Lloyd's as of the date of this Agreement and as of the date of each FX Transaction that:

- (a) it has authority to enter into this Agreement and all FX Transactions, being authorised by its Syndicate Members to enter into financing transactions which may be expedient in connection with the underwriting business of the Syndicate on behalf of the Syndicate Members;
- (b) the person entering into this Agreement on its behalf has been duly authorised to do so;
- (c) this Agreement and the Currency Obligations created under this Agreement are legal, binding upon it and enforceable against it in accordance with their terms; and
- (d) no Event of Default has occurred and is continuing with respect to it.

Notification of Events of Default

4.2 The Agent covenants to Lloyd's that it will promptly notify Lloyd's of the occurrence of any Event of Default.

Mandatory Close Out

5.1 Subject to clause 5.3, immediately on the occurrence of an Event of Default or at any time thereafter, Lloyd's may notify the Agent that a Close-Out Date has occurred and all outstanding FX Transactions shall forthwith be settled on the Close-Out Date in the following manner:

- (a) Each amount payable by the Agent under each FX Transaction whose Value Date falls on or after the Close-Out Date shall be discounted to present day value by Lloyd's to take account of the period between the Close-Out Date and the Value Date of the FX Transaction by discounting at LIBOR for the relevant period on a daily basis and assuming a year of 365 days (in the case of sterling) or 360 days or such other period as market convention dictates (in the case of any CCS Currency) and if denominated in any CCS Currency, shall be converted into sterling at Lloyd's applicable spot rate of exchange at close of business on the Close-Out Date;
- (b) Each amount payable by Lloyd's under each FX Transaction whose Value Date falls on or after the Close-Out Date shall be discounted to present day value to take account of the period between the Close-Out Date and the Value Date of

the FX Transaction by discounting at LIBOR for the relevant period on a daily basis and assuming a year of 365 days (in the case of sterling) or 360 days or such other period as market convention dictates (in the case of any CCS Currency), shall be converted into sterling at Lloyd's applicable spot rate of exchange at close of business on the Close-Out Date;

- (c) Lloyd's shall determine the difference between the aggregate of each such discounted amount payable in sterling by the Agent under paragraph (a) and the aggregate of each such discounted amount payable in sterling by Lloyd's under paragraph (b) above;
  - (d) If the amount calculated in paragraph (a) exceeds that calculated in paragraph (b) the Agent shall be obliged to pay to Lloyd's the amount of the excess and if the amount calculated in paragraph (b) exceeds paragraph (a) Lloyd's shall be obliged to pay the Agent the amount of the excess.
- 5.2 The Parties agree that the amount payable under clause 5.1 shall constitute a reasonable pre-estimate of the loss which would otherwise be suffered as a result of an Event of Default and is not a penalty. No proof or evidence of actual loss shall be required in respect of such amount. Such amount represents the amount which will be payable as damages for loss of bargain and loss of protection against future risks and, except as otherwise provided in this Agreement, neither Party will be entitled to recover any additional damages as a consequence of such losses.
- 5.3 The provisions of clause 5.1 shall apply to an Event of Default which is an Insolvency Event in respect of a Syndicate Member only where that Syndicate Member's participation in respect of the year of account to which the FX Transaction relates represents 5% or more of the aggregate participations of all the Syndicate Members in respect of that year of account

## 6. Payments and Default Interest

- 6.1 The amount payable by one Party to the other Party pursuant to the provisions of clause 5 shall be paid by the close of business on the 2nd Business Day following such close-out and liquidation of the position. Payments made by the Agent to Lloyd's under this Agreement shall be made without set-off, deduction or counterclaim. To the extent permitted by applicable law, any amounts required to be paid under clause 5 and not paid on the due date therefore shall bear interest at 1% over National Westminster Bank's base rate from time to time in force.
- 6.2 The Agent hereby irrevocably directs that any payment to Lloyd's hereunder shall be made out of the Premiums Trust Funds of the Syndicate Members and confirms the authority of Lloyd's (including as operator of the Central Accounting System) to debit accounts holding such funds.

## 7. Service Charges

Lloyd's will not make a direct charge for the operation of the foreign exchange element of the currency conversion service. However, Lloyd's will seek to recover the costs of providing the service by varying CCS bid/offer rates relative to prevailing



exchange rates. Such variation of the CCS bid/offer rates will be up to 0.04% of prevailing foreign exchange rates quoted by such foreign exchange market participants as Lloyd's shall select in relation to direct costs incurred by Lloyd's in operating the foreign exchange element of the service, and up to a further 0.2% of the prevailing foreign exchange rates quoted by such foreign exchange market participants as Lloyd's shall select in relation to all other costs associated with operating the service. All amounts payable by it hereunder shall be treated for all purposes as an expense of the underwriting business of the Syndicate Members. The Agent shall pay all charges, interest and other amounts due or incurred by Lloyd's in respect of the services provided hereunder free from any deductions or withholdings, set-off or counterclaim, exclusive of Value Added Tax or other form of sales or supply tax, or duty from time to time in force. At the same time as payment of charges and expenses the Agent shall pay to and reimburse Lloyd's for any VAT or other form of sales or supply tax or duty levied thereon.

## 8. Indemnification and Liability

### Indemnification

- 8.1 The Agent shall indemnify and hold harmless Lloyd's, on an after-tax basis on demand, from and against any and all claims, penalties, damages, losses, liabilities, obligations, costs, taxes, expenses and disbursements (together **Indemnified Risks**) joint or several, of any kind or nature whatsoever (including, without limitation, fees and disbursements of counsel) that may be suffered, imposed upon, incurred by or asserted or awarded against Lloyd's in any way relating to, arising out of or in connection with this Agreement or the services provided hereunder, except to the extent such Indemnified Risks have resulted directly and primarily from the gross negligence or wilful misconduct of Lloyd's.
- 8.2 The Agent agrees that Lloyd's shall have no liability (whether direct or indirect, in contract, tort or otherwise) to it, its Syndicate Members or any of their respective shareholders or affiliates for or in connection with this Agreement, or otherwise in connection with the provision of the services hereunder except for direct (as opposed to indirect or consequential) damages to the extent such liability has resulted directly and primarily from Lloyd's gross negligence or wilful misconduct.
- 8.3 The Agent shall indemnify Lloyd's on demand if prevailing market rates move between any Purchase Date and any Value Date (inclusive) in respect of any FX Transaction and Lloyd's suffers any loss as a result which is reasonably attributable to its participation in that FX Transaction and which is in excess of the amounts which may be recovered under clause 7 within a reasonable time period (as determined by Lloyd's in its sole discretion). Without prejudice to the above, Lloyd's will enter into such foreign exchange transactions with market counterparties as it deems reasonable in its sole discretion to manage its aggregate foreign exchange exposure under this Agreement and other similar currency conversion service operating agreements entered into with other managing agents.
- 8.4 The Agent acknowledges and agrees that in providing the currency conversion service Lloyd's shall from time to time make use of systems and equipment owned, maintained, controlled and/or operated by third persons and the Agent irrevocably authorises the disclosure to such third persons and the transmission to and storage

within such systems and equipment of all financial and other information relating to the Agent or any of its Syndicate Members as required in the provision of the currency conversion service.

- 8.5 The Agent acknowledges and agrees that in providing the currency conversion service Lloyd's shall from time to time make use of, or rely on, information provided by Xchanging, and that Lloyd's shall not be responsible for the accuracy of (nor be under a duty to verify the accuracy of) any such information. The Agent further acknowledges that Lloyd's shall from time to time make use of, or rely on, information regarding currency exchange rates provided by third persons, which information Lloyd's reasonably believes to be accurate.

9. Records/Determinations

In the absence of manifest error, the records of Lloyd's relating to any FX Transaction shall constitute conclusive evidence with respect to such matter. Any determination or notification by Lloyd's concerning any rate or amount under any FX transaction or otherwise in connection with the services provided hereunder shall, in the absence of manifest error, be conclusive evidence as to that matter.

10. Notices

- 10.1 Any notice to be given by a Party under, or in connection with, this Agreement shall be in writing and signed by or on behalf of the Party giving it. It shall be served by sending it by email to the email addresses set out in clause 10.2 or delivering it by hand, or sending it by pre-paid recorded delivery or registered post, to the address set out in clause 10.2 and in each case marked for the attention of the person specified in clause 10.2 or such other person as may be notified in writing from time to time by the receiving Party to the sending Party. Any notice so served by hand, fax or post shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of email, at the time of receipt;
- (c) in the case of prepaid recorded delivery or registered post, at 10am on the second Business Day following the date of posting

provided that in each case where delivery by hand or by email occurs after 6pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9am on the next following Business Day.

- 10.2 The addresses and email addresses of the Parties for the purpose of clause 10.1 are as follows:

**Lloyd's**

Address: One Lime Street, London EC3M 7HA

For the attention of: Tony Cullum, Manager, Lloyd's Treasury & Investment Management

Email: [tony.cullum@lloyds.com](mailto:tony.cullum@lloyds.com); and cc: [treasuryoperations@lloyds.com](mailto:treasuryoperations@lloyds.com)

**[The Agent]**

Address:

For the attention of:

Email:

11. Scope of Role

11.1 **Nature of Service:** Lloyd's will have no liability or responsibility, except as expressly provided in this Agreement, for any loss arising from changes in exchange rates or for the good faith or acts and/or omissions, creditworthiness, performance or standing of any person, any clearance system or clearing agent or any other person whomsoever and the Agent has entered into this Agreement in reliance only upon its own judgement.

11.2 **Force Majeure:** Lloyd's shall have no responsibility or liability for or regarding any non-performance, improper performance, suspension of performance or delay in performance, of Lloyd's obligations under or in connection with the currency conversion service by reason of any circumstances beyond Lloyd's reasonable control.

11.3 **Principal:** Lloyd's is acting as a principal in entering into all FX Transactions hereunder.

12. Termination

12.1 Either Party hereto may terminate this Agreement at any time by seven days' prior written notice to the other Party specifying the relevant Syndicate or Syndicates in respect of which the notice of termination shall apply, provided that such termination shall take effect from the first Business Day of the following calendar month. Any such termination shall not affect any outstanding Currency Obligations.

12.2 Termination of this Agreement shall not release a Party from any other liability which at the time of termination is already in existence nor affect in any way clauses 6, 8, 9, 10, 12, 13 and 14 which shall survive such termination.

12.3 This Agreement shall continue in full force and effect until terminated in accordance with clause 12.1.

13. Miscellaneous

Amendment

13.1 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of the Parties.

Assignment or transfer

13.2 Neither Party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party.

Counterparts

13.3 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

14. Law and Jurisdiction

14.1 This Agreement shall be governed by, and construed in accordance with, English law.

14.2 The English courts are to have jurisdiction to settle any disputes which may arise in connection with this Agreement and the Parties hereby irrevocably submit to the jurisdiction of the English courts.

**THE SOCIETY** incorporated by Lloyd's **[Name of Managing Agent]**  
Act 1871 by the name of Lloyd's

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE 1**

**Syndicates**


**[Name of Managing Agent]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_