

FROM: Head of Capacity Markets, Regulatory Division
LOCATION: 58/NW1
EXTENSION: 5897
DATE: 8 July 1999
REFERENCE: 065/99
SUBJECT: **MANDATORY OFFERS FOR CAPACITY :
AMENDMENTS TO THE MANDATORY OFFER
BYELAW**

SUBJECT AREA(S): Mandatory offers, pre-emptions and de-emptions
ATTACHMENTS: Byelaw amendments
ACTION POINTS: **All recipients to note the byelaw amendments, which
have effect from 16 June 1999**
DEADLINE: None

Introduction

The Council decided on 7 July 1999 to make amendments to the Mandatory Offer Byelaw (No. 5 of 1999). The principal amendment is intended to ensure, as far as possible, that amounts payable or receivable under a mandatory offer are not affected by increases or reductions in capacity as a result of pre-emptions or de-emptions. Two typographical amendments to the Byelaw are also being made.

Background

The Mandatory Offer Byelaw requires an offer to be made when the capacity holding of a single member and its associates, as defined in the Byelaw, reaches or exceeds 75% of the aggregate capacity of the syndicate. Once this threshold is reached or passed, an offer must be made, at not less than a specified minimum price, to all those who are entitled to be on the syndicate for the following year at the time the offer is made, in respect of their then capacity entitlement for the following year of account, as increased or reduced by any pre-emption or de-emption on the syndicate that has been notified to members. This has the effect of increasing (in the case of a pre-emption) or decreasing (in the case of a de-emption) the minimum amount payable by an offeror to those entitled to receive the offer.

The Regulatory Division considered that the minimum amount payable by an offeror or receivable by each offeree under a mandatory offer should not be affected by subsequent increases or reductions in capacity as a result of pre-emptions and de-emptions. A regulatory bulletin was therefore published on 16 June 1999 (reference 059/99) stating that it was the Division's intention to seek Council's approval in July 1999 of an amendment to the Byelaw to correct the existing potential anomaly.

Amendment

The principal amendment to the Byelaw will ensure, as far as possible, that where a pre-emption or de-emption occurs in relevant circumstances, the minimum price payable by the offeror, namely the highest price paid by the offeror or any of its associates in the twelve months preceding the making of the offer and while the offer remains open for acceptance, can be adjusted so that the aggregate consideration payable under the offer by the offeror and receivable by each offeree remain the same. Thus, for example, where there is a de-emption of 50%, the minimum offer price for the reduced capacity could be expected to be increased by 100%, while a pre-emption of 100% could be expected to halve the minimum offer price.

The amendment should help to eliminate the conflicts of interest that may arise when agents propose capacity increases and reductions at a time when they or their aligned corporate members or other associates are under an obligation to make an offer. Above all, it should secure the successful operation of one of the fundamental principles behind the mandatory offer rules by ensuring that the minimum price offered to the minority reflects as far as possible any premium the offeror may have paid to other participants for the acquisition of "control" of the syndicate.

Since the existing rules (set out in Paragraph 2 of Schedule 2 to the Byelaw) already enable an offeror to ask Council to agree to a reduction in the minimum offer price, the amendment gives Council the discretion, on its own volition or on application by a potential offeree, to require an increase to be made to the minimum offer price where there has been an overall reduction in the allocated capacity of a syndicate during the relevant period, as defined by the Byelaw.

Effective Date

The amendment will have effect with regard to any pre-emptions or de-emptions that occur on or after 16 June 1999.

Conclusion

This bulletin has been sent to all underwriting agents, corporate members, Lloyd's advisers, recognised accountants and market associations, including the ALM. Any queries on its contents should be referred to Richard Miller on extension 5897.

Richard Miller
Head of Capacity Markets
Regulatory Division

MANDATORY OFFER (AMENDMENT) BYELAW

(No. 10 of 1999)

(Made on 7th July 1999)

The Council of Lloyd's in exercise of its powers under section 6(2) of Lloyd's Act 1982 by special resolution hereby makes the following byelaw.

1. Amendment of Mandatory Offer Byelaw

The Mandatory Offer Byelaw (No. 5 of 1999) is hereby amended -

- (a) in paragraph 6(3), by deleting "paragraph 1(1)(c) of the Schedule" and substituting "paragraph 1(1)(c) of Schedule 2";
- (b) in the definition of "potential offeror" in Schedule 1, by deleting "paragraph 2(1) of 2(2)" and substituting "paragraph 2(1) or 2(2)";
- (c) in paragraph 2(1) of Schedule 2, by deleting "sub-paragraph (2)" and substituting "sub-paragraphs (2) and (2A)";
- (d) by inserting after sub-paragraph 2(2) of Schedule 2 the following new sub-paragraphs -
 - "(2A) Subject to sub-paragraph (2B), if during the relevant period the managing agent increases or reduces the syndicate allocated capacity of the syndicate for the succeeding year of account, the Council may, if it thinks fit, on its own volition or on the written application by or on behalf of any of the persons referred to in sub-paragraph 1(1)(c) of Schedule 2, require that the consideration should be of such higher value than that required by sub-paragraph (1) or agreed to under sub-paragraph (2) as the Council may specify.
 - (2B) Sub-paragraph (2A) shall not apply to any increase or reduction in the syndicate allocated capacity of the syndicate for the succeeding year of account before 16th June 1999."; and
- (e) in sub-paragraph 2(3) of Schedule 2, be deleting "sub-paragraph (1)" and substituting "sub-paragraphs (1) and (2A)".

2. Commencement

This byelaw shall come into force on 7th July 1999.

MANDATORY OFFER (AMENDMENT) BYELAW

(No. 10 of 1999)

EXPLANATORY NOTE

(This note is not part of the byelaw)

This byelaw amends the Mandatory Offer Byelaw (No. 5 of 1999).

Paragraph 1(d) effectively entitles the Council to require an offeror to pay a higher price per £ of capacity under the mandatory offer than the offeror would otherwise have to pay where there has been an overall reduction in the syndicate allocated capacity of the syndicate.

Ordinarily, any price increase required by Council would be inversely proportional to the reduction in the syndicate allocated capacity. Thus, for example, where there is a de-emption of 50%, the minimum offer price for the reduced capacity could be expected to increase by 100%.

The Council may not, however, exercise this power in respect of increases or reductions in the syndicate allocated capacity before 16th June 1999.