

FROM: Head, Worldwide Compliance
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SUBJECT: UNITED STATES PRIVACY REGULATIONS
SUBJECT AREA(S): US DIRECT BUSINESS COVERING INDIVIDUALS
ACTION POINTS: **Managing Agents to ensure compliance**
DEADLINE: **Implementation for 1 July 2001**

Most US states are now adopting new privacy rules, based on the “NAIC Privacy of Consumer Financial and Health Information Regulation” that impose requirements on brokers and insurers, effective from 1 July, regarding the sharing of personal data and personal health information. This bulletin advises on the required compliance procedures.

The new regulations apply to brokers and insurers quoting or providing insurance to individuals in the US for personal, family, health or household risks, including circumstances where coverage is provided through associations and group schemes, (referred to hereafter as “US personal lines business” although such risks can be produced on a “commercial lines ” basis).

The regulations apply to direct business only and not reinsurance business. Whilst the regulations cover US licensed and surplus lines business, in view of the regulatory attention being given to this matter, it is recommended that managing agents apply the compliance procedures for all US personal lines business, including risks produced as “exempt” or “unregulated” business.

A very brief summary of the new regulations is given below. Appendix 1 provides full details including guidance on mass-marketed schemes.

The new regulations permit insurers and brokers to share personal data for certain recognised purposes, subject to compliance with the necessary notice procedures. Broadly, these recognised purposes allow the sharing of data where this is genuinely necessary to effect and service an insurance contract, to enable fraud prevention, to enable dispute resolution, or to meet other legal requirements and demands.

By 1 July 2001, insurers are required to issue notices to their US personal lines customers (i.e. all existing and new policy holders) stating whether or not they share personal data with nonaffiliated third parties, other than for the recognised purposes outlined in the regulations. Appendix 1 provides more details of the recommended notice procedures, together with a suggested wording which will have to be agreed to by all underwriters on the risk if there is no sharing of personal data (LSW 1135). This wording must be included in all relevant Lloyd's policies, certificates issued by Lloyd's coverholders, and covernotes issued by Lloyd's brokers. Special circumstances apply to the issuance of notices to existing policyholders in Illinois, Kentucky and the USVI and these are also covered in Appendix 1.

Where a party involved in a quotation or placement does share personal data with a nonaffiliated third party (and this sharing of information is not for one of the purposes recognised and exempted by the regulations), then different notice procedures are required. In such circumstances, the party sharing data outside of recognised exceptions must provide the "consumer" (ie "proposer" at the quotation stage) as well as the "customer" (i.e. all existing and new policyholders) with a detailed statement on their organisation's policy on the sharing of personal data. This must be provided a minimum of thirty days prior to the sharing of such data. The notice must permit consumers to "opt-out" by notifying insurers that their personal data must not be shared, and they cannot be penalised or prejudiced for their decision. A consumer's affirmative consent must be obtained prior to the sharing of any health data except for the purposes recognised in the regulations.

Where personal data is shared outside of the scope of the permitted exceptions, managing agents are strongly advised to take legal advice. They must also ensure that all co-subscribing insurers on any US direct placements covering individuals are advised of their data sharing policy.

Managing agent's policy on data privacy

Managing agents, pursuant to the UK Data Protection Act registration, may already have implemented a privacy policy and advised it to all relevant staff. Otherwise, when considering their privacy policy, a managing agent may wish to note that under §51 of the Underwriting Agents Byelaw (No. 4 of 1984) an Underwriting Agent's business "shall consist only of the conduct of its business as such at Lloyd's and any other business which the Council considers to be directly ancillary thereto...". Accordingly, normal best practice would be for a managing agent not to permit data sharing beyond that strictly necessary for conducting insurance on behalf of syndicate members.

Any questions regarding this bulletin should be addressed to Lloyd's Market Services Centre on Lloyd's ext 6677 or at box 190b, or Bruce Tompson: Senior Manager, Worldwide Compliance on ext 5603. This bulletin has been sent to all Active Underwriters, Compliance Officers, and to accredited and provisionally accredited Lloyd's Brokers.

Head, Worldwide Compliance

BACKGROUND TO THE NAIC MODEL PRIVACY REGULATION

Most US states are adopting new privacy rules that are applicable to certain US business written at Lloyd's. The rules are prompted by the Federal Gramm-Leach-Bliley Act ("GLB"), which was enacted in 1999. Many of the new state insurance regulations will be based on the NAIC Privacy of Consumer Financial and Health Information Regulation ("regulations"). This advice is based on the model regulation. Additional advice will be published in any state that deviates from the model and imposes more onerous requirements on Lloyd's underwriters.

WHAT ARE THE REGULATIONS CONCERNED WITH?

The regulations are concerned with the sharing of non-public personal financial and health information with non-affiliated third parties.

WHAT CLASSES OF BUSINESS ARE THE REGULATIONS APPLICABLE TO?

The regulations apply to licensed and to surplus lines business. It is arguable that the regulations do not apply to exempt / non-regulated business, however, in view of the serious regulatory attention focussed on this issue, it is recommended that Managing Agents safeguard their compliance by treating the regulations as applicable to all direct US business – certainly if their policy is to share data with non-affiliated third parties.

The regulations do not apply to reinsurance.

WHAT LINES OF DIRECT BUSINESS DO THE REGULATIONS IMPACT?

The regulations apply to institutions that sell products for "personal, family or household purposes". In the insurance context, this means that they generally affect only personal lines business, not commercial lines. However, some commercial lines business may be affected, especially in the group context where individual certificate holders may be entitled to protection in some circumstances. Examples of affected coverages include (1) individual or group health; (2) high value residential property; (3) yacht; (4) fine art; (5) private aviation; and (6) K&R coverages. Underwriters writing and selling such coverages must ensure that they comply with the new regulations. (Please note that these are only examples and do not constitute an exhaustive list.)

WHEN DO THE REGULATIONS COME INTO EFFECT?

GLB requires all states to have implemented privacy provisions by 1 July 2001.

IS THERE ANY RETROSPECTIVE IMPLICATION?

The model regulation places an obligation on insurers to provide notice of their privacy policy to existing policyholders, by 1 July 2001. This applies whether the insurer's policy is one of data sharing or not. Any managing agent who does share data with non-affiliated third parties must take immediate steps to ensure compliance. Where there is no sharing by any managing agent for the Lloyd's underwriters on the risk, the Lloyd's Privacy Policy Statement (LSW 1135) which is described in more detail below, may be issued.

With regard to the licensed territories, Kentucky has a similar requirement to provide existing policyholders with notice of Lloyd's underwriter's privacy policy. Identification of existing policyholders and despatch of all notices will be arranged on behalf of Lloyd's underwriters by the Kentucky Attorney in Fact. Notices do not need to be provided to existing policyholders for Illinois and the USVI.

WHAT SITUATIONS DO THE REGULATIONS APPLY TO?

The regulations address two scenarios:

- 1) Where the managing agent(s) for the Lloyd's underwriters involved in a quotation or placement do not share nonpublic personal data with nonaffiliated third parties except within certain recognised exceptions, which include (but are not limited to):
 - sharing data necessary for effecting and servicing an insurance contract, such as: to underwrite insurance; to maintain accounts; to administer or service benefits or claims; to process premium payments; to provide confirmation statements to customers; or for reinsurance or stop loss insurance purposes, or
 - sharing data in respect of matters, such as: fraud prevention; dispute resolution, and to meet other legal requirements or demands.
- 2) Where any managing agent(s) for the Lloyd's underwriters involved in a quotation or placement do share nonpublic personal data with nonaffiliated third parties.

WHAT IS THE IMPACT OF THE REGULATIONS ON LLOYD'S UNDERWRITERS?

1. Where there is no sharing of data by any managing agent for Lloyd's underwriters on risk:

Provided that the managing agent(s) for the Lloyd's underwriters involved in a quotation or placement do not share nonpublic personal data with nonaffiliated third parties, except within the recognised exceptions, the privacy regulations provide that:

- 1.1 Pre-contractual notice:

As long as there is no sharing of data by any Lloyd's underwriter involved, there is no obligation to provide a notice of the Lloyd's underwriters' privacy policy at the time the "consumer" (ie, the proposer at the quotation stage) approaches for a quote.

- 1.2 Contractual notice:

Even when there is no sharing of data by any Lloyd's underwriter involved, all the Lloyd's underwriters subscribing to the policy must provide a privacy policy statement to the insured at the time the "customer relationship") is established (i.e. to all existing and new policyholders.

In order to meet the notice requirements it is recommended that the following Lloyd's Privacy Policy Statement (LSW 1135) be incorporated as a clause on the slip under the general conditions and in the insuring document. The Lloyd's Privacy Policy Statement (LSW 1135) may only be used when all the managing agents for all the subscribing Lloyd's underwriters have a privacy policy that is in accordance with its provisions.

The Lloyd's Privacy Policy Statement (LSW 1135) must be provided to the insured as follows:

LLOYD'S PRIVACY POLICY STATEMENT

UNDERWRITERS AT LLOYD'S, LONDON

We, the Certain Underwriters at Lloyd's, London that have underwritten this insurance want you to understand how we protect the confidentiality of nonpublic personal information we collect about you.

INFORMATION WE COLLECT

We collect nonpublic personal information about you from the following sources:

- a) Information we receive from you on applications or other forms;
- b) Information about your transactions with our affiliates, others or us; and
- c) Information we receive from a consumer-reporting agency.

INFORMATION WE DISCLOSE

We do not disclose any nonpublic personal information about you to anyone except as is necessary in order to provide our products or services to you or otherwise as we are required or permitted by law (e.g., a subpoena, fraud investigation, regulatory reporting etc.)

CONFIDENTIALITY AND SECURITY

We restrict access to nonpublic personal information about you to our employees, our affiliates' employees or others who need to know that information to service your account. We maintain physical, electronic, and procedural safeguards to protect your nonpublic personal information.

CONTACTING US

If you have any questions about this privacy statement or would like to learn more about how we protect your privacy, please contact the agent/broker who handled this insurance.

The privacy policy statement must be provided in a timely manner to the insured. It is therefore probable that inclusion of the Lloyd's Privacy Policy Statement (LSW 1135) in a Lloyd's policy issued by LPSO, will not alone be timely to meet the standard that the notice be provided at the time the customer relationship is established. The Lloyd's Privacy Policy Statement (LSW1135 in addition, must be incorporated in the broker's covernote issued to the insured. ***Although the Lloyd's Privacy Policy Statement may be delivered by an intermediary, the subscribing underwriters carry ultimate responsibility for ensuring that the notice is provided to the insured.***

The new regulations require that a privacy policy statement must be provided to the insured in a manner that makes it clear to which insurers the privacy policy applies.

The Lloyd's Privacy Policy Statement (LSW 1135) must therefore be incorporated as a clause in the Lloyd's policy and in any Lloyd's certificate or other document evidencing insurance issued by a Lloyd's coverholder under a Lloyd's binding authority or facility.

Each insuring document must list in full the Lloyd's syndicates subscribing to the insurance. Lloyd's brokers are reminded of the requirements contained in earlier market bulletins that Lloyd's broker's covernotes and other insuring documentation (certificates and policies) must list in full the Lloyd's syndicates participating on the risk. Lloyd's brokers' covernotes must continue to list in full the Lloyd's syndicates participating on the risk (as advised in earlier market bulletins).

1.3 Contractual notice – steps to be taken to ensure timely delivery of notice to the insured

Open market placements: For open market business, the Lloyd's Privacy Policy Statement (LSW 1135) must be included in all Lloyd's policies providing coverage to individuals purchasing coverage for personal, family, or household use and incepting on or after 1 July 2001.

Each underwriter should ensure that they can abide by the Lloyd's Privacy Policy Statement before subscribing to the insurance. It is important that the underwriters also ensure that the Lloyd's Privacy Policy Statement (LSW 1135) is included as a clause on the slip under the general conditions and the broker is asked to communicate this condition immediately to the insured in a covernote. The covernote must continue to list the syndicates of Lloyd's underwriters subscribing to the insurance.

Managing agents are advised that to safeguard their compliance they may wish to include a requirement in their Terms of Business Agreements with Lloyd's brokers, that instructs the Lloyd's broker and others acting on their behalf to include the Lloyd's Privacy Policy Statement, together with details of the subscribing Lloyd's syndicates, on their covernotes evidencing any US direct insurance providing coverage to individuals.

Binding authority placements: On binding authority business, the Lloyd's Privacy Policy Statement (LSW 1135) should be included in the certificate issued by the coverholder, which must also list the subscribing Lloyd's syndicates.

The subscribing Lloyd's underwriters are therefore advised to include provisions for the LSW 1135 clause and full listing of subscribing syndicates, in the binding authority contract wording.

1.4 Annual renewal requirements

In addition to providing the initial privacy policy statements at the time the customer relationship is established, a repeat notification must be provided to insureds at least annually during the continuation of the relationship. Managing agents and Lloyd's brokers should consider putting systems in place to ensure annual notices are provided.

1.5 Mass marketed programmes and group schemes

Where cover is provided under these arrangements, if there is no sharing of data, the Lloyd's Privacy Policy Statement (LSW 1135) need only be provided to the master policyholder.

1.6 Short form surplus lines compliance privacy notice

Managing agents should be aware that the new regulations also contain provisions for a single notice to be provided to insureds on behalf of all subscribing insurers and producing brokers involved in a surplus lines placement. This notice could also be used for exempt or unregulated business.

However, in order to use such a notice, Lloyd's underwriters need to be reasonably assured that **all co-insurers and brokers** involved in the placement do not share personal data, other than for the recognised purposes.

The principal benefit of this provision is that it can avoid the need to provide a specific listing of syndicates on the insuring documentation and broker covernotes.

The short form privacy notice, reference LSW 1136, must be provided to the insured in 16 point type as follows:

PRIVACY NOTICE

“Neither the U.S. brokers that handled this insurance nor the insurers that have underwritten this insurance will disclose nonpublic personal information concerning the buyer to nonaffiliates of the brokers or insurers except as permitted by law.”

2. Where there is sharing of data by any involved managing agent for Lloyd's underwriters

Any Managing agent which does share personal data with nonaffiliated third parties except within the recognised exceptions necessary for the conduct and servicing of insurance, will trigger complex additional regulations – summarised below – for themselves and co-subscribing syndicates. This will include providing a document stating their organisation's policy on privacy of information to the insured.

Managing agents whose policy is to share data ***must therefore ensure that co-insurers on all US direct business are aware of their data sharing policy.*** They are also advised to take specific US legal advice.

2.1 Sharing of financial information

2.1.1 Pre-contractual notice:

If there is sharing of nonpublic financial data by any managing agent for any Lloyd's underwriter involved, then at the outset of a relationship, the consumer must be provided with a clear and conspicuous copy of the statement of policy on sharing private data.. The statement of privacy policy must include provisions to allow the consumer to opt-out of the disclosure of the sharing of his/her financial data to non-affiliated parties.

2.1.2 Contractual notice:

Open market placements: For open market business where the managing agent for any subscribing Lloyd's underwriter involved in a placement shares nonpublic personal information with nonaffiliated third parties, then the underwriters should communicate their privacy policy to the broker at the time the slip is presented. The underwriter must require the broker to communicate such to the insured promptly, certainly no later than when the Lloyd's broker issues a covernote.

Binding authority placements: On binding authority business, the statement of privacy policy must be included with each certificate issued by the coverholder. Lloyd's underwriters are advised to include appropriate provisions within the binding authority/contract wording.

2.1.3 Required content of Privacy Policy Statement

A privacy policy statement is required to disclose the types of nonpublic personal financial information it collects and discloses, to whom it gives this information, and its policy with respect to protecting the confidentiality and security of the information. The privacy policy statement must also include a clear explanation of how individuals can exercise their right to opt-out of the disclosure of information (other than per the recognised exemptions) to nonaffiliated parties.

Managing agents for Lloyd's underwriters needing to provide such statements are advised to take appropriate US legal advice as to the content of the statement.

2.1.4 Delivery of Privacy Policy Statements

The obligation is for privacy policy statements to be delivered in such a way that consumers can be "reasonably expected to receive actual notice in writing or, if the consumer agrees, electronically". Delivery may be provided before insuring documentation is delivered. Oral notice is inadequate. The privacy policy statement must be delivered to the insured at least thirty days before information is shared with nonaffiliated parties. As noted above, it is recommended that brokers provide the statement on covernotes evidencing affected US coverages.

2.1.5 Annual renewal requirements

In addition to providing an initial privacy policy statement at the time the customer relationship is established, a repeat notification must be provided to insureds at least annually during the continuation of the relationship. Managing agents and Lloyd's brokers should consider putting systems in place to ensure annual notices are provided.

2.1.6 Opt-out by insureds

An insured has the ability at any time to "opt-out" and no further data sharing may take place after that date. This right to opt-out continues indefinitely after the contract is concluded.

2.1.7 Non-discrimination

The regulations prohibit discrimination against consumers based on their exercise of their privacy rights. This expressly extends to refusing to provide coverage to a consumer who opts out of allowing data sharing.

2.2 Sharing of health information

The regulations regarding sharing of health data generally echo those for nonpublic personal financial data at 2.1 (above). The most important difference is that data can only be shared once consumers have expressly opted-in to allow sharing (subject to recognised exceptions). Underwriters or brokers who share health information other than under the exceptions even amongst affiliated entities, are advised to take appropriate US legal advice as to the content of the statement

2.3 Mass marketed programmes and group schemes

Where cover is provided under these arrangements, if there is sharing of data, then the requirements described in Section 2.1 (above) apply in respect of each individual member of the scheme, and notice must be provided directly to each insured individual and not just the master policyholder.