

# MARKET BULLETIN

**From** Senior Tax Manager Taxation (extn 6839)

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**Date** 3 November 2005

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**Reference** Y3662

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**Subject** US Tax: Corporate Members' Eligibility for Treaty Benefits

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**Subject areas** US Tax: Corporate Members other than Scottish Limited Partnerships -  
Documentation Required

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**Attachments** Appendices 1-5

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**Action points** MSU will issue documentation to corporate members to complete and return.

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**Deadlines** 15 December 2005

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## 1. Purpose

- 1.1 The US tax treatment of Lloyd's members depends on their residence and their eligibility for benefits under tax treaties. This bulletin concerns corporate members other than Scottish Limited Partnerships and all references in it to corporate members should be read accordingly. Its purpose is to set out:
- a) the benefits available under the US-UK double taxation treaty and how they affect Lloyd's corporate members; and
  - b) the steps a corporate member has to take to demonstrate its eligibility for benefits under the US-UK Treaty or to indicate which other tax treaty, if any, may apply.
- 1.2 Lloyd's MSU is writing to each corporate member enclosing a copy of this bulletin and asking the corporate member to complete the US tax form W-8BEN (including the attachment)<sup>1</sup> evidencing its treaty status. It is important that members return these by the deadline given above to the address given by MSU. If no response is received by MSU, US tax returns will have to be filed on the basis that the member

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<sup>1</sup> US resident members need to complete and return a W9 instead of a W-8BEN

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concerned is not eligible for any treaty benefits, which may well increase the amount of US tax that it has to pay.

- 1.3 All corporate members who are participating on an open syndicate during 2005 will need to return the relevant documentation. The documentation will need to be kept up to date and amended documentation should be submitted to MSU if any details change.
- 1.4 A separate bulletin is being issued for Scottish Limited Partnerships, and MSU will carry out a separate documentation exercise for these. So far as individual members are concerned, this bulletin is for information only as MSU has recently performed a documentation exercise which collected the data required for US tax purposes.
- 1.5 This Market Bulletin is meant only as a guideline and therefore members may need to take external advice where appropriate.

## **2 Background**

- 2.1 A new US-UK double tax treaty (the US-UK Treaty) was ratified in March 2003 and is effective for all Lloyd's members from 1 January 2005. Article 23 of the US-UK Treaty introduced a complicated set of Limitation on Benefits (LOB) rules that a UK resident (other than an individual) must satisfy in order to establish eligibility for benefits under the treaty.
- 2.2 On 30 June 2005, new US Closing Agreements were entered into between Lloyd's, Lloyd's members and the IRS. These set out new tax arrangements with effect from 1 January 2005 that apply to all Lloyd's members regardless of residence for tax purposes, with respect to both US federal income tax and US federal excise tax. Among other things, the Closing Agreements contain a number of safe harbours that significantly reduce the complexity of the LOB provisions of the US-UK Treaty for Lloyd's members.
- 2.3 As detailed in Market Bulletin Y3538 dated 4 July 2005, the application of the Closing Agreements depends on the particular circumstances of the member concerned and further details are provided below.

## **3. Tax Treaty Benefits**

- 3.1 Lloyd's members will, where possible, wish to prove eligibility under a US tax treaty in order to obtain four specific treaty benefits. These are the permanent establishment (PE) provision; the rate of withholding tax; the rate of branch profits tax; and the Federal Excise Tax (FET) exemption. They are described in more detail in Appendix 1.
- 3.2 Perhaps the most significant of these treaty benefits for Lloyd's members is the restriction of the US taxing rights to profits which are attributable to a PE in the US. This is this treaty provision which, under the terms of the new Closing Agreement, allows a reduction in the US PE tax base to 70% of the profit from Illinois and Kentucky licensed business and 35% of the profits from US binding authority business (excluding Illinois and Kentucky licensed business).

- 3.3 UK resident members who can establish eligibility to the UK treaty benefits are subject to US tax on this reduced tax base, as well as receiving other benefits.
- 3.4 US resident corporate members need not establish eligibility under any tax treaty, as they are subject to tax on their worldwide profits under US Federal Tax law.
- 3.5 Members who are resident neither in the US nor in the UK can qualify for treaty benefits if they can demonstrate eligibility under a treaty between the US and their country of residence. The benefits depend on the treaty in question. A list of current US treaties is at Appendix 3, showing which treaties restrict US taxing rights to profits attributable to a PE, and which include some form of FET exemption.
- 3.6 Any members who are not US resident and cannot prove eligibility under a treaty with the US will not get treaty benefits. Among other things, they will continue to be subject to US tax on a tax base which is largely unchanged from before 2005.

#### **4. Steps to Take to Show Tax Residence and Treaty Status**

The following categories member should take the following actions.

##### **4.1 *Individual Members***

Individual members should note that, although they have to establish their residence for tax purposes in order to determine whether they are eligible for the benefits of a US tax treaty, they need take no action in relation to this bulletin as MSU has already carried out a separate exercise to obtain the applicable documentation.

##### **4.2 *Scottish Limited Partnerships***

A separate bulletin will be issued shortly detailing the steps that Scottish Limited Partnerships have to take to establish their tax treaty status. Therefore they need not take any action as a result of this bulletin.

##### **4.3 *Corporate Members (other than SLPs)***

The action to be taken by other corporate members depends on their residence for tax purposes, i.e. whether they are UK resident; resident in another territory other than the US; or US resident. This bulletin considers each in turn below.

###### **4.3.1 UK Resident Corporate Members**

Under the US-UK Treaty it is no longer sufficient for corporate members merely to be UK resident in order to obtain the benefits of the Treaty. Instead corporate members who are resident in the UK will need to determine their eligibility under the Treaty by applying the tests in the Limitation on Benefits (LOB) Article.

Appendix 2 to this Bulletin has been written to assist UK resident corporate members in applying the LOB tests and completing the W-8BEN and attachment. It describes various LOB tests in the Treaty in more detail, taking into account the safe harbours contained within the Closing Agreements, in the order in which it may be useful for Lloyd's members to consider them. The list is not exhaustive and includes only those tests which are generally applicable to Lloyd's members. It also provides guidance on how to complete the W-8BEN, specific to the LOB test passed. Because of the nature of this bulletin the explanations given apply only to members of Lloyd's, in relation to their Lloyd's business, and members may need to take external advice in relation to the application of these tests.

On receipt of the documentation request from MSU, UK resident corporate members should complete and return form W-8BEN and attachment (see Appendix 4 and Appendix 5), having followed the guidance in Appendix 2.

#### 4.3.2 Non UK, Non US Corporate Members

Any corporate member that is neither UK nor US resident may be eligible for the benefits of a tax treaty between the US, if one exists with its country of residence. The Closing Agreement safe harbours may be used in determining whether any applicable LOB Article is satisfied. However, this issue is not dealt with further in this Bulletin.

On receipt of the documentation request from MSU, any corporate members that are neither UK nor US resident should complete Part I of the W-8BEN and insert their country of residence in Line 9(a) of Part II. This form should then be returned to MSU. Such members will then be contacted directly in order to establish their treaty status so they can complete as necessary the remaining parts of the W-8BEN form.

#### 4.4.3 US Resident Corporate Members

Corporate members that are resident in the US are subject to US tax on their worldwide income under US federal tax law. US resident members therefore need not complete a form W-8BEN, but will instead be required to complete a form W9 and return it to MSU. You can obtain a W9 from the IRS website at [www.irs.gov](http://www.irs.gov) or alternatively contact MSU.

## 5. Readership and Contact Details

5.1 This bulletin is being issued to managing agents, members' agents, recognised auditors and direct corporate members.

5.2 If you have any questions regarding the content of the bulletin, please contact:

Juliet Phillips                      tel: 0207 327 6839      email: [juliet.phillips@lloyds.com](mailto:juliet.phillips@lloyds.com) or  
David Clissitt                      tel: 0207 327 5228      email: [david.clissitt@lloyds.com](mailto:david.clissitt@lloyds.com).

5.3 If you have any questions regarding the issue of documentation from, and its return to, MSU, please contact:

Mita Johnson                      tel: 01634 392960      email: [mita.johnson@lloyds.com](mailto:mita.johnson@lloyds.com)

Juliet Phillips  
Senior Tax Manager  
Taxation

## Appendix 1

### **Summary of Benefits under the US-UK Treaty**

Certain benefits under the Treaty and the reason why they are of particular relevance to Lloyd's members are detailed below. Reference is made in the discussion below to specific LOB tests, and the table indicates which test has to be met in order to obtain particular benefits under the treaty. Further information on these tests is given in Appendix 2.

All references below to corporate members exclude SLPs, which will be dealt with in a later Bulletin.

#### **1. Permanent Establishment**

The US domestic legislation subjects all profits of a business carried out in the US to US federal income tax.

Under the terms of the US-UK Treaty, the US can only tax profits of a US trade or business where the UK resident carries on a business through a US permanent establishment ("PE"). Only business profits that are attributable to this US permanent establishment can be taxed in the US.

The US has also entered into treaties with other countries with a similar provision limiting the US tax base to that of profits attributable to a US permanent establishment. This is of relevance to members who are not resident in either the UK or the US but is outside the scope of the Market Bulletin.

It is the operation of this Treaty benefit which has resulted in a reduced tax base under the new Closing Agreement. Members who can establish eligibility under the UK Treaty (or another relevant Treaty) are subject to tax only on profits attributable to a US PE, and these consist of 70% of the profits from Illinois and Kentucky licensed business and 35% of the profit from the US binding authority business other than Illinois and Kentucky licensed business. Members who are not able to establish eligibility under an applicable Treaty will continue to be subject to US tax on a tax base which is largely unchanged from that which was subject to tax prior to 2005.

#### **2. Withholding Tax on dividends and interest**

Under US domestic legislation, investment income, e.g. interest, dividends etc. from US sources that is not otherwise subject to US federal income tax, is subject to a 30% withholding tax. This rate is reduced for certain types of income under many US double tax treaties.

Lloyd's members who can establish eligibility under the UK Treaty will be able to take advantage of reduced withholding tax rates on certain US source non effectively connected investment income, i.e. income and dividends which do not fall to be taxed as part of a US PE.

Under the US-UK Treaty, the withholding tax on interest and certain capital gains is eliminated and the withholding tax on dividends is reduced to 15%<sup>2</sup>.

Members who are not resident in the US or the UK will suffer rates of withholding as applicable under US domestic law, or as applicable under any Treaty with the US for which they are eligible.

### 3. Branch Profits Tax

Where a taxpayer has a PE<sup>3</sup> in the US, the US domestic legislation imposes a further tax at a rate of 30% on the "dividend equivalent amount" of the profits of the PE. This is intended to replicate the situation where a non-resident company sets up a subsidiary in the US the profits of which are subject to US tax and a US withholding tax is payable in respect of any dividend paid out of the US company to the foreign parent.

The US-UK Treaty reduces the branch profits tax to 5%, and if additional conditions are met exempts the UK resident from the branch profits tax entirely.

These additional requirements are that the member:

- (i) was engaged in the same activities in the US prior to 1 October 1998; OR
- (ii) meets the Quoted Company or Subsidiary of a Quoted Company test; OR
- (iii) meets the Derivative Benefits test; OR
- (iv) gets approval from the Competent Authority.

The Closing Agreement safe harbours are applicable in determining whether such additional conditions are met. As a result the branch profits tax is also eliminated for any UK corporate members that satisfy these tests:

- (v) any of the LOB tests of Article 23 and participated on a 1998 or earlier syndicate year of account; OR
- (vi) any of the LOB tests of Article 23 and was formed by an underwriter that participated on a 1998 or earlier syndicate year of account; OR
- (vii) the Lloyd's Derivative Benefits Test; OR
- (viii) the Active Trade or Business Test (with Lloyd's Safe Harbours) as described at Appendix 2 of this Bulletin.

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<sup>2</sup> There are further provisions in the treaty which reduces the withholding tax on dividends to 5% and nil. However, due to the restriction of activities of Lloyd's members it is unlikely that any member would hold a large enough shareholding in the company paying this dividend to qualify for either of these reduced rates.

<sup>3</sup> or taxable branch

Any corporate member who meets one of the tests given above will need to complete line 10 of the W-8BEN as described in Appendix 2.

Any member who is not UK or US resident will need to consider its eligibility under any other Treaty with the US to which it may be entitled to determine whether it is eligible for any reduction in the rate of branch profits tax given under that Treaty.

Where the member is not entitled to an exemption from branch profits tax, the 2005 Closing Agreement contains a safe harbour provision for calculating the branch profits tax "dividend equivalent amount" on the basis of the federal income tax profits. If a member elects not to apply this safe harbour then the amount will need to be determined in accordance with the generally applicable US tax law.

#### **4. US Federal Excise Tax (FET)**

The US-UK Treaty provides an exemption from US FET on insurance or reinsurance premiums which are the receipts of a business of insurance carried on by an enterprise of the United Kingdom provided the underlying policies were not entered into as part of a "conduit arrangement" as defined in the Treaty. Under the Closing Agreement, the FET is not applied to insurance or reinsurance premiums that are effectively connected to UK resident Lloyd's members' US trade or business and is only applied to other insurance premiums paid to such members if a conduit arrangement is determined to exist. A conduit arrangement is one where all or substantially all of the income from such premiums is paid on to another territory and one of the main purposes of the arrangement was to get the benefit of the US-UK Treaty. Further information on this will be given in a subsequent Market Bulletin.

**5. Summary Table**

The table below summarises the benefits that are obtained when each LOB test is met. Details of how to pass each test are contained in Appendix 2.

<b>LOB Test</b>	<b>Reduced Tax Base</b>	<b>Nil Rate Branch Profits Tax</b>	<b>Withholding Tax</b>	<b>Federal Excise Tax</b>
Quoted Company	Yes	Yes	Yes	Yes
Subsidiary of a quoted company	Yes	Yes	Yes	Yes
Lloyd's Derivative Benefit Test	Yes	Yes	Yes	Yes
Derivative Benefits Test	Yes	Yes	Yes	Yes
Active Trade or Business Test with Lloyd's Safe Harbours	Yes	Yes	Yes	Yes
Active Trade or Business Test	Yes	5%	Yes	Yes
Base Erosion Test and participated on a 1998 year of account	Yes	Yes	Yes	Yes
Base Erosion Test	Yes	5%	Yes	Yes

## Appendix 2

### **Corporate Members (other than SLPs)**

#### **LOB Tests under the US-UK Treaty taking into account safe harbours in the Closing Agreement**

These instructions apply to all non US resident corporate members, other than Scottish Limited Partnerships.

This document is intended to assist corporate members when completing W-8BENs (see Appendix 5) and the attachment (see Appendix 4). It also provides further details of the LOB tests provided under the US-UK Treaty, taking into account the safe harbours within the US Closing Agreements and provides guidelines on how UK resident corporate members should complete Part II of the Form.

Corporate members who are resident in the US do not have to complete a form W-8BEN and should refer to the main body of this Market Bulletin for further details on documentation requirements.

Any corporate members who are resident in countries other than the US or UK are only required to complete Part 1 and line 9(a) of the W-8BEN at this stage and return the form to MSU. Lloyd's Tax Department will then contact these members separately to assist them in completing the remainder of the W-8BEN if applicable.

The descriptions and explanations given below apply only to members of Lloyd's in relation to their Lloyd's business.

This document is meant only as a guideline and therefore members may need to take advice where appropriate.

#### **W-8BEN – Part I**

Part I should be completed, with reference to the IRS W-8BEN instructions (available on the IRS website at [www.irs.gov](http://www.irs.gov)). Corporate members should check the "corporation" box at line 4.

#### **W-8BEN – Part II – Claim of Treaty Benefits**

If the corporate member is resident in a country other than the US or UK, this country should be entered in the space in line 9(a). US resident members should refer to the Market Bulletin for further guidance.

If the corporate member is resident in the UK, “United Kingdom” should be inserted into the space in 9(a). Line 9(c) must also be completed if the member is eligible for treaty benefits, as well as the attachment to the W-8BEN indicating which LOB test is passed. The guidance notes below will assist you in doing this. The order in which the LOB tests are described below is the order in which we suggest a corporate member should examine its eligibility under the US-UK Treaty. Depending on the test passed, line 10 may also need to be completed.

The LOB tests as set out in the attachment to the W-8BEN have been classified as either Category A or Category B tests. If you meet the conditions of a Category A test, you are eligible under the US-UK Treaty for 0% branch profits tax, and therefore you should also complete line 10 as follows:

“ the beneficial owner is claiming the provisions of Article 10 (7) of the treaty identified on line 9(a) above to claim a 0% rate of branch profits tax withholding on such owner’s dividend equivalent amount, if any”

### **Lines 9(c) and 10 - LOB Test**

#### **Category A Tests**

##### **1. Quoted Companies**

In order to meet this test the corporate member must be resident in the UK for tax purposes and also a quoted company. A quoted company for this purposes means that the principal class of the company’s shares must be:

- a) listed or admitted to dealings on a “recognised stock exchange”, AND
- b) the shares must be regularly traded on a recognised stock exchange.

To be quoted on a recognised stock exchange for this purpose the company must be quoted on one of the following: NASDAQ; any stock exchange registered with the SEC as a national securities exchange; the London Stock Exchange; and any other recognised investment exchange within Financial Services Act 1986 (and Financial Services and Markets Act 2000).

However, the company need not be regularly traded on one of the above stock exchanges provided it is regularly traded on one of the other “recognised stock exchanges”<sup>4</sup> under the Treaty. Regularly traded means that at least 6% of the average number of outstanding shares are traded in the taxable period.

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<sup>4</sup> Irish, Swiss, Amsterdam, Brussels, Frankfurt, Hamburg, Johannesburg, Madrid, Milan, Paris, Stockholm, Sydney, Tokyo, Toronto and Vienna Stock Exchanges are recognised under the Treaty. The Competent Authorities can also specify others.

**W-8BEN instructions**

If the corporate member meets the conditions of this test, the “Quoted Company Test” box may be ticked on the attachment to the W-8BEN. Line 9(c) should be ticked on the W-8BEN and line 10 completed as described above.

**2. Subsidiary of a quoted company**

A company will qualify for treaty benefits if it is a UK tax resident and 50% of the shares (by vote and value) are owned either directly or indirectly by 5 or fewer companies which would qualify for benefits under the new Treaty under 1 above, i.e. as quoted companies.

In the case of indirect ownership all of the intermediate companies between the corporate member and the quoted company parent must be either UK or US resident for tax purposes.

**W-8BEN instructions**

If the corporate member meets the conditions of this test, the “Subsidiary of a Quoted Company” box may be ticked on the attachment to the W-8BEN. Line 9(c) should be ticked on the W-8BEN and line 10 completed as described above.

**3. Lloyd’s Derivative Benefits Test**

One of the LOB tests in the Treaty is the Derivative Benefits Test. This test is complex but the Closing Agreement provides for several safe harbours which should make it simpler for a UK resident Lloyd’s corporate member to establish eligibility under the Treaty by applying the Lloyd’s Derivative Benefits Test.

A corporate member will need to meet both conditions given below in order to meet this Limitation on Benefits test.

First condition

At least 50% of the shares (by vote and value) or other beneficial interests must be owned, either directly or indirectly, by US resident persons or other persons that are eligible for the benefits of a United States income tax treaty that contains a PE Article<sup>5</sup>.

A full list of countries which have treaties with the US containing a PE article is attached as Appendix 3. Provided at least 50% of the shares of the corporate member are owned by persons resident in a country with a US Treaty containing

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<sup>5</sup> A PE Article allows the US to tax only those business profits that are attributable to a PE in the US.

such an article and those persons can establish eligibility under that Treaty, then the first condition of the Lloyd's Derivative Benefits Test will be passed. As noted above, the first condition is also met if at least 50% of the shares are owned by US resident persons.

Where shareholders are determining their own eligibility under a Treaty with the US in order to pass this LOB test, they are not entitled to apply any of the safe harbours within the US Closing Agreements when applying any LOB tests within that treaty but must refer to the wording of the specific treaty itself

### Second Condition

Having successfully applied the first condition the member must pass one of the three tests detailed below. It is only necessary to pass one of these tests in order to meet this second condition.

The three tests are:

- (i) the outward reinsurance premiums as reported in the corporate member's technical account for the taxable year are less than 50% of gross premiums written, regardless of who the premiums are paid to; OR
- (ii) the sum of outward reinsurance premiums, net operating expenses and investment expenses and charges is less than 50% of the sum of gross premiums written and allocated investment return. All of these figures will be as reported in the corporate member's technical account; OR
- (iii) the amount of outward reinsurance premium which is paid to reinsurers who are not entitled to the benefits of a tax treaty with the US is less than 30% of gross premiums written. The reinsurance premium is as reported in the technical account of the corporate member for the relevant taxable year.

Test (iii) above is complex, and may in practice only be suitable for certain aligned members to apply.

### **W-8BEN instructions**

If the corporate member meets the conditions of this test, the "Lloyd's Derivative Benefits Test" box may be ticked on the attachment to the W-8 BEN. Line 9(c) should be ticked on the W-8BEN and line 10 completed as described above.

## **4. Derivative Benefits Test**

The Lloyd's Derivative Benefits Test summarised above takes account of several safe harbours provided for under the Closing Agreement. If a corporate member does not pass the second condition it may want to apply the Derivative Benefits Test

as detailed in Article 23 (3) without applying any of the safe harbours provided for in the Closing Agreement.

### **W-8BEN instructions**

If the corporate member meets the conditions of this test, the “Derivative Benefits Test” box may be ticked on the attachment to the W-8BEN. Line 9(c) should be ticked on the W-8BEN and line 10 completed as described above.

## **5. Active Trade or Business Test (with Lloyd’s Safe Harbours)**

There are two conditions which must be met in order to meet this test.

### First condition

The corporate member must be a UK resident engaged in the active conduct of a trade or business in the UK (other than the business of making or managing investments for the members own account) AND the income, profit or gain derived from the US must be derived in connection with, or be incidental to, the UK trade or business. The UK trade or business must be substantial compared to the activities in the US.

In establishing whether a member is engaged in an active trade or business in the UK activities conducted by persons connected to the member are deemed to be conducted by the member and will be taken into account. This will, for example, include the situation where a corporate member is aligned to a managing agent (i.e. they are owned and controlled by the same person or persons) so that activities performed by the managing agent are attributed to the member. Therefore, aligned members will pass this test.

### Second Condition

The Active Trade or Business test alone does not give access to all the benefits of the US-UK treaty. In particular, whilst passing this test will allow the member to apply the reduced US branch profits tax of 5%, it will not allow the member to eliminate the US Branch profits tax altogether. However, if the member meets the first condition and also passes one of the five tests set out below then this test is met and the member can eliminate the branch profits tax.

- (i) The member participated on a 1998 or earlier year of account; OR
- (ii) the member was formed by another member who participated on a 1998 or earlier year of account; OR

- (iii) the outward reinsurance premiums as reported in the corporate member's technical account for the taxable year are less than 50% of gross premiums written, regardless of who the premiums are paid to; OR
- (iv) the sum of outward reinsurance premiums, net operating expenses and investment expenses and charges is less than 50% of the sum of gross premiums written and allocated investment return. All of these figures will be as reported in the corporate member's technical account; OR
- (v) the amount of outward reinsurance premium which is paid to reinsurers who are not entitled to the benefits of a tax treaty with the US is less than 30% of gross premiums written. The reinsurance premium is as reported in the technical account of the corporate member for the relevant taxable year.

Test (v) above is complex, and may in practice only be suitable for certain aligned members to apply.

#### **W-8BEN instructions**

If the corporate member meets the conditions of this test, the "Active Trade or Business Test (with Lloyd's Safe Harbours)" box may be ticked on the attachment to the W-8BEN. Line 9(c) should be ticked on the W-8BEN and line 10 completed as described above.

### **6. Base Erosion Test (and participation on a 1998 or earlier YOA)**

If a corporate member does not pass any of the tests above it may want to apply the Base Erosion Test as detailed in Article 23 (2)(f), without applying any of the safe harbours provided for in the Closing Agreement.

If that member also participated on a 1998 or earlier year of account OR was formed by another member who participated on a 1998 or earlier year of account then this test is met.

#### **W-8BEN instructions**

If the corporate member meets the conditions of this test, the "Base Erosion Test and participated on a 1998 or earlier year of account" box may be ticked on the attachment to the W-8BEN. Line 9(c) should be ticked on the W-8BEN and line 10 completed as described above.

### **Category B Tests**

#### **7. Active Trade or Business Test**

If a corporate member passes the First Condition of the Active Trade or Business Test (with Lloyd's Safe Harbours) (Test 5 above), but not the second condition it has passed the Active Trade or Business Test as set out in the Treaty.

**W-8BEN instructions**

If the corporate member meets the conditions of this test, the “Active Trade or Business Test” box may be ticked on the attachment to the W-8BEN and line 9(c) ticked on the W-8BEN.

You must not insert any text at line 10.

**8. Base Erosion Test**

If a corporate member does not pass any of the tests above it may want to apply the Base Erosion Test as detailed in Article 23 (2)(f), without applying any of the safe harbours provided for in the Closing Agreement.

**W-8BEN instructions**

If the corporate member meets the conditions of this test, the “Base Erosion Test” box may be ticked on the attachment to the W-8BEN and line 9(c) ticked on the W-8BEN.

You must not insert any text at line 10.

**9. Competent Authority**

A member who does not meet any of the tests above may make an application to the Competent Authority (the Secretary to the US Treasury or his delegate) who can grant it benefits under the Treaty in relation to certain items of income, profit or gain. The Competent Authority will need to satisfy itself that the “establishment, acquisition or maintenance of [the member] and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under this convention”.

The Competent Authority route can also be used by members who only meet either the Base Erosion Test or the Active Trade or Business Test in order to get further treaty benefits. As neither of these tests is sufficient to get an exemption from the Branch Profits Tax or the nil rate of withholding tax the Competent Authority can still grant these benefits.

The procedures for making Competent Authority claims have not yet been determined, but Lloyd’s Taxation Department will co-ordinate any applications as necessary.

If you want to make an application to the Competent Authority, the “Competent Authority” box on the attachment to the W-8BEN should be ticked. Lloyd’s Taxation Department will then contact you regarding the making of the Competent Authority claim.

## Appendix 3

### List of Countries with a US Treaty with a PE Article or FET Exemption

(position as at 1 November 2005)

Country	PE Article	FET Exemption
Australia	Yes	No
Austria	Yes	No
Barbados	Yes	No
Belgium	Yes	No
Bermuda	Yes	No
Canada	Yes	No
China	Yes	No
Cyprus	Yes	Qualified
Czech Republic	Yes	No
Denmark	Yes	No
Egypt	Yes	No
Estonia	Yes	No
Finland	Yes	Qualified
France	Yes	Qualified
Germany	Yes	Qualified
Greece	Yes	No
Hungary	Yes	Unqualified
Iceland	Yes	No
India	Yes	Qualified
Indonesia	Yes	No
Ireland	Yes	Qualified
Israel	Yes	Qualified
Italy	Yes	Qualified
Jamaica	Yes	No
Japan	Yes	Qualified
Kazakhstan	Yes	No
Korea	Yes	No
Latvia	Yes	No
Lithuania	Yes	No
Luxembourg	Yes	Qualified
Mexico	Yes	Qualified

<b>Country</b>	<b>PE Article</b>	<b>FET Exemption</b>
Morocco	Yes	No
Netherlands	Yes	Qualified
New Zealand	Yes	No
Norway	Yes	No
Pakistan	Yes	No
Philippines	Yes	No
Poland	Yes	No
Portugal	Yes	No
Romania	Yes	Unqualified
Russia	Yes	No
Slovakia	Yes	No
Slovenia	Yes	No
South Africa	Yes	No
Spain	Yes	Qualified
Sri Lanka	Yes	No
Sweden	Yes	Qualified
Switzerland	Yes	Qualified
Thailand	Yes	No
Trinidad and Tobago	Yes	No
Tunisia	Yes	No
Turkey	Yes	No
Ukraine	Yes	No
United Kingdom	Yes	Conduit
USSR/CIS	Yes	Qualified
Venezuela	Yes	No

Appendix 4

**Corporate Members**  
**Attachment to W-8BEN**

The form should be included as an attachment to the W-8BEN submitted to MSU by all corporate members. Guidance for completing this form is included in Appendix 2.

Member name: .....

Member number:.....

Please indicate which LOB test you pass by ticking the relevant box below

Category A Tests:

Quoted Company Test

Subsidiary of a Quoted Company

Lloyd’s Derivative Benefits Test

Derivative Benefits Test

Active Trade or Business Test (with Lloyd’s Safe Harbours)

Base Erosion Test and participated on a 1998 or earlier year of account


If the corporate member meets any of the tests above but does not meet any of the Category A tests then the box at line 9(c) on the W-8BEN should be checked. The box at Line 10 on the W8-BEN should also be checked, and text should be inserted to read as follows:

*“ the beneficial owner is claiming the provisions of Article 10 (7) of the treaty identified on line 9a above to claim a 0% rate of branch profits tax withholding on such owner’s dividend equivalent amount, if any”*

Category B Tests:

Active Trade or Business Test

Base Erosion Test


If the corporate member meets any of the tests above then the box at line 9(c) on the W-8BEN should be checked. However, no text should be inserted at line 10.

**Competent Authority**

Please tick the appropriate box below if the corporate member wants to make a Competent Authority claim.

The corporate member does not meet any of the tests above and wants to make a claim to the Competent Authority for treaty benefits

The corporate member only meets a category B test and wants to make a claim to the Competent Authority for 0% branch profits tax

If you have ticked either of the boxes above Lloyd's Taxation Department will contact you shortly to request further details that will be necessary in order to make such a claim.

Signed .....

Date.....

Form W-8BEN

(Rev. December 2000)

Department of the Treasury Internal Revenue Service

Certificate of Foreign Status of Beneficial Owner For United States Tax Withholding

Section references are to the Internal Revenue Code. See separate instructions. Give this form to the withholding agent or payer. Do not send to the IRS.

OMB No. 1545-1621

Do not use this form for:

- A U.S. citizen or other U.S. person, including a resident alien individual. W-9
A person claiming an exemption from U.S. withholding on income effectively connected with the conduct of a trade or business in the United States. W-8ECI
A foreign partnership, a foreign simple trust, or a foreign grantor trust (see instructions for exceptions). W-8ECI or W-8IMY
A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession that received effectively connected income or that is claiming the applicability of section(s) 115(2), 501(c), 892, 895, or 1443(b) (see instructions). W-8ECI or W-8EXP

Note: These entities should use Form W-8BEN if they are claiming treaty benefits or are providing the form only to claim they are a foreign person exempt from backup withholding.

- A person acting as an intermediary. W-8IMY

Note: See instructions for additional exceptions.

Part I

1 Name of individual or organization that is the beneficial owner
2 Country of incorporation or organization
3 Type of beneficial owner: Individual, Corporation, Disregarded entity, Partnership, Simple trust, Grantor trust, Complex trust, Estate, Government, International organization, Central bank of issue, Tax-exempt organization, Private foundation
4 Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address.
5 Mailing address (if different from above)
6 U.S. taxpayer identification number, if required (see instructions)
7 Foreign tax identifying number, if any (optional)
8 Reference number(s) (see instructions)

Part II Claim of Tax Treaty Benefits (if applicable)

9 I certify that (check all that apply):
a The beneficial owner is a resident of ... within the meaning of the income tax treaty between the United States and that country.
b If required, the U.S. taxpayer identification number is stated on line 6 (see instructions).
c The beneficial owner is not an individual, derives the item (or items) of income for which the treaty benefits are claimed, and, if applicable, meets the requirements of the treaty provision dealing with limitation on benefits (see instructions).
d The beneficial owner is not an individual, is claiming treaty benefits for dividends received from a foreign corporation or interest from a U.S. trade or business of a foreign corporation, and meets qualified resident status (see instructions).
e The beneficial owner is related to the person obligated to pay the income within the meaning of section 267(b) or 707(b), and will file Form 8833 if the amount subject to withholding received during a calendar year exceeds, in the aggregate, \$500,000.
10 Special rates and conditions (if applicable - see instructions): The beneficial owner is claiming the provisions of Article ... of the treaty identified on line 9a above to claim a ...% rate of withholding on (specify type of income): ... Explain the reasons the beneficial owner meets the terms of the treaty article: ...

Part III Notional Principal Contracts

11 I have provided or will provide a statement that identifies those notional principal contracts from which the income is not effectively connected with the conduct of a trade or business in the United States. I agree to update this statement as required.

Part IV Certification

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:
I am the beneficial owner (or am authorized to sign for the beneficial owner) of all the income to which this form relates.
The beneficial owner is not a U.S. person,
The income to which this form relates is not effectively connected with the conduct of a trade or business in the United States or is effectively connected but is not subject to tax under an income tax treaty, and
For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions.
Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which I am the beneficial owner or any withholding agent that can disburse or make payments of the income of which I am the beneficial owner.

Sign Here

Signature of beneficial owner (or individual authorized to sign for beneficial owner) Date (MM-DD-YYYY) Capacity in which acting