

MARKET BULLETIN

REF: Y4087

Title	Syndicate Mergers
Purpose	Consultation on proposals to amend the syndicate merger rules
Type	Event
From	Chairman of the Capacity Transfer Panel
Date	4 December 2007
Deadline	22 February 2008
Related links	<p>Major Syndicate Transactions Byelaw http://www.lloyds.com/NR/ronlyres/69D77E4B-99A9-4248-A25E-4E9EFF305CBB/0/March07ByelawMajorSyndicateTransactions.pdf</p> <p>Agency Agreements Byelaw http://www.lloyds.com/NR/ronlyres/2D768073-6CCC-4F5C-941D-FA5C1B2DBCA7/0/March07AgencyAgreementsByelawFeb07.pdf</p> <p>Mandatory Offer Byelaw http://www.lloyds.com/NR/ronlyres/A62E853C-DBA9-4CC9-A482-A66262A2ABB3/0/March07ByelawMandatoryOffer.pdf</p> <p>Enforcement Byelaw http://www.lloyds.com/NR/ronlyres/A5354AFE-3BA3-4571-AF0C-1F4672A192CA/0/March07byelawenforcement_dec06.pdf</p>

Introduction

The Capacity Transfer Panel (the "Panel") has intensively reviewed Lloyd's rules for syndicate mergers and has concluded that a number of changes should be made. The Panel wishes to consult with the market on these changes before making any recommendations to the Council for implementation in April 2008.

Background

Applications for consent to effect syndicate mergers are referred to the Panel. The Panel comprises the Chairman of the Panel (Andreas Prindl, a nominated member of the Council), the Deputy Chairman of the Panel and independent lawyer (Margaret Chamberlain), an independent financial expert (Ian Salter), two third party capital nominee members (Alan Lovell and Lady Delves Broughton) and two LMA nominee members (David Gittings and Paul Swain).

Lloyd's rules for syndicate mergers are set out in the Major Syndicate Transactions Byelaw ("MSTB") (primarily, paragraph 1 of, and Schedule 1 to, the MSTB). The MSTB was made by the Council in May 1997 and was amended a number of times between 1997 and 2000.

The MSTB must be read in conjunction with paragraph 11B of the Agency Agreements Byelaw ("AAB") as effecting a syndicate merger will involve the termination of standard managing agent's agreements. In addition, provisions of the Mandatory Offer Byelaw ("MOB") may also apply in certain cases (see below).

In summary, the current rules for syndicate mergers require –

- a. an application to be made under paragraph 11B of the AAB (by no later than 30 April) and a linked application to be made under Schedule 1 of the MSTB (by no later than 21 June);
- b. the managing agent to convene meetings of the syndicates in question (although in practice this requirement is invariably waived);
- c. a ballot of each syndicate in question to be undertaken;
- d. representations for or against the merger to be made; and
- e. the Panel to convene to consider whether or not to grant consent to a proposed syndicate merger.

In deciding whether or not to grant consent, the Panel must take into account the extent to which the proposal has the approval or disapproval of the members of the syndicates in question. In particular, the Panel must take into account whether or not 75% (by capacity) of the members of each syndicate voted in favour of the merger. However, this 75% threshold is not an absolute requirement and the Council may still give its consent to a syndicate merger where the threshold has not been reached and withhold its consent where the threshold has been reached.

The current syndicate merger rules are complex and difficult to follow and involve a number of unnecessary administrative steps. Accordingly, the Panel concluded that it should –

- a. consider appropriate criteria to be applied in connection with future applications for syndicate mergers; and

- b. implement the rules for syndicate mergers in a simple and clear manner.

Discussion

The Panel concluded that –

1. consent should not be given to a syndicate merger unless either –
 - a. 75% (by capacity) of the members of each syndicate in question vote in favour of the merger; or
 - b. all of the members of the Panel considering an application for a syndicate merger are satisfied that there exist exceptional circumstances such that if consent to the merger was not granted the interests of the majority of members on a syndicate in question would be materially damaged.
2. the Council should issue Guidance for the Panel which it must take into account when deciding whether or not there exist “exceptional circumstances.” The proposed draft Guidance is set out below –

“The Council intends that the discretion afforded by paragraph 4(2)(b) of Schedule 1 to the Major Syndicate Transactions Byelaw should –

- a. only be exercised following specific consultation with the relevant managing agent and relevant members (where appropriate, via their members’ agents) with regard to the existence or otherwise of ‘exceptional circumstances’;
- b. only be used with considerable circumspection involving the most objective and careful consideration of all of the circumstances; and
- c. only be used where there is clear evidence that the interests of the majority of members on a syndicate in question would be materially damaged.

It is in the nature of ‘exceptional circumstances’ that they cannot be exhaustively defined in advance. However, examples of when it is anticipated that the exercise of the discretion might be considered include where there is clear evidence that –

- i. if consent to the merger were not granted, one or more of the syndicates in question would cease and go into run-off; or
- ii. there has been a material change of events following the conclusion of the ballots such that if they were retaken the conditions in paragraph 4(2)(a) of Schedule 1 to the Major Syndicate Transactions Byelaw would be met.

An example of when it is anticipated that the exercise of discretion will not be employed is where the damage said to arise from the refusal to grant consent to the

merger relates only to an alleged loss of the operational or business benefits or advantages said to arise from the merger.”

3. the other existing criteria that the Council may take into account in deciding whether to grant consent to a syndicate merger should be retained.
4. paragraph 1 of, and Schedule 1 to, the MSTB should be redrafted as simply and as clearly as possible and in a way so as to remove any cross reference to termination of the standard managing agent’s agreements under paragraph 11B of the AAB. (See the proposed amendments to the MSTB and AAB set out at annex 1).
5. the provision of the MOB which provides that where the requirement to make a mandatory offer has been postponed neither the offeror nor any associate shall be entitled to vote on a syndicate merger should be deleted. (See the proposed amendment to the MOB at annex 1).
6. the rights of appeal against a decision to either grant or refuse consent to effect a syndicate merger should be amended so that it is much clearer that managing agents can appeal a decision to refuse consent to a merger and members can appeal a decision to grant consent to a merger. (See the proposed amendments to the Enforcement Byelaw at annex 1).

Conclusion

The Panel invites members, members’ agents, managing agents and their respective associations to submit written responses to the numbered matters set out above and to the draft byelaw by no later than 22 February 2008. In particular, the Panel invites views on the usefulness of the draft guidance set out at paragraph 2 above regarding “exceptional circumstances” and whether any other examples may be given. Responses should be sent for the attention of –

The Secretary to the Capacity Transfer Panel
Lloyd’s,
One Lime Street,
London EC3M 7HA

or by email to melinda.triggs@lloyds.com

Proposed Amendments to the Major Syndicate Transactions Byelaw

1. Syndicate mergers
 - (1) No syndicate merger shall be effected without the written consent of the Council given in accordance with Schedule 1 to this byelaw.
 - (2) In this byelaw “syndicate merger” means a transaction by which –
 - (a) a managing agent ceases or is to cease to accept new business or renewal business on behalf of the syndicate (a “ceasing syndicate”);
 - (b) reinsurance to close is placed on behalf of the ceasing syndicate for its final year of account with another syndicate (the “successor syndicate”);
 - (c) the managing agent of the successor syndicate is to accept renewals of business previously accepted by the ceasing syndicate; and
 - (d) members of the ceasing syndicate and members of the successor syndicate are offered participation in the successor syndicate for the following year of account.

[Sub-paragraph 1(3) will be deleted. It currently reads:

“Schedule 1 to this byelaw shall have effect in relation to syndicate mergers save as the Council may permit.”]

[paragraphs 2 – 9 – no amendments]

10. Interpretation

insert ““majority of members on a syndicate” means members whose member’s syndicate premium limits and MAPA participation in aggregate exceed not less than one half of the syndicate’s allocated capacity.”

Schedule 1 – Syndicate Mergers

1. Notice of intention to effect a syndicate merger

In the event that a managing agent intends to effect a syndicate merger it must, by no later than 30 April in the year in which it is intended the ceasing syndicate will

cease underwriting (or such later date as the Council may permit), send a written notice to the Council copied to every direct member of the syndicates in question and to every members' agent. The notice must –

- (a) specify the syndicates in question; and
- (b) explain why the managing agent intends to effect the syndicate merger.

2. Application for consent to effect a syndicate merger

(1) In the event that a managing agent intends to proceed to effect a syndicate merger it must, by no later than 21 June in the same year as notice of intention to effect a syndicate merger was given (or such later date as the Council may permit), send a written application to the Council copied to every direct member of the syndicates in question and to every members' agent. The application must include –

- (a) a detailed explanation of why the managing agent intends to effect the syndicate merger;
- (b) an explanation of the basis on which, and the amounts in which (stated, by reference to an illustrative share in the ceasing syndicate, as a share in the syndicate allocated capacity and also as a monetary amount), rights to participate in the successor syndicate for the following year of account are to be allocated among the members of the ceasing syndicate and (if any) the members of the successor syndicate for the current year of account and any other persons;
- (c) particulars of plans for participation in the successor syndicate by members who are associates of the managing agent of the successor syndicate;
- (d) confirmation by the managing agent of the successor syndicate that it intends to effect a reinsurance to close of the ceasing syndicate by the successor syndicate;
- (e) a copy of the syndicate annual report required to be prepared in the current year for each syndicate concerned;
- (f) either –
 - (i) a copy of the proposed business plan for the successor syndicate for the following year of account including the identity of the active underwriter and particulars of his contract of employment; or
 - (ii) a summary thereof specifying the person from whom copies of such proposed business plan can be obtained free of charge;
- (g) particulars of the managing agent's plans in the event that the Council refuses its consent to the proposal in respect of which the application is made; and

- (h) a declaration signed by two directors of the managing agent in the following form: “The directors of the managing agent have taken all reasonable care to ensure that the facts stated herein are true and accurate in all material respects and that there are no other material facts the omission of which would make misleading any statement herein, whether of fact or opinion. All the directors accept responsibility accordingly.”;
 - (i) an invitation to all of the members of all of the syndicates in question to send any representations they may wish to make on the syndicate merger to the Council within 60 days (or such other period as the Council may prescribe) of the date of the application;
 - (i) copies of the ballot papers to be used for the purposes of conducting the ballots in accordance with paragraph 3(1) of Schedule 1; and
 - (k) any other document or information the Council may prescribe or require.
- (2) If at any time after an application has been sent to the Council under paragraph 2(1) of this Schedule 1 but prior to the ballots referred to in paragraph 3(1) having been concluded –
- (a) there is a significant change affecting any material matter contained in the application; or
 - (b) a material new matter arises which would have been required to be included in the application if it had arisen before the application was prepared,

the managing agent shall forthwith prepare a supplementary document giving particulars of the change or new matters and send that document to the Council copied to every direct member of the syndicates in question and to every members’ agent.

- (3) Every members’ agent which receives information or documents from a managing agent under paragraphs 1, 2(1) or 2(2) of Schedule 1 must, within seven days of receipt, forward the information or documents to every member of any of the syndicates in question for the current year of account for whom it acts as members’ agent (otherwise than by virtue of that member’s participation in MAPA).

3. Ballot

- (1) The managing agent shall, at its own expense, conduct separate postal ballots in respect of the members (or in the case of MAPA members, the MAPA operator) of –
- (a) each ceasing syndicate; and
 - (b) the successor syndicate

in order to determine the extent of support for, or objections to, the proposed syndicate merger.

- (2) The managing agent shall, no later than 60 days after the date of an application sent to the Council under paragraph 2(1) of Schedule 1, provide to the Council certificates from the syndicate auditor of the ceasing syndicate confirming the result of each ballot conducted under paragraph 3(1) of Schedule 1.

4. Determination of application

- (1) The Council may, subject to paragraph 4(2) of Schedule 1, grant or refuse consent to effect a syndicate merger or grant consent subject to such modification of the proposed syndicate merger as it thinks fit.
- (2) The Council shall not grant consent to a syndicate merger unless –
 - (a) in each separate ballot held under paragraph 3(1) of Schedule 1, of the aggregate of member's syndicate premium limits and MAPA participations attributable to members or MAPA operators voting in the ballot, not less than 75 per cent was attributable to those voting in favour; or
 - (b) notwithstanding that the conditions in paragraph 4(2)(a) of Schedule 1 have not been met the Council (or where the Council acts by a committee, each of the members of the committee participating in the committee's decision with regard to the syndicate merger) is satisfied that there exist exceptional circumstances such that if consent was not granted the interests of the majority of members on a syndicate in question would be materially damaged.
- (3) The Council may from time to time make and publish guidance which it shall take into account when deciding whether or not to exercise its discretion under paragraph 4(2)(b) of Schedule 1.
- (4) In considering whether to grant consent to a syndicate merger, the Council may take into account any or all of the following matters –
 - (a) the reasons why the syndicate merger is proposed;
 - (b) the extent to which the proposal for the syndicate merger has the approval or disapproval of the members of each syndicate in question;
 - (c) the basis on which, and the amounts in which (stated as a share in the syndicate allocated capacity and also as a monetary amount), rights to participate in the successor syndicate for the next following year of account are to be allocated among the members of the ceasing syndicate and of the

- successor syndicate (if any) for the current year of account and any other persons;
- (d) the terms on which members of the ceasing syndicate will be invited to subscribe for shares in, or otherwise participate in, any corporate member which is to participate as a member of the successor syndicate for the next following year of account;
- (e) plans for participation in the syndicate by members which are associates of the managing agent of the successor syndicate;
- (f) whether the information provided to the members of the syndicates concerned (other than members participating by virtue only of their participation in a MAPA) is sufficient, and has been provided in sufficient time, to enable them to make an informed assessment of the proposed syndicate merger and its effect on them; and
- (g) any other matter (whether or not similar to any of the other matters mentioned in this paragraph) which in the opinion of the Council should be taken into account in deciding whether its consent should be granted.

5. General powers in connection with syndicate mergers

The Council may at any time give such directions or impose such conditions and requirements on the managing agent in connection with an application to effect a syndicate merger or the grant or refusal of such an application as it thinks necessary or appropriate. A direction, condition or requirement given or imposed under this paragraph may include, but shall not be limited to, a direction, condition or requirement for the purposes of –

- (a) protecting the interests of members of the syndicates in question;
- (b) holding syndicate meetings for the purposes of discussing the proposed syndicate merger;
- (c) conducting ballots under paragraph 3(1) of Schedule 1; and
- (d) dealing with an application made under paragraph 2(1) of Schedule 1 made by more than one managing agent.

6. Permission of Council for notice to terminate standard managing agent's agreement

Where the Council gives consent to a syndicate merger that consent shall also be deemed to be the prior approval of the Council for the managing agent to terminate the standard managing agent's agreements with each of the members of each ceasing syndicate under clause 11.6 of the agreements such that permission under paragraph 11B of the Agency Agreements Byelaw is not required.

[Schedules 2 – 5 – no amendments]

Proposed Amendments to the Mandatory Offer Byelaw

- (a) Delete the emboldened words from sub-paragraph 5(5) of the Mandatory Offer Byelaw:

“Where sub-paragraph (1) applies, neither the potential offeror nor any associate of that potential offeror, shall be entitled to vote on:

(a) any syndicate merger affecting the syndicate under Schedule 1 to the Major Syndicate Transactions Byelaw (No. 18 of 1997); or

(b) any proposed increase in the syndicate allocated capacity of the syndicate under paragraph 6 of the Syndicate Pre-Emption Byelaw (No. 19 of 1997).”

Proposed Amendments to the Enforcement Byelaw

- (a) Insert the emboldened words into paragraph 1(k)(i) of Schedule 1 (Rights of appeal from decisions of the Council) to the Enforcement Byelaw:

“the **grant of or** refusal to grant consent to effect a syndicate merger”

- (b) Insert the following paragraph as a new paragraph 2(j) of Schedule 1 (Rights of appeal from decisions of the Council) to the Enforcement Byelaw:

“in the case of the grant of or refusal to grant consent to effect a syndicate merger, is the managing agent who made the application or is a member of a ceasing syndicate or is a member of the successor syndicate.”

Proposed Amendments to the Agency Agreements Byelaw

- (a) Insert the emboldened words into paragraph 11B(2) of the Agency Agreements Byelaw:

“Where a managing agent proposes to give notice to terminate an agreement in the terms of the standard managing agent’s agreement (general) or the standard managing agent’s agreement (corporate member) under clause 11.6 of that agreement, it shall, **other than in the case of a syndicate merger**, apply to the Council for permission to do so in accordance with the following provisions of this paragraph.”