

MARKET BULLETIN

REF: Y4145

Title	Syndicate Mergers
Purpose	<ol style="list-style-type: none"> 1. To give feedback to the market following consultation on proposed changes to the rules and arrangements for syndicate mergers; 2. To inform the market of changes to the rules and arrangements for syndicate mergers; and 3. To set out guidance on the application of the rules.
Type	Event
From	Chairman of the Capacity Transfer Panel
Date	7 April 2008
Deadline	Notice of intention to effect a syndicate merger to be sent by 30 April each year
Related links	None

The Capacity Transfer Panel (the "Panel") published proposals for the amendment of the rules and arrangements of the syndicate mergers by way of consultation on 4 December 2007 (see market bulletin Y4087).

The consultation period closed on 22 February 2008. The Panel received responses from the LMA Regulatory Committee, Argenta Private Capital Limited, Hampden Agencies Limited, the Association of Lloyd's Members and the High Premium Group. The Panel subsequently met to consider the responses.

1. Feedback

The majority of the responses focussed on whether there should be an exceptional circumstances test. Those representing unaligned capital generally concluded that there should not. Analogies were drawn with protections afforded to shareholders under the Companies Acts and the City Code for Takeovers and Mergers which have 75% thresholds.

The Panel found these a useful starting point for discussion but was concerned that some discretion should be preserved to deal with exceptional circumstances that could otherwise materially damage the interests of a majority of members on a syndicate in question.

After very careful consideration of the issue, the Panel unanimously concluded that its package of proposals comprising; (a) the definition of exceptional circumstances; (b) the Guidance; and (c) the requirement that all of the Panel's members considering an application must unanimously consider that there exists exceptional circumstances, would allow for exceptional cases to be dealt with fairly whilst being sufficiently restrictively drawn so as to properly protect unaligned members.

However, and in view of (c) above, the Panel noted that there was an increasing risk that third party capital nominee members and LMA nominee members may be conflicted from participating in the consideration of mergers (and similarly minority buy-outs) because, for example, they underwrite on a syndicate in question. Accordingly, the Panel concluded that its terms of reference should be amended to simplify the appointment of alternate members. The Panel proposes that the Chairman of the Panel should, in consultation with the Nomination, Appointments and Compensation Committee, the LMA, the ALM and the HPG, draw up a list of suitable alternates. In the event that the Chairman of the Panel determines that a nominee is precluded from participating in a decision he will appoint an alternate from the list for the purposes of that decision.

The Panel had proposed to delete the provision within the Mandatory Offer Byelaw which provides that where the requirement to make a mandatory offer had been postponed neither the offeror nor any associate shall be entitled to vote on a syndicate merger.

Following consideration of the responses, the Panel wished to give further consideration to arrangements which would avoid the need to postpone the making of mandatory offers because no relevant price had been set. Accordingly, the Panel decided to revert to this point in due course. This will not affect any mergers that may take place during 2008.

The Panel's other proposals were largely uncontroversial. One response did call for the wider application of the so-called "agency circumstances" rules. However, these rules were not designed to deal with mergers which, since 1995, have been dealt with under Major Syndicate Transactions Byelaw. The Panel concluded that mergers should continue to be dealt with exclusively under the byelaw regime. The Panel will write to each of the respondents separately.

Overall, the Panel unanimously recommended the package of proposals set out in the Market Bulletin of 4 December 2007 to the Council other than with regard to the Mandatory Offer Byelaw and with a minor amendment to the guidance.

2. Changes to rules and arrangements

At its meeting on 2 April 2008, the Council agreed with the Panel's recommendation and made the necessary amendments to the Major Syndicate Transactions Byelaw (and other relevant byelaws) which are available on www.lloyds.com. The amendments came into force on 4 April and will apply to any syndicate mergers from that date.

3. Guidance

The Council also made the following guidance on the application of 'exceptional circumstances' under paragraph 4(2)(b) of schedule 1 to the Major Syndicate Transactions Byelaw.

"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 the loss or alleged loss of the operational or business benefits or advantages said to arise from the merger."