

## **CODE FOR MEMBERS' AGENTS:** **RESPONSIBILITIES TO MEMBERS**

**This code was first issued in a regulatory bulletin 055/98 dated 9 June 1998. Section 7 was added in a further bulletin 073/99 dated 23 August 1999 and revised again by 087/99 dated 29 October 1999.**

### **Explanatory Note**

This Code was issued to provide guidance to members' agents on their duties to members and to ensure that the conduct of business standards for members' agents are at least as rigorous as those applicable elsewhere in the financial services sector.

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# **CODE FOR MEMBERS' AGENTS: RESPONSIBILITIES TO MEMBERS**

## **Code of Practice issued by the Council of Lloyd's on 3 June 1998 pursuant to paragraph 2A of the Core Principles Byelaw (No. 34 of 1996).**

### **1 Introduction**

#### **Objective**

- 1.1 This code revises and replaces the Code for Members' Agents: Responsibilities to members Code of Practice issued by the Council of Lloyd's on 3 June 1998 pursuant to paragraph 2A of the Core Principles Byelaw (No. 34 of 1996).
- 1.2 The purpose of this code (the Code) is to provide guidance to members' agents, in the light particularly of changes to the environment in which members' agents operate, to enable them to fulfil their responsibilities to their members, individual or corporate, in relation to the advice they provide to them.

#### **Structure of the Code**

- 1.3 The Code is in eight parts:
  - 1 introduction;
  - 2 general;
  - 3 advertising;
  - 4 "know your principal";
  - 5 advising on suitability for, and type of, underwriting participation;
  - 6 advising on syndicate selection issues; and
  - 7 reporting to Members; and
  - 8 other advice of a general nature.

#### **Existing Guidance**

- 1.4 There are a number of existing Lloyd's rules which concern the principles of business conduct relevant to a members' agent in fulfilling its responsibilities to its members. These are:
  - (i) the Core Principles Byelaw (No 34 of 1996), particularly Schedule 2 : Core Principles for Underwriting Agents;
  - (ii) the Agency Agreements Byelaw (No 8 of 1988), particularly Schedule 1 : The Members' Agent's Agreement;
  - (iii) the Disclosure of Interests Byelaw (No. 3 of 1984);

1.5 The Core Principles for Underwriting Agents establish a set of general principles with which managing agents and members' agents must comply. In relation to the provision of advice, Core Principle No 5 is particularly relevant. It requires that:

*'An agent should seek from members it advises any information about their circumstances and objectives which might reasonably be expected to be relevant in enabling it to fulfil its responsibilities to them. An agent should also take all reasonable steps to give members it advises or for whom it exercises discretion, in a comprehensible and timely way, any information needed to enable them to make balanced and informed decisions. An agent should also be ready to provide members with a full and fair account of the fulfilment of its responsibilities to them'.*

1.6 Schedule 1 of the Agency Agreements Byelaw (No 8 of 1988) sets out the Standard Members' Agent's Agreement between a member and his members' agent. The Agreement prescribes:

- ◆ the services to be provided by the members' agent, including the provision of advice in respect of:
  - syndicate selection;
  - the performance of syndicates on which a member participates;
  - reserve requirements - including the composition and levels of Personal Reserves and Special Reserve Trust Fund;
  - a member's compliance with all relevant regulatory requirements; and
  
- ◆ the duties of the agent, of which the following are particularly relevant:
  - to act in what it believes to be the best interests of the member and not allow its personal interest to conflict with the obligations owed by it to the member;
  - to forward promptly to a member all reports etc. received by it from managing agents which are required by the Council to be sent to a member or which it reasonably considers to be material including, if it considers it to be appropriate, a commentary on these documents;
  - to disclose to a member in good time any information in its possession relating to any syndicate on which a member participates, or which it has advised the member to join, which could reasonably be expected to influence the member in deciding whether to become/remain a member or increase/reduce his participation and to use its reasonable endeavours to obtain any such information; and
  - to maintain and make available proper records relating to all transactions effected by the agent concerning the member's Lloyd's business.

1.7 The Statements of Principle attached to the Major Syndicate Transactions Byelaw are thirteen principles which apply to all transactions affecting any change of participation in a syndicate. All are potentially relevant to a members' agent, although the following are particularly important in the context of an agent providing advice to members:

- (iii) *Information must not be furnished to some members of an affected syndicate which is not made available to all members of the same syndicate.*
- (iv) *The information must be sufficient to enable the members to reach a properly informed decision and they must be allowed adequate time to reach a decision. No relevant information should be withheld from them.*
- (v) *All information must be prepared with the highest standards of care and accuracy and must not be misleading.'*

## 2 **General**

### **Application**

- 2.1 The Code applies to all business carried out by a members' agent in connection with a member's or prospective member's underwriting business at Lloyd's. It is relevant to individual members and to corporate members, where they have a members' agent. It also applies to members who have ceased to underwrite but still have a members' agent, although the sections of the Code which relate to the following year's participations will not apply to these members.
- 2.2 The Code applies to all activities carried out by members' agents which are subject to Lloyd's regulatory requirements and fall outside the scope of the Financial Services Act 1986 by virtue of the exemption contained in section 42 of the Act. It therefore applies to:
- ◆ promoting, advising on and arranging participation in Lloyd's as an underwriting member;
  - ◆ advising existing members about disposing of or acquiring participations through the auctions;
  - ◆ advising existing members of Lloyd's on disposing of their participations by the acceptance of cash offers;
  - ◆ advising existing members of Lloyd's on disposing of their participations by the acceptance of bilateral arrangements; and
  - ◆ advising existing members on disposing of their syndicate participations in exchange for shares, whether through a conversion scheme, a share swap or managing agent's offer, including advising existing members on conversion schemes which involve collective investment schemes.
- 2.3 The Code does not apply, except in principle, to any activities of a members' agent which fall within the scope of the Act and would require an agent to seek authorisation from SFA or IMRO. For guidance on what those activities might consist of and obtaining the requisite authorisation, members' agents are referred to Regulatory Bulletin 015/98, issued in February 1998.
- 2.4 Subject to paragraph 2.5, breaches of the Code will fall under the Core Principles

Byelaw (No 34 of 1996) and consequently the Misconduct and Penalties Byelaw (No 30 of 1996).

## **Best Practice**

2.5 The Code seeks to promote best practice. It should not, however, be taken to be exhaustive. Members' agents will be expected to demonstrate that they fulfil their responsibilities to their members either by adhering to the Code or by other equivalent procedures.

## **Reliance on others**

2.6 A members' agent may rely on any information provided in writing by a third party if it reasonably believes the third party to be independent and competent to provide the information.

2.7 A members' agent may rely on the accuracy and sufficiency of information concerning a member which is supplied by an agent of the member (e.g. an accountant) provided the members' agent has no reasonable grounds on which to doubt the honesty, authority and reliability of the agent or the reliability of the information.

## **Advice provided by a Members' Agent**

2.8 The information which a members' agent is obliged to provide to its members should be:

- ◆ comprehensive;
- ◆ provided in a timely manner;
- ◆ not false or misleading; and
- ◆ impartial.

In addition to the above, any advice which a members' agent is obliged to provide to its members should be:

- ◆ suitable for the member - having regard to the information disclosed by the member and other relevant facts about the member of which the members' agent is, or reasonably should be, aware;
- ◆ informed - a members' agent should take reasonable steps to inform itself/its employees about the subject matter to which the advice relates; and
- ◆ independent - unless a members' agent does not hold itself out as offering independent advice, on the grounds that it has an association or arrangement with another person under which it will be constrained in the advice it provides to a member.

If the agent has a conflict of interest, or potential conflict of interest, which means that it is unable to provide independent advice or information, see paragraphs 2.11 - 2.15 (and in relation to conversion and related arrangements paragraph 6.10 (iii) - (viii))

for guidance.

- 2.9 A members' agent must ensure that records are kept of any written or oral advice provided to a member. The records should demonstrate the appropriateness of any advice given and the members' agent must be ready to make these available to the member concerned and to Lloyd's. Absence of written records will be taken to imply that appropriate advice has not been given.
- 2.10 Unless a member informs a members' agent in writing that he does not wish to receive certain information, or authorises the members' agent to act on his behalf in respect of certain transactions, a members' agent must provide all appropriate advice/information to that member. It is not possible, however, for a member to instruct a members' agent not to receive specific information where there is a byelaw requirement that it should be sent to relevant members. A members' agent which has greater discretion to act on behalf of members has, as a consequence, an increased responsibility to act prudently on their behalf.

## **Conflicts of interest**

- 2.11 A members' agent should either avoid any conflict of interest arising or should seek to manage the situation in such a way that it is able to ensure fair treatment for all its members.
- 2.12 In particular, a members' agent should not unfairly place its own interests above those of its members.
- 2.13 A conflict of interest may arise between:
- ◆ a members' agent (or any related company of the members' agent or any executive of the members' agent) and a member. (For example, a syndicate merger may result in a potential conflict of interest for the agent since any reduction in the number of syndicates may lead to a reduction in the fees received by the agent from its members); or
  - ◆ members for whom a members' agent acts, particularly where it acts for individual members and corporate members or as a MAPA operator for some members. (For example, the interests of various categories of members may be completely opposed to one another in relation to the acceptance of a cash offer).
- 2.14 In circumstances of a conflict of interest, or potential conflict of interest, a members' agent should either:
- (i) disclose the conflict of interest, or potential conflict of interest, to all relevant members. The Disclosure of Interests Byelaw outlines the requirements as regards retrospective disclosures; other prospective issues may need to be disclosed forthwith in order to enable them to be taken into account by members as appropriate;
  - (ii) effect a "Chinese wall" i.e. an arrangement whereby information known to persons involved in one part of the business is not available (directly or indirectly) to those involved in another part of the business. In each of the parts of the business so divided, decisions will be taken without reference to

any interest which any other such part of the business may have in the matter;  
or

- (iii) decide that it cannot act for a member, or group of members (for example, in the case of a MAPA) in respect of a particular matter such as providing advice in relation to a conversion scheme promoted by another members' agent when the members' agent is promoting its own conversion scheme.

An agent might find it useful to discuss each option with the Authorisations Department of the Regulatory Division.

- 2.15 Any advice or action taken by the members' agent in situations involving a conflict of interest, or potential conflict of interest, must be fully documented (see paragraph 2.9).

### **Lack of Information from a Member**

- 2.16 If a member is unwilling or unable to provide information which a members' agent considers is, or may be, relevant to ensuring that it is in a position to provide appropriate advice to that member, then the members' agent must determine whether it is able, in the circumstances, to give any advice to the member. At the very least, it is likely that a members' agent should provide more cautious, prudent advice and clearly state to the member the assumptions on which it has provided that advice. Where no information is given and no objectives are agreed between a members' agent and a member, it is likely that the members' agent will not be in a position to provide any advice.

### **Member's Refusal to Accept Advice**

- 2.17 Where a member refuses to accept the advice of a members' agent and insists on entering into a transaction which the members' agent considers unsuitable, the members' agent should advise the member in writing that it considers the transaction to be unsuitable together with reasons supporting this advice.

## **3 Advertising**

### **General Application**

- 3.1 These requirements apply to all advertisements issued by a members' agent in respect of any service relating to a member's Lloyd's business. The advertisements to which the Code applies are those issued in respect of the activities described in paragraph 2.2 above. These provisions of the Code, therefore, are not intended to apply to advertisements issued or approved in relation to investment business under the Financial Services Act.
- 3.2 Advertisements include, but are not limited to, recommendations which contain the results of research into, or analysis of, factors likely to influence the future performance of a service. They also include advice or recommendations based on

such results which are issued by or on behalf of a members' agent to the public or selected sections of the public including members for whom the members' agent acts.

3.3 Where a members' agent issues an advertisement, it must:

- (i) apply appropriate expertise;
- (ii) be satisfied that Lloyd's requirements have been fully and properly complied with; and
- (iii) be able to show that it believes on reasonable grounds that the advertisement is fair and not misleading.

3.4 Where a members' agent issues an advertisement, it must ensure that the advertisement identifies it as issuer.

### **Approval Procedure and Records**

3.5 In preparing an advertisement, a members' agent should have regard to the relevant provisions of the Advertisement Code which is drawn up by, and freely available from, the Committee of Advertising Practice together with any relevant domestic or overseas legislation.

3.6 A members' agent must ensure that an advertisement is approved by a director of the agency who is responsible for ensuring that these requirements are complied with. The identity of the individual and the date of approval should be recorded, together with details of how the records used to support any statement referred to in the advertisement may be obtained. These records should be kept available for inspection by Lloyd's for not less than three years from the latest date of publication.

### **Guidance on Application**

3.7 A members' agent should consider the following in judging whether any advertisement is fair and not misleading:

- (i) the contents and presentation of an advertisement should be such that it is not likely to be misunderstood by those to whom it is directed; and
- (ii) any statements, promises or forecasts must be fair and not misleading in the form and context in which they appear, and where any statement, promise or forecast is based on assumptions, these must be stated in the advertisement.

3.8 In particular, a members' agent should take reasonable steps to ensure that, where applicable, it has complied with the following:

- (i) guarantees - no guarantees should be given unless legally enforceable;
- (ii) commendations/testimonials - any commendations quoted must be:
  - ◆ complete or a fair and truthful representation;

- ◆ accurate and not misleading at the time of issue; and
- ◆ relevant to the service advertised.

The author must have given his consent to the commendation and, if he is an associate or employee of the issuer, the advertisement must state that fact.

(iii) comparisons - comparisons or contrasts must:

- ◆ be based either on facts verified by the issuer or on assumptions stated within the advertisement;
- ◆ not mislead;
- ◆ be presented in a fair and balanced way; and
- ◆ not omit anything material to the comparison;

(iv) material interests - where a members' agent knows that it (or an associate as defined in paragraph 10 of the Major Syndicate Transactions Byelaw (No 19 of 1997)) has a material interest or a relationship of any description with another party which may involve a conflict with the member's agent's duties to a member, it should state that fact and disclose the nature of the interest or relationship;

(v) past performance - any information about the past performance of a service or about a members' agent must:

- ◆ be relevant to the performance of the service or the members' agent advertised;
- ◆ be a complete record of, or a fair and not misleading representation of, the past performance of the service or the members' agent;
- ◆ not be selected so as to exaggerate the success or disguise the lack of success of a service or the members' agent;
- ◆ state the source of the information; and
- ◆ be based on the actual past performance of the service or the members' agent and not based on simulated figures.

(vi) taxation - if the advertisement contains any reference to the impact of taxation, it must:

- ◆ state the assumed rate of taxation on which any matter is based;
- ◆ to whom the tax relief referred to in the advertisement directly applies e.g. the member, the members' agent; and
- ◆ state if it is the case, that the matters referred to are only relevant to a particular class or classes of member with particular tax liabilities, identifying the class or classes and liabilities concerned.

## **Risk warnings**

3.9 A members' agent which issues an advertisement must take reasonable steps to ensure that the advertisement adequately explains any unusual risks involved and where appropriate contains warnings about the service concerned. Attached, as **Appendix 2**, are some examples of risk warnings which a members' agent should use as guidance.

The list, however, is not intended to be exhaustive and any risk warning that does not appear on the list, but which a members' agent considers to be appropriate, should be given in the advertisement.

- 3.10 Specific requirements apply to advertisements issued for an overseas person. This includes advertisements issued in One Lime Street. Any advertisement issued in One Lime Street must include the following:

"These services are not being offered publicly to US persons or in the United States, nor are they being offered publicly in any other jurisdiction where such offers may be unlawful."

[This is required in order to protect Lloyd's position as publisher of One Lime Street.]

- 3.11 If a members' agent is uncertain of whether the health warning referred to in paragraph 3.10 will provide it with adequate protection in respect of an advertisement issued in One Lime Street or any other publication which may be read by overseas persons, it must seek approval of the advertisement by a firm of lawyers which is competent to provide advice in respect of the jurisdiction concerned.

## 4 **"Know Your Principal"**

### **Requirements**

- 4.1 A members' agent should be aware of any information concerning a member which may be relevant to his membership of Lloyd's in order that it may be in a position to offer appropriate advice to the member. Every members' agent must, therefore, seek from a member any information which might reasonably be expected to be relevant in enabling it to fulfil its responsibilities to him.

This will include details of a member's:

- ◆ personal circumstances;
- ◆ financial circumstances, including available means;
- ◆ financial objectives, including whether participation should be on a limited or unlimited liability basis and the risk based capital implications of a member's underwriting portfolio; and
- ◆ any personal preferences.

- 4.2 The requirement to seek relevant information from a member is a continuing requirement, and such information should be updated at least annually.
- 4.3 A members' agent should seek to ensure a member informs it of any changes to this information.
- 4.4 A members' agent should ensure that proper records are kept of the information provided by a member (or any agent) in relation to his underwriting business.

## **Guidance on Application**

4.5 There should be:

- (i) evidence to support the appraisal of each prospective member's personal and financial circumstances, financial objectives and personal preferences;
- (ii) evidence of regular liaison, at least once a year, by a members' agent with each member which demonstrates the monitoring of changes in the member's relevant circumstances;
- (iii) evidence that the member has been advised of the importance of informing his member's agent of any changes in his personal and financial circumstances, financial objectives and any personal preferences which may be of relevance to his underwriting;
- (iv) where a member underwrites through more than one agent, evidence that the member has been advised that the advice given will be based on the agent's knowledge of that part of the member's portfolio for which the agent is responsible; and
- (v) evidence that a members' agent has lodged with Lloyd's each year a statement confirming that appropriate means statements have been completed in respect of all of its members.

A schedule is attached as Appendix 1 which may be used as a basis for discussion with each member or prospective member in relation to (i) and (ii) above.

## **5 Advising On Suitability For, And Type Of, Underwriting Participation**

### **Suitability for Membership**

- 5.1 A members' agent should advise a prospective member of any information which it considers to be material to that prospective member in deciding whether to become a member. This must include a recommendation from the members' agent whether, in its opinion, membership of Lloyd's is suitable for the prospective member.
- 5.2 Advice should be provided to an existing member on whether underwriting at Lloyd's remains a suitable activity for him. Such advice should be updated regularly.

### **Type of Underwriting Participation**

- 5.3 A members' agent should advise a prospective member on the type of underwriting participation that is suitable for him - whether as an underwriting member of Lloyd's or via a corporate member and, if as an underwriting member, whether bespoke or MAPA.

5.4 It should advise a member on whether an alternative type of membership is appropriate in the event of, for example, a change in the member's personal circumstances or changes to the structure of the Lloyd's market. This would include advice on conversion from unlimited to corporate membership.

## **Guidance on Application**

5.5 There should be:

- (i) evidence that full account has been taken of a member's, or prospective member's, current personal and financial circumstances, financial objectives and personal preferences in the advice given by the members' agent and the appropriateness of that advice;
- (ii) evidence that a members' agent has taken reasonable steps to ensure that a member understands the inherent risks and long term nature of underwriting at Lloyd's. In particular, the member, or prospective member, should understand the possible effect of this for himself or his estate in the event of his death, i.e. that he will remain liable for losses until liabilities of all of the syndicates on which he participates have been reinsured to close and even then, in the event of failure of the reinsurer the ultimate liability remains with the member. A members' agent should regularly remind a member of these risks; and
- (iii) evidence that a members' agent has taken into account potential changes to the capital structure at Lloyd's and the likely consequences in terms of the options for underwriting participation.

## **6 Advising On Syndicate Selection Issues**

### **Syndicate Selection / Monitoring**

- 6.1 A members' agent should provide advice to a member about the syndicates, or MAPAs, on which to participate and the amounts of his overall premium limit which should be allocated to each syndicate or MAPA.
- 6.2 Subject to paragraph 6.3 and 6.4 below, in order that a members' agent may be in a position to fulfil this obligation, a members' agent should review the performance of all active syndicates (except those syndicates which are supported entirely by dedicated corporate capital). This should include analysis of the valuations of participations in each syndicate. (See paragraph 7.4 for guidance).
- 6.3 If a members' agent does not monitor the performance of all active syndicates, it must disclose this fact to all of its members.
- 6.4 The information available to a members' agent in respect of the syndicates which operate in the Lloyd's market will vary dependent on whether the members' agent has any members who participate on a particular syndicate. It is likely that the members'

agent will have access to more information if it has members who participate on a syndicate than if it has none. Notwithstanding this, a members' agent must take all reasonable steps to ensure that it obtains any appropriate information available concerning each active syndicate.

- 6.5 Where a members' agent provides advice in relation to a MAPA for which it acts as the MAPA operator, the members' agent should inform a member that there may be alternative MAPAs operated by other members' agents which the member could join.

### **Overall Risk Profile of a Member's Portfolio**

- 6.6 The advice should ensure that a member has adequate information regarding the overall risk profile of that member's underwriting portfolio and how this may impact on the member's other capital/wealth.

### **Capacity Transfers / Restructuring Transactions**

- 6.7 A members' agent should also advise a member on changes to his syndicate participations as a consequence of restructuring and other transactions. This will include, but is not limited to, giving advice in relation to transactions governed by:
- (i) the Major Syndicate Transactions Byelaw (No 18 of 1997), including syndicate mergers and cessations, mandatory offers and minority buy-outs;
  - (ii) the Mandatory Offer Byelaw (No.5 of 1999)
  - (iii) the Conversion and Related Arrangements Byelaw (No. 22 of 1996), including conversion and cash offers (surrender arrangements);
  - (iv) the Auction Byelaw (No. 14 of 1997);
  - (v) the Syndicate Pre-emption Byelaw (No. 19 of 1997), including pre-emption and de-emption offers;
  - (vi) the Bilateral Arrangements (1998) Byelaw (No. 8 of 1998); and
  - (vii) consequential matters, such as variations in the Funds at Lloyd's (FAL) requirements, including syndicate risk assessment figures, which may give rise to a need to change a member's syndicate participations.

### **Guidance on Application**

#### **Authority of Members' Agent**

- 6.8 A members' agent which is a MAPA operator has the authority to act on behalf of MAPA members in relation to syndicate selection. This includes complete discretion to determine the syndicates forming the MAPA. A MAPA operator also has authority

to act on behalf of its MAPA members in respect of transactions covered under paragraph 6.7 (i), (iii) and (iv). It does not, currently, have any such authority in relation to (ii) except where a MAPA member has signed a supplemental agreement to the members' agent's agreement which allows a MAPA operator to make decisions on behalf of MAPA members in respect of surrender arrangements for 1998. However, from 1999 onwards this authority to accept a surrender arrangement on behalf of MAPA members will be included as an amendment to the members' agent's agreement. In respect of (v), a MAPA operator must obtain the express authority of MAPA members before engaging in a bilateral arrangement on their behalf.

- 6.9 A members' agent may act on behalf of bespoke members in respect of any capacity transfer/restructuring transaction covered by paragraph 6.7 (i) - (v), if instructed to do so in writing by the member concerned.

### **Syndicate Selection and Capacity Transfer / Restructuring Transactions**

- 6.10 In relation to syndicate selection, a members' agent should:

- (i) take full account of the information provided by the member in respect of his personal and financial circumstances, financial objectives and personal preferences, together with any other relevant information (e.g. concerning the future plans of any of the recommended syndicates or their managing agents) of which the members' agent should be aware when providing such advice to a member (see paragraph 7.4 for guidance in relation to syndicate monitoring);
- (ii) have a clearly defined procedure for determining the advice given to members concerning syndicate participations which is approved by the agent's board.

With regard to restructuring and similar transactions, including the transactions covered by paragraph 6.7 (i) - (vi), the members' agent should also:

- (iii) take reasonable steps to inform itself and appropriate employees about any relevant transaction in respect of which it intends to advise a member;
- (iv) before or when making a recommendation to a member, give the member such information about a relevant transaction as is adequate to enable a member to make an informed decision, unless the members' agent has the authority to act on behalf of the member, when this is not applicable;
- (v) promptly, or in accordance with any specific byelaw provisions, advise a member in writing why it believes a transaction should be approved/rejected as suitable/unsuitable, unless the member's agent has the authority to act on behalf of the member. In that case, however, the members' agent must keep full records demonstrating the suitability of any decision made on behalf of a member;
- (vi) take reasonable steps to ensure that its recommendation is suitable for the member having regard to a member's circumstances and any other relevant information about the member of which the members' agent is, or reasonably should be, aware;

(vii) where it advises a member to accept/participate in a particular transaction, maintain for a minimum period of 6 years any records concerning the results of enquiries which led it to give such advice;

(viii) in addition to (iii) - (vii), in relation to advice in respect of conversion or related arrangements, a members' agent:

- ◆ must advise a member, if necessary, that it has a personal interest in a scheme/arrangement and the advice offered may not be impartial;
- ◆ must ensure that all offer documents issued by it include a clear statement that such transactions are complex and a member is recommended to seek independent financial advice, for example, from a lawyer, accountant, or other professional adviser;
- ◆ must ensure that all acceptance forms for any scheme/arrangement offered by it include –
  - a statement that the members' agent's advice in relation to that scheme/arrangement may not be independent; and
  - require a member to confirm whether they have, or have not, obtained advice from an adviser other than their members' agent; and
  - may wish to seek legal advice before giving advice to members resident or domiciled outside of the UK.

## Consequential matters

6.11 A members' agent should advise a member on any consequential matters which may affect a member's syndicate selection. In relation to these, there should be evidence of a members' agent providing advice on any relevant changes to Lloyd's rules which impact on a member's underwriting business and the suitability of the advice given. Such matters will include, for example, changes to the Funds at Lloyd's requirements, syndicate risk assessment figures and how these may affect the amount of business underwritten by a member.

## 7 Reporting to Members- requirements

IMPORTANT - Note on the Application of this part of the Code

7.1 The matters set out in this Chapter are requirements made under the Core Principles Byelaw (No.43 of 1996). The requirements consolidate and simplify certain of the provisions formerly contained in the Members' Agents (Information) Byelaw (No.7 of 1988) and the Disclosure of Interests Byelaw (No.3 of 1984) which were revoked on 4 August 1999.

7.2 **Unlike other provisions of this Code, a failure to observe any of the requirements set out in this chapter may, in itself, constitute a failure in respect of which disciplinary proceedings may be commenced. Each of the paragraphs headed 'Introduction' have been provided by way of guidance only.**

## **New member statement**

### **Introduction**

7.3 A prospective member of Lloyd's needs information in order to be in a position to make an informed choice about which particular members' agent he should approach. Existing members require the same information if they wish to change members' agent. Accordingly, no members' agent may act for any new member unless the agent has first provided that member with a new member statement in accordance with the requirements set out below.

### **Requirements**

- 7.4 No members' agent shall act as a members' agent for an underwriting member (other than a member for whom it acted as members' agent as at 4 August 1999) unless that agent has first provided that member with a statement (a "new member statement") which contains all of the information that would materially assist a reasonable member to make an informed assessment of the members' agent and its business.
- 7.5 The information contained in every new member statement shall be set out under the following headings and contain information of the type thereafter described:
- (i) "Description" - the name and registered office of the agent and a description of the agent;
  - (ii) "Management, staff and proprietors" - details of the agent's management, staff and controllers;
  - (iii) "Fees and charges" - details of the fees and charges levied by the agent;
  - (iv) "Syndicate relationships" - details of the syndicates on which members underwriting through the agent underwrite;
  - (v) "Policy" - details of the agent's current policies with regard to the underwriting business carried on by the members for whom it acts;
  - (vi) "Past performance" - details of the past performance of the agent including a commentary on that performance and the performance of each of the syndicates referred to in sub-paragraph (iv) above and a statement of the average performance achieved by the agent; and
  - (vii) "Other information" - all other information that would materially assist a reasonable member to make an informed assessment of the agent and its business.
- 7.6 Every new member statement must be signed by 2 directors (or 2 partners if the agent is a partnership) of the members' agent certifying that the statement complies with the above requirements.
- 7.7 Any new members statement produced by a members' agent shall be made available to any member of the Society and to the Council on request.

### **Brochures and advertisements**

7.8 No members' agent shall issue or cause to be issued any brochure or advertisement which is misleading or inconsistent with its new member statement (or with the

information that would be contained in such a statement). The procedures and arrangements relating to advertisements are set out in chapter 3 of this code.

## **MAPA Brochures**

### **Introduction**

7.9 A prospective member of a MAPA needs information to be in a position to make an informed choice about participation on any MAPA that his members' agent intends to operate. Accordingly a members' agent which intends to operate a MAPA for the following year of account must prepare a MAPA brochure.

### **Requirements**

7.10 A members' agent which intends to operate a MAPA for the next calendar year shall prepare a brochure (a "MAPA Brochure"). Each MAPA brochure shall contain all of the information that would materially assist a member to make an informed assessment of each MAPA that the members' agent intends to operate and include in respect of each MAPA:

- (i) A statement of the agent's policy as to how the underwriting capacity available to it will be allocated to the MAPA;
- (ii) Details of the proposed composition of the MAPA including the proposed capacity that will be allocated to each syndicate and in respect of each such syndicate, the name of the active underwriter and the managing act and a description of the underwriting business of that syndicate;
- (iii) The anticipated total MAPA capacity which the MAPA is expected to have and
- (iv) Details of the fees to be charged by the members' agent in respect of the MAPA.

7.11 Every MAPA brochure must be signed by 2 directors (or 2 partners if the agent is a partnership) of the members' agent certifying that the MAPA brochure complies with the above requirements

7.12 Every members' agent shall send a copy of each MAPA brochure prepared in accordance with the above requirements free of charge to each of its members in good time in order that they may properly make an informed decision as to whether to participate on any such MAPA for the following year of account.

## **Material interest statement**

### **Introduction**

7.13 Members' agents are subject to the duties imposed upon them by the law including fiduciary duties to their principals to account, to avoid conflicts of interest and not to make secret profits. The requirements set out below in no way derogate from those duties but seek to promote high standards of accountability and disclosure at Lloyd's.

## **Requirements**

- 7.14 A members' agent shall, by no later than 31 July next following the end of every year, send to every member for whom it acted as members' agent during that year a statement (the "material interest statement") which fully and fairly presents all of the material transactions and arrangements involving the agent which were entered into or which subsisted at any time during that year, and in which:
- (i) the members' agent;
  - (ii) any related company (as defined in Lloyd's Act 1982) of the members' agent; or
  - (iii) any director or partner of the members' agent (or any person in accordance with whose instructions any such director or partner are accustomed to act)
- had, directly or indirectly, a material interest. If there are no such transactions or arrangements, the statement shall state that fact.
- 7.15 For the purposes of the above requirement, an interest shall be treated as material if a reasonable member might regard it (whether on its own or in conjunction with any other interest) as something which might influence the members' agent in the performance of its duties as members' agent.
- 7.16 A members' agent must establish and maintain systems and procedures and make all reasonable inquiries of its related companies and directors or partners to enable it to prepare a material interest statement. The material interest statement must be signed by the members' agents auditor certifying that the statement complies with the above requirements. A members' agent must retain a copy of its material interest statement for not less than 6 years after the end of the year to which it relates.

## **MAPA annual reports**

### **Introduction**

- 7.17 Members who participate in syndicates through members' agent pooling arrangements (MAPA) need information to make an informed assessment of how well the MAPA is performing or has performed. Accordingly, members' agents must prepare MAPA annual reports in respect of each MAPA operated by them.

### **Requirements**

- 7.18 Every members' agent shall in each year in respect of each MAPA operated by it which includes a MAPA syndicate for a year of account that was open at any time during the preceding year prepare a MAPA annual report made up to 31st December of the preceding year (the "reference date"). A MAPA annual report shall contain the information referred to in parts A to D below together with such further information which is not misleading or inconsistent with the remainder of the report as the members' agent may consider appropriate to assist a MAPA member to make an informed assessment of the MAPA.

7.19 A members' agent shall deliver a copy of the MAPA annual report free of charge to each MAPA member and the Society in good time prior to the date of the first auction.

### **Part A - Information to be contained in every MAPA annual report**

7.20 Every MAPA annual report shall contain the following information:-

- (i) the MAPA name (if any) and the number issued to it by Lloyd's;
- (ii) the reference date to which the report is made up;
- (iii) the year of account to which the MAPA relates;
- (iv) the total MAPA capacity;
- (v) the number of MAPA syndicates;
- (vi) the syndicate numbers of each MAPA syndicate and the name of the managing agent of each MAPA syndicate;
- (vii) the syndicate MAPA capacity of each MAPA syndicate expressed as a monetary amount and as a percentage of the total MAPA capacity;
- (viii) the number of MAPA members;
- (ix) details of the MAPA operator's charges;
- (x) the name of each of the directors of or partners in the members' agent who are MAPA members and the particulars of his MAPA participation in the MAPA expressed as a monetary amount and as a percentage of his overall premium limit;
- (xi) a detailed explanation of any significant difference between an evaluation of the expected final result of the MAPA contained in the previous MAPA annual report relating to the MAPA and the evaluation of the expected final result of the MAPA or the final result of the MAPA contained in the MAPA annual report prepared as at the reference date;
- (xii) a statement signed by two directors of or partners in the members' agent which confirms that the MAPA annual report complies with the requirements set out in paragraphs 7.18 to 7.25 of this code and has been approved by a resolution of the directors or partners of the members' agent;
- (xiii) a report made by an auditor qualified to act as the auditor of an underwriting agent in accordance with paragraph 60(a) of the Underwriting Agents Byelaw (No.4 of 1984) to each MAPA member confirming that in the opinion of the auditor the MAPA annual report complies with the requirements set out in paragraphs 7.18 to 7.25 of this code.

## **Part B - Additional content of a MAPA annual report for a MAPA at between one and two years**

- 7.21 A MAPA annual report prepared in respect of a MAPA that as at the reference date has been operated for more than one calendar year but for no more than two calendar years shall include the following additional information -
- (i) for each MAPA syndicate, the members' agent's evaluation of the profit or loss that will be attributable to the syndicate MAPA capacity when the syndicate's year of account is closed in accordance with the normal accounting policy of the syndicate. The evaluation shall be calculated using the quarterly figures of the syndicate and shall be expressed as a monetary amount;
  - (ii) the members' agent's evaluation of the expected final result of the MAPA when each MAPA syndicate has been closed by reinsurance to close. The evaluation shall be calculated by aggregating the evaluations referred to in sub-paragraph (a) above and by deducting therefrom the MAPA operator's charges and shall be expressed as a monetary amount and per illustrative MAPA share;
  - (iii) a detailed commentary on each of the five MAPA syndicates with the largest syndicate MAPA capacity; and
  - (iv) a detailed commentary on any MAPA syndicate forecast by the members' agent to incur a loss exceeding 10 per cent of the syndicate's capacity.

## **Part C - Additional content of a MAPA annual report for a MAPA at more than two years (other than closed year MAPAs)**

- 7.22 A MAPA annual report prepared in respect of a MAPA that as at the reference date has been operated for more than two calendar years but which is not a closed year MAPA shall contain the following additional information -
- (i) in respect of each MAPA syndicate that has not been closed in accordance with the normal accounting policies of the syndicate:
    - (a) the profit or loss attributable to the syndicate MAPA capacity as at the reference date calculated using the result for the run-off account figure in the audited underwriting account of the syndicate and expressed as a monetary amount and shown in the report in italics;
    - (b) an explanation of the reasons why the syndicate has not been closed in accordance with the normal accounting policies of the syndicate; and
    - (c) a commentary on the development of the run-off of the syndicate;
  - (ii) in respect of each MAPA syndicate that has been closed in accordance with the normal accounting policy of the syndicate, the profit or loss attributable to the syndicate MAPA capacity as at the reference date calculated using the closed year of account figure shown in the audited underwriting account of the syndicate and expressed as a monetary amount;
  - (iii) the overall result of the MAPA as at the reference date which shall be calculated by aggregating the profit or loss attributable to each MAPA syndicate calculated in accordance with sub-paragraphs (i)(a) and (b) above

and deducting therefrom the MAPA operator's charges. The overall result shall be expressed as a monetary amount and per illustrative MAPA share;

- (iv) a detailed commentary on any MAPA syndicate that has incurred or is forecast by the members' agent to incur a loss exceeding 10 per cent of its capacity.

## **Part D - MAPA annual reports for closed year MAPAs**

7.23 Every MAPA annual report prepared in respect of a closed year MAPA as at the reference date shall contain the following additional information:-

- (i) for each MAPA syndicate the profit or loss attributable to the syndicate MAPA capacity calculated using the profit or loss of the closed year of account figure shown in the audited underwriting accounts of the syndicate and expressed as a monetary amount;
- (ii) the final result of the MAPA which shall be calculated by aggregating the profit or loss attributable to the syndicate MAPA capacity of each MAPA syndicate calculated in accordance with sub-paragraph (a) above and deducting therefrom the MAPA operator's charges. The final result of the MAPA shall be expressed as a monetary amount and per illustrative MAPA share;
- (iii) a detailed commentary on any MAPA syndicate that has incurred a loss exceeding 10 per cent of its capacity.

7.24 For the purposes of paragraphs 7.18 to 7.23 above:

- (i) "closed year MAPA" means a MAPA where each MAPA syndicate has been closed by way of reinsurance to close;
- (ii) "illustrative MAPA participation" means a MAPA participation of £10,000;
- (iii) "MAPA member" means, in relation to a MAPA, an underwriting member who underwrites through the relevant MAPA;
- (iv) "MAPA operator's charges" means, in relation to a MAPA, any charges, annual fees, profit commission or other remuneration charged by the members' agent for operating the MAPA or for any other service (howsoever arising) carried out by it in connection with the MAPA;
- (v) "MAPA participation" means in relation to a member that part of his overall premium limit allocated to the MAPA;
- (vi) "MAPA syndicate" means, in relation to a MAPA, a syndicate in which a MAPA member participates through the MAPA;
- (vii) "quarterly figures" has the meaning given in paragraph 19(1) of the Syndicate Accounting Byelaw (No. 18 of 1994);
- (viii) "syndicate MAPA capacity" means, in relation to a MAPA syndicate, that part of the total MAPA capacity allocated to that syndicate;
- (ix) "total MAPA capacity" means, in relation to a MAPA, the aggregate of the MAPA participations of the MAPA members.

7.25 For the purposes of paragraphs 7.18 to 7.23 above a year of account of a syndicate shall be treated as closed at the time as from which reinsurance to close that year of account takes effect; and a year of account shall be treated as open until it is closed.

## **8 Other Advice Of A General Nature**

- 8.1 A member's agent should advise a member on any information in its possession relating to any syndicate on which a member participates, or intends to join, or concerning the Lloyd's market in general, which could reasonably be expected to influence a member in making properly informed decisions regarding his underwriting business.

This will include any material information:

- (i) received from a managing agent (e.g. changes to the board of the managing agent, details of a significant loss);
- (ii) derived by a members' agent from information received from the managing agent or another third party (e.g. monitoring syndicate performance); and
- (iii) concerning the members' agent and its staff.

### **Guidance on Application**

#### **Information Received from a Managing Agent**

- 8.2 With regard to information received from a managing agent, there should be evidence that a member has been notified of any:
- ◆ material change of active underwriter or deputy underwriter or other personnel responsible for key roles in a relevant syndicate;
  - ◆ acquisition of syndicate participations of 25% or more of a relevant syndicate by any member;
  - ◆ any proposal to transfer the management of a syndicate to a different managing agent;
  - ◆ material changes in the nature or scope of the underwriting business of a relevant syndicate;
  - ◆ material changes to the reinsurance accepted or effected on behalf of a relevant syndicate.

#### **Information Derived by a Members' Agent**

- 8.3 With regard to information derived by a members' agent, there should be evidence that any information derived by a members' agent from information in its possession which could reasonably be considered to be materially relevant to a member's business has been forwarded promptly to the member. This would include analysis of syndicate performance and syndicate valuations.
- 8.4 In relation to the monitoring of syndicate performance and valuations, there should be evidence:
- ◆ that a members' agent has a formal procedure which has been approved by the agent's board;
  - ◆ of attendance at formal syndicate meetings and run-off syndicate meetings;

- ◆ of the review of syndicate accounts, quarterly reports, syndicate business plans and any other relevant reports issued by the managing agent;
- ◆ of regular liaison with syndicates; and
- ◆ of the resolution of any queries arising from the analysis of information provided by the managing agent.

### **Information Concerning a Members' Agent and its Staff**

8.5 With regard to information concerning a members' agent and its staff, there should be evidence that a member has been advised of any:

- ◆ material changes to the structure/management of the members' agent;
- ◆ material changes in the support of a relevant syndicate, or MAPA, by directors of the members' agent;
- ◆ material changes in the personal stop loss arrangements of the directors of the members' agent.

## **Checklist For The Review Of A Member's Circumstances**

This schedule is intended to provide assistance to members' agents when complying with the code for members' agents. Members' agents are reminded that they have a duty of confidentiality to their principals and should therefore ensure that this information is kept confidential at all times.

The list is not exhaustive but sets out a minimum requirement which should form the basis of reviews carried out by members' agents of their members. Members' agents must still bear in mind their member's individual circumstances and that it may be appropriate to raise matters in addition to those referred to below.

### **Personal Circumstances**

- Name (and any previous name or names)
- Age
- Residence
- Career to date
- Marital status
- Number of dependants

### **Financial Circumstances**

#### Section A - Risk Profile

- Other investments/financial transactions
  - Type
  - Scale
  - Volume
- Advisers
  - Does the principal have advisers?
  - Who are they?
  - Has the principal consulted them?
- Understanding of risk
  - Limited/unlimited liability - options
  - Lloyd's accounting cycle
  - Personal stop loss
  - Balance of underwriting portfolio

#### Section B - Liquidity

- Assets
  - What assets does the principal have?
  - What is their value?
  - How realisable are they?
  - Are they beneficially owned by the principal?
  - What assets does the principal expect to have in future?

- What collateral lies behind any bank guarantees or letters of credit?  
What effect would drawdown on that collateral have?
  
- Income stream/earning power  
How much?  
How much has income varied over recent years?  
Does it satisfy the requirements of the member's category?  
What part do exceptional receipts play?  
Are there reasonable prospects of continuity?
  
- Liabilities/commitments  
Does the principal have any?  
What are they (e.g. tax)?  
Are there any in the future and if so when and for how much?
  
- Other obligations  
Are there any (e.g. partnership)?  
What is their scale?  
Have other partners agreed to the principal's membership of Lloyd's?
  
- Annual means test  
Explain obligations.

## **Examples Of Risk Warnings**

### **1 Inherent risks/long term nature of underwriting at Lloyd's**

Where appropriate an advertisement must contain a warning that a member will remain liable for losses, even after death, until liabilities of all the syndicates on which he participates have been reinsured to close and even then, in the event of failure of the reinsurer the ultimate liability remains with the member.

### **2 Suitability**

Where the advertisement contains or refers to a recommendation about a service, a statement must be made warning that the service may not be suitable for all recipients of the advertisement and a recommendation that, if they have any doubt, they should seek independent advice.

### **3 Past performance**

Where the advertisement contains information concerning past performance, it must also contain a warning that the past is not necessarily a guide to future performance.

### **4 Taxation**

Where the advertisement contains any reference to the impact of taxation it must also contain a warning that the levels and bases of taxation can change.

### **5 Advertising to overseas persons**

Where an advertisement is issued to or may be read by overseas persons it should contain a statement that: these services are not being offered publicly to US persons or in the United States, nor are they being offered publicly in any other jurisdiction where such offers may be unlawful.