

To: All Broker Contacts
All Company Contacts
Lloyd's Managing Agents
Software Providers

Date: 19 April 2013

Reference: 2013/041

market communication

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RE: DEFERRED ACCOUNT SCHEME – AVOIDING FUNDING OF INSTALMENTS – CHANGE IN PROCESS

Xchanging market communication 2010/031 dated 12 February 2010 advised the process whereby a broker could delay the payment of a second or subsequent premium instalment due under the Deferred Account Scheme due to funds not being received from their client.

When the Delay of Instalments Mechanism was introduced, it became the default basis of the Deferred Scheme that prior agreement from underwriters was not required to delay an instalment. However, market reform contracts (MRCs) continue to contain provisions of various kinds by which underwriters retain the right to agree to any postponement of an instalment. Following consultation with their appropriate committees, LMA and IUA have decided it is necessary to clarify with XIS how XIS should respond to MRCs containing such provisions, recognising that the use of any clauses is a matter for individual underwriters and brokers when negotiating a contract. Where the MRC contains (whether by omission or design) a requirement for underwriters' prior agreement to the postponement of an instalment, this provision must prevail, even where this may be contrary to the default basis of the Deferred Scheme.

Consequently, with immediate effect, when a request to delay payment of a premium instalment is received by XIS, the following conditions will apply:

Where a slip contains:

- LSW3003 or is silent on postponement of a deferred payment, XIS will respond to any instruction from a broker without agreement of the lead underwriter, in line with the basis of the Scheme agreed at London Market Group (LMG)

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- LSW3002 or other clause which specifically requires the leading underwriter to agree any postponement, XIS will look for evidence of that agreement before postponing the payment

An underwriter's instruction that they require to agree any postponement of an instalment must be specific (for example, the deletion of the second paragraph of LSW3003 – which recognises the mechanism under the Scheme for a broker to postpone an instalment – would not suffice to indicate that the underwriter requires to agree that postponement).

Where a slip subject to LSW3002 or similar clause as referenced above has had an instalment delayed without agreement in the past, it should be noted that any new requests for delaying instalments would need to be agreed.

In light of these changes, in order to avoid funding, the broker must ensure the submission is **received by Xchanging no later than 15:00 hours¹, four working days prior** to the settlement due date.

Submissions sent by brokers after this time may not be received by Xchanging in time to allow checking, processing and avoidance of funding. It should be noted that the date and time of receipt by Xchanging will be used as a basis for measurement of service level achievement. Best endeavours will be made to process instructions received after 15:00 hours, four working days prior to the settlement due date.

For the avoidance of doubt, whilst a change in a Settlement Due Date (SDD) **could**, in certain circumstances, result in the movement of an instalment date under the Deferred Processing Scheme, the amendment of an SDD (for example in order to avoid termination or cancellation or payment clauses) is a different and unconnected change to that of the postponement of an instalment date by the broker.

This change has been discussed and agreed with LIIBA.

All other terms, conditions and exceptions of the Avoiding of Funding of Instalments Mechanism remain unchanged and a copy of the original market communication on this subject has been included with this communication.

ANTHONY CROYDON
HEAD OF SERVICE
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¹ Xchanging reserves the right to change the 15:00 hours cut-off time in light of volumes experienced.