

Relations with managing agents

Introduction

1. This appendix sets out the concerns expressed by a number of managing agents in relation to the acquisition of CBSPC by HAL. These concerns focus primarily on the potentially strengthened position of members' agents in fee and profit commission negotiations and in voting procedures concerning major syndicate transactions.

Concerns

2. Out of the 22 managing agents that operate the 29 syndicates that are open to unaligned capital, eight have expressed concerns about the potentially strengthened position of members' agents as a result of the merger. Most of these managing agents have planned one or more major syndicate transactions for 2007. Those concerns can be set out as follows:

- (a) HAL/CBSPC may be more able to influence fees and syndicate conduct by:
 - (i) indicating that it intends to advise its members to terminate their participation on a syndicate (forcing them into run-off); or
 - (ii) advising its members to vote against certain syndicate transactions that require votes of the syndicate's members. Particular concerns related to: minority buyout applications; syndicate pre-emptions; syndicate mergers; and agency circumstances procedures.

Some managing agents have told us that in their view these actions may in turn reduce the overall efficiency of the Lloyd's market, which could raise the costs of insuring through Lloyd's, possibly reducing its competitiveness compared with other insurance markets.

- (b) The reduction in the number of members' agents may have adverse effects on various aspects of capacity trading in the Lloyd's market, potentially reducing the market's overall efficiency.

General considerations

3. These concerns relate in part to syndicate voting arrangements on particular issues, which we summarize below, and the effect of the merger in the context of those arrangements. But there are a number of points common to our consideration of managing agents' concerns:
 - (a) the majority of total syndicate capacity—some 83 per cent—is provided by aligned members, most of whom are not represented by a members' agent. This applies even to the 29 syndicates that are open to unaligned capital.¹ It therefore

¹With regard to those 29 syndicates that are currently open to unaligned capital, members represented by members' agents (mostly individual members) provide approximately 41 per cent of total syndicate capacity. On 8 out of the 29 syndicates, members represented by members' agents provide the majority of the capital; on the other 21 syndicates (aligned and unaligned) corporate members who are not represented by a members' agent provide the majority of syndicate capacity.

seems unlikely that, in general, members' agents, who advise mainly individual members,² will be capable of exercising market power in relation to syndicates and their managing agents.

- (b) It is wholly legitimate for members' agents to act in what they perceive to be the interests of their members, and they would be failing in their duty to do otherwise.
 - (c) The interests of members' agents and their members coincide to a large extent, given the dependence of the members' agents on profit commission, which in turn depends on the underwriting profits of their members.
 - (d) Members' agents can only advise their members; and members can only be expected to follow that advice if it is well-founded and in their interests to do so.
 - (e) As apparent from the discussion below, most of the concerns raised with us would also have applied to a number of syndicates even before the merger, and any effect of the merger would be relatively limited.
4. We have also noted that following a review by the CTP in response to the concerns of managing agents, Lloyd's has imposed additional requirements on both remaining members' agents following the merger and will conduct a further review at the start of 2007: see paragraphs 56 and 57 of Appendix B. Some of the concerns raised with us would seem relevant primarily to the further review by Lloyd's rather than to our assessment of the effects of the merger on competition.

Advising members to terminate participation on a syndicate to influence syndicate conduct and fees

5. Several managing agents have indicated that members tend to follow the advice of their members' agents and that, by advising their clients whether or not to participate in a particular syndicate, the members' agents effectively decide which syndicates to support. If a substantial part of capital were to leave certain syndicates, following members' agents' advice, those syndicates might be forced into run-off. Several managing agents fear that HAL/CBSPC might use this threat to seek to negotiate changes to managing agents' fees and profit commission and to influence syndicate conduct regarding major syndicate transactions. These managing agents argue that this may frustrate the operation and development of syndicates and therefore have detrimental effects on the efficiency of the Lloyd's market as a whole. It should be noted that these fears relate to the use of undue influence over members. It does not relate to the provision of objective advice to withdraw capital from a syndicate which has performed poorly.
6. On whether members' agents' increased bargaining power might make it more difficult for managing agents to increase fees or profit commission, Hampden said this would be a very good thing, for members, if it were so. However, the relative bargaining positions between members' agents, acting on behalf of members, and managing agents had been a longstanding issue. Hampden drew our attention to a 1992 report, which commented:

the lack of competition on managing agents' fees is not surprising for several reasons. First, their importance relative to underwriting perform-

²Hampden also provides members' agency services for three unaligned corporate members; these activities represent approximately 2 per cent of Hampden's total annual revenue.

ance is limited. Fees, profit commission, or even syndicate expenses will never be the predominant factor in syndicate evaluation. Second, managing agents control a scarce resource—ie access to quality syndicates. Thus, there is limited negotiating power for names or members' agents over managing agents' remuneration levels.

Hampden also argued that:

- (a) Members' agents' bargaining power in respect of fees and profit commissions was very limited; it had, this year, failed in its request to one syndicate to reduce fees, although in a previous year the fee had been reduced in response to requests. This was evidence that if anything the bargaining power of members' agents had reduced over the last three years despite the fall in the number of members' agents, and this was a reflection of the declining influence of unaligned capital in the Lloyd's market.
 - (b) Fee increases were not settled by vote but were approved by Lloyd's. However, it hoped that the merger would give Hampden the opportunity to make stronger representations to restrict fee increases where such fee increases were unjustified. The CTP had concluded that this procedure should not be amended.
 - (c) Where members' agents would, however, hope to exert influence on managing agents was in encouraging them to start new syndicates on which unaligned capital might participate.
7. In order to assess managing agents' concerns regarding members' agents potentially influencing members to withdraw capital, we have considered members' agents ability and incentives to engage in this type of behaviour.

Ability to influence withdrawal of capital

8. Members' agents' ability to carry out any threat to influence members to withdraw capital from syndicates would be determined in part by syndicates' viability in the event that all capital represented by members' agents were withdrawn.
9. If individual capital can easily be replaced by corporate capital (that is not represented by a members' agent), it is unlikely that syndicates would be forced into run-off upon withdrawal of all individual capital.
10. We have noted that underwriting capacity is now generally dominated by aligned members, and these members may increase their participation if any members' agent sought to restrict capacity supplied by its members. When asked whether their syndicates would be forced into run-off if all unaligned capital³ were withdrawn following members' agents' advice, all responding managing agents⁴ answered that their syndicates would not be sent into run-off if this were to happen. However, a couple of managing agents noted that this would have a negative effect on the business or make trading more difficult.

³Note that 'all unaligned capital' is a broader term than 'all capital represented by members' agents'—it also encompasses the capital of unaligned members that are not represented by members' agents. However, on some syndicates all unaligned capital exists of capital represented by members' agents, in which case there is effectively no difference between the two.

⁴Responding managing agents include all managing agents that have submitted information to the OFT and/or to the CC (either in the form of a submission or in response to the CC's questionnaire that was sent to all managing agents that operate syndicates that are open to unaligned capital). Out of 22 managing agents that operate syndicates that are open to unaligned capital, 17 responded.

11. Most managing agents expected to be able to replace the withdrawn capital with aligned and/or unaligned corporate capacity. However, even under the assumption that there would be no available corporate capital, none of the managing agents expected its syndicates to be forced into run-off if all unaligned capital were withdrawn.
12. However, if members exercised a degree of autonomy, any threats by members' agents to influence members to withdraw capital from syndicates in order to influence managing agents' fees and syndicate conduct would not be credible, as members may continue syndicate participation against their members' agent's advice.
13. Although several managing agents told us that in their experience members usually followed their members' agent's advice, the ALM, which represents the majority of individual members underwriting at Lloyd's, and the HPG, which represents approximately 300 members who underwrite relatively high amounts, consider that some Lloyd's members exercise a degree of autonomy.
14. In its representations to Lloyd's following the merger of HAL and CBSPC, the ALM stated that most individual members decide which syndicates they will support, what bids to make for the capacity of various syndicates and what amount of capacity to sell at what price. Similarly, evidence from the HPG suggests that some individual members do not necessarily follow their members' agent's advice.
15. According to Hampden, even members who participate through MAPAs⁵ have the final choice of syndicates on which to participate, in the sense that if they do not wish to underwrite on a particular syndicate (while the MAPA operator chooses the opposite course of action) then they could choose to withdraw from the MAPA prior to any business being underwritten.
16. Given that none of the managing agents expect their syndicates to go into run-off if all unaligned capital were withdrawn and given that members can exercise autonomy, it is unlikely that members' agents would be able credibly to threaten to influence members to withdraw capital from syndicates. There are no indications that this would change following the merger.

Incentive to influence withdrawal of capital

17. Even if members' agents could indicate their intention to advise members to withdraw capital from syndicates, they may not have the incentive to engage in this type of behaviour.
18. The number of syndicates that are partly made up of unaligned members is declining. In the 2006 year of account, 29 (of 62) syndicates were open to unaligned members. If members' agents were to say they intended to advise members to withdraw capital from the remaining syndicates and force them into run-off, the result may be an even smaller number of syndicates for unaligned capital to participate in. As this limits the options for diversifying members' underwriting, such actions may not be in members' interests, a point emphasized by Lloyd's and also recognized by some managing agents.

⁵The MAPA operator manages the pooled capacity on behalf of the members of the MAPA buying and selling capacity at the capacity auctions in the same way as a member may do directly.

19. The Council's paper following the merger between HAL and CBSPC addressed managing agents' concerns.⁶ It concluded that the risk of a members' agent advising its members to withdraw support from a syndicate (and potentially precipitating a run-off) without good reason was unlikely. It indicates that the same concerns had existed when there were three members' agents but they had caused no reported problems in practice. It further states that the CTP identified no reason to believe that this would change as a consequence of the further reduction in members' agents.

Assessment

20. We believe that it is unlikely that members' agents would advise, or threaten to advise or have the incentive to advise, their members to withdraw their capital from syndicates, except where this would be objective advice to withdraw from syndicates that are performing poorly, since:
- (a) in accordance with clause 6 of the standard form members' agents agreement, members' agents are to act in what they believe to be the interest of their members;
 - (b) the number of syndicates open to unaligned capital is declining; and
 - (c) there is no evidence that members' agents have attempted to use such threats during negotiations in the past despite this being possible.

There are no indications that any of these factors would change following the merger.

Blocking of certain syndicate transactions

21. Some managing agents fear HAL/CBSPC may have influence over a greater proportion of voting power following the merger. According to some managing agents, transactions falling into this category include:
- (a) minority buyouts;
 - (b) syndicate pre-emptions;
 - (c) syndicate mergers; and
 - (d) the so-called 'agency circumstances procedure'.

These managing agents fear that votes may be used for the purpose of seeking re-negotiation of managing agents' fees and profit commission.

22. Hampden's response to such concerns was as follows:
- (a) Hampden quoted from a paper by Keefe, Bruyette & Woods, an investment bank:

many Lloyd's insurers prefer to operate without external Names. The first thing to be said about this is that there are perfectly sound ways of achieving this, of which Amlin, Catlin and BRIT have taken advantage. The annual auctions of capacity allow managing agents to buy

⁶Lloyd's Council Discussion paper [078/06], written by the CTP for consideration by the Council on 14 June 2006.

capacity from their Names at an open-market price. Any managing agent with external Names does so either because (i) it prefers it, (ii) it has not got enough money, or (iii) it is not prepared to offer a high enough price.

- (b) In the case of a minority buyout proposal, HAL/CBSPC gains independent advice from an investment bank regarding the buyout price, which makes its view more neutral and independent.
 - (c) HAL was unlike a fund manager in that it was unable to exercise block-voting rights without the approval of its members.
 - (d) In respect of the specific issue of syndicate pre-emptions of over 7.5 per cent, it has been rare for members' agents to recommend rejection of a pre-emption. Hampden believed that, in any event, the ability to block certain transactions was a healthy control on the market, particularly if the utilization of capacity was poor and it was seen that the managing agent had been over-optimistic, or indeed might be seeking to dilute a member's share of the syndicate through an unnecessary pre-emption. There were also only five syndicates where HAL/CBS's share had risen above 25 per cent as a result of the merger.
 - (e) The CTP had concluded that there was 'no evidence that members' agents had unreasonably blocked a syndicate pre-emption. However, the potential for unreasonable action reinforced the CTP's concern that Lloyd's should have a mechanism in place for the reporting of any such action'. Following the merger, Lloyd's had requested that members' agents put in place service standards for dealing with managing agents and members and to ensure that adequate resources were devoted to deal with syndicate transactions. Members' agents had complied with these requests to the satisfaction of Lloyd's.
23. In the following paragraphs we discuss in turn the ability and the incentives of the members' agents' to recommend action which would block major syndicate transactions for each of the types of transactions listed above.

Ability to block transactions

24. Members' agents themselves do not have voting rights with regard to major syndicate transactions. It is the members who can vote in favour of or against a proposed transaction. As in the case of withdrawal of capital discussed above, an important factor influencing members' agents' ability to block major syndicate transactions is the considerable degree of autonomy exercised by their members. Any recommendation from members' agents to block a certain syndicate transaction need not necessarily be accepted by members.

Minority buyout applications

25. Before a minority buyout application can be made to the CTP of Lloyd's, a managing agent must have made an offer to acquire all of the capacity on a syndicate and have received acceptances such that it and its connected companies have 90 per cent of the syndicate capacity (or such other proportion as the Council may specify, either generally or in relation to a particular case).⁷ Accordingly, a members' agent that represents more than 10 per cent of the total capacity of a syndicate could

⁷Paragraph 2 and Schedule 2 of the Lloyd's Major Syndicate Transactions Byelaw.

recommend to its members that they should not accept a minority buyout offer. If that recommendation was accepted by 10 per cent of the total capacity the managing agent could not, generally, proceed to seek the CTP's⁸ permission to effect a minority buyout of those who did not accept the offer (on the same terms as that offer).

26. However, the Council has put in place a complaints procedure which is designed to allow managing agents to report to Lloyd's for review any recommendation made by a members' agent which a managing agent considers to be unreasonable. The Council would be able to take corrective action if the actions of a members' agent were found to be unreasonable.
27. Once a minority buyout application has been made, the CTP has a broad discretion as to whether to give permission taking into account the reasons why the minority buyout was proposed and the adequacy of the offer (including long-standing guidance that at least 50 per cent of the unaligned members by capacity have accepted the offer).
28. Accordingly, a members' agent that represents more than 50 per cent of the unaligned capacity could recommend to its members that they should not accept a minority buyout offer. If that recommendation was accepted by 50 per cent of the total capacity and the managing agent proceeded to seek the CTP's permission to effect a minority buyout the CTP would need to consider whether to apply the 50 per cent guidance.
29. Before the merger, HAL represented more than 10 per cent of total capacity on 16 out of 29 syndicates. CBSPC represented more than 10 per cent of total syndicate capacity on 13 out of 29 syndicates. After the merger, HAL/CBSPC represents more than 10 per cent of total capacity on five additional syndicates,⁹ which means that it could prevent minority buyout applications on those five additional syndicates, provided that its members followed the recommendation to decline the relevant buyout offer. On four of these syndicates, Argenta represents more than 10 per cent of total syndicate capacity, which means minority buyout applications could potentially also be prevented on these syndicates in absence of the merger (though by a different members' agent).
30. On one syndicate, HAL/CBSPC represents less than 10 per cent of total syndicate capacity, but more than 50 per cent of unaligned capacity, whereas neither represented more than 50 per cent of unaligned capacity before the merger. Subject to consideration by the CTP, HAL/CBSPC may thus be able to recommend action that would block a minority buyout on that one syndicate, if its members were to follow the recommendation to decline the relevant buyout offer.¹⁰
31. The Council considers that the CTP has sufficiently broad discretion to determine a minority buyout application fairly, having regard to whether any unreasonable recommendation had been made by a members' agent.

⁸See paragraph 19.

⁹Compared with the number of syndicates on which either Hampden or CBSPC represented more than 10 per cent of total capacity before the merger.

¹⁰[redacted]

Syndicate pre-emption

32. In order to effect a syndicate pre-emption of more than 7.5 per cent a managing agent must obtain the approval of 75 per cent by capacity of the (aligned and unaligned) members of a syndicate who notify the managing agent of their approval or disapproval of the proposal.¹¹ Accordingly, a members' agent that represents more than 25 per cent of the total capacity of a syndicate could recommend to its members that they should not approve the proposed increase. According to Lloyd's, this has never occurred in practice, and members' agents are generally keen to support syndicate growth.
33. Before the merger, HAL represented more than 25 per cent of total syndicate capacity on 8 out of 29 syndicates. CBSPC represented more than 25 per cent of total syndicate capacity on four out of 29 syndicates. After the merger, HAL/CBSPC represents more than 25 per cent of total syndicate capacity on five additional syndicates and would thus be able to block significant pre-emptions on these five additional syndicates, provided its members followed its recommendation to disapprove of the proposal.
34. On two of these five syndicates, Argenta represents more than 25 per cent of total syndicate capacity, which means significant pre-emptions could potentially also be blocked on these syndicates in absence of the merger (though by a different members' agent).

Syndicate mergers

35. Where a managing agent wishes to merge two or more syndicates it must seek the consent of the Council. The Council will take into account the extent to which the merger proposal has the approval or disapproval of the members of the syndicates and, in particular whether 75 per cent by capacity of the (aligned and unaligned) members voting on the proposal voted in favour.¹²
36. Accordingly, a members' agent that represents more than 25 per cent of the total capacity of a syndicate could recommend to its members that they should not accept the merger. If that recommendation was accepted by 25 per cent of the total capacity that would not be conclusive but the Council would need to give very careful consideration as to whether it should give consent to the merger in all of the circumstances of the case.
37. As indicated in paragraph 33, before the merger, HAL represented more than 25 per cent of total capacity on 8 out of 29 syndicates and CBSPC represented more than 25 per cent of total syndicate capacity on four out of 29 syndicates. After the merger, HAL/CBSPC represents more than 25 per cent of total syndicate capacity on five additional syndicates and is thus able to recommend its members not to approve a syndicate merger on these five additional syndicates.
38. However, even if all its members were to follow its recommendation, this would not necessarily increase HAL/CBSPC's ability to recommend action which would block syndicate mergers, given that the Council has a broad discretion to determine an application for consent to merge a syndicate.

¹¹Paragraph 6 of the Lloyd's Syndicate Pre-Emption Byelaw.

¹²Paragraph 1 and Schedule 1 of the Lloyd's Major Syndicate Transactions Byelaw.

Agency circumstances procedure

39. The agency circumstances procedure allows a managing agent to acquire business or transfer business away from an unaligned syndicate in circumstances which may conflict with their strict agency law duties, provided that full disclosure is given and the proposal is approved by 50 per cent of unaligned capacity voting in a ballot (which the managing agent is obliged to organize in the event that 10 per cent by capacity of the unaligned members object to the proposal). Managing agents may pay compensation to the unaligned members to obtain that approval. If approval is obtained the managing agent has a 'safe harbour' from claims for breach of fiduciary duty.¹³
40. The above implies that a members' agent representing more than 50 per cent of unaligned syndicate capacity could block the acquisition or transfer of business under the agency circumstances procedure by first objecting to the proposal and then voting against it in the ballot. However, it should be noted that the procedure need only be used at a managing agent's election. A managing agent may instead be able to obtain advice that a particular proposal does not conflict with their agency law duties or seek the Court's approval of the proposal.
41. Before the merger, HAL represented more than 50 per cent of unaligned syndicate capacity on 3 out of 29 syndicates. CBSPC represented more than 50 per cent of unaligned syndicate capacity on 5 out of 29 syndicates. After the merger, HAL/CBSPC represents more than 50 per cent of unaligned syndicate capacity on an additional 14 syndicates and thus it would be able to block acquisition or transfer of business under the agency circumstances procedure on 14 additional syndicates if its members followed its recommendation to object to and vote against the proposal.
42. However, even if HAL/CBSPC recommendations were followed by its members, the managing agent could still seek the Court's approval of the proposal—the agency circumstances procedure is merely one route to get approval to acquire or transfer business. According to Lloyd's, use of this procedure is relatively rare. In addition, it is questionable whether HAL/CBSPC's potential frustration of managing agents' plans to use the procedure would have any effects on competition.

Past use of members' agents' negotiating position

43. A number of managing agents have indicated that members' agents have used their members' voting position to negotiate managing agents' fees and profit commission. HAL has confirmed that it has been successful in negotiating lower managing agents' fees and/or profit commission for its members in situations that required a positive vote from individual members in order for a major syndicate transaction to proceed.¹⁴ According to HAL, on other occasions, managing agents have refused to renegotiate their fees and profit commission.
44. Various individual members have indicated that they hope the combined HAL/CBSPC will have greater bargaining power in negotiations with managing agents regarding fees, profit commission, and buyout price. HAL has indicated it will continue to make a case for lower managing agents' fees and commissions and hopes that it will be more successful in doing so in the future.

¹³Lloyd's Market Bulletin 090/1999.

¹⁴HAL told us that the managing agent in question agreed to reduce its prices by 0.05 per cent.

Incentives to block transactions

45. There are no indications that members' agents' incentives would not be broadly aligned with those of their members. We have received no evidence of any unreasonable blocking behaviour as such and have no reason to believe that such behaviour would arise, given the duty of an agent to act in the best interests of the members that it represents.

Assessment

46. From the above, therefore, it appears that:
- (a) HAL/CBSPC's ability to block certain syndicate transactions (specifically minority buyouts and syndicate pre-emptions) may potentially have increased because, after the merger, the combined entity represents a greater proportion of unaligned syndicate capacity.
 - (b) However, whilst the merger may strengthen HAL/CBSPC's bargaining position in negotiations with managing agents, there are no indications that this would negatively impact on competition in any relevant market.
 - (c) In addition, members may not always follow the recommendations of their members' agent (ie to vote against a certain syndicate transaction), particularly if HAL/CBSPC sought to block a syndicate transaction for reasons other than poor syndicate performance or obtaining fair value for its members.

Possible effects on capacity trading in the Lloyd's market

Liquidity/volatility of the auctions

47. A concern expressed by several managing agents is that capacity auctions may become more illiquid and more volatile as a consequence of the merger. One of the main reasons for this would be that after the merger there are only two members' agents' views concerning which syndicates to support and what price should be paid for capacity on those syndicates. Other managing agents have submitted that they would only expect to see an impact on the auction process in a few cases and that the merger would not significantly affect the already volatile and illiquid capacity auctions.
48. On whether the reduction in the number of members' agents may affect the auctions, Hampden said:
- (a) HAL did not make a market in syndicate capacity and did not introduce liquidity into the auction system by holding capacity on its own account. The Lloyd's auction system did not normally permit trading in syndicates in one calendar year. HAL had duties to both buyers and sellers and operated strict Chinese walls between its auction pricing committee, which determined sale prices for sellers, and its MAPA manager, which determined buy and sell transactions for each MAPA (any pricing decisions had been delegated to the head of Hampden Underwriting Research, who did not advise members directly).
 - (b) In respect of members underwriting on a bespoke basis, purchase prices were discussed between each individual names executive and their client. However, the purchasers made their own decisions and ultimately decided which syndicates they would like to support and how much they were prepared to offer to

purchase capacity on such syndicates. This process had been in place for some years. It did not consider, therefore, that the merger would have any impact at all on auctions.

- (c) It also referred to the CTP report which noted the ALM and the HPG's view that the reduction in members' agents would not have a substantial effect on the conduct of the auction, primarily because individual members exercised a considerable degree of autonomy in deciding which syndicate to support. The CTP had concluded that the same underlying theoretical concerns expressed by managing agents had existed when there were three members' agents but there had been no reported problems in practice. The CTP had identified no reason to believe that this would change as a consequence of the further reduction in members' agents. The CTP further concluded that the risk of a members' agent withdrawing support from a syndicate (and potentially precipitating a run-off) without good reason was unlikely, as was the risk that members' agents would fail to act when there was a good reason to do so.

49. Following the merger, there are only two members' agents' views concerning which syndicates to support. However, we believe that members are to a large extent able to decide for themselves which syndicates they would like to participate in and what would be a reasonable price for capacity,¹⁵ since:

- (a) individual members can exercise a considerable degree of autonomy;
- (b) there are various other sources of information and advice in and around the Lloyd's market;¹⁶ and
- (c) evidence from representative bodies such as the HPG and the ALM confirm the autonomy of members in making decisions.

50. In conclusion, we have no evidence that the merger would make the capacity auctions more illiquid and volatile.

Conflicts of interest

51. A further concern expressed by several managing agents relates to increased potential for conflicts of interest which could have an effect on capacity auctions. Several managing agents have questioned HAL/CBSPC's ability to provide independent advice where it is to act on behalf of both buyers and sellers of capacity in the syndicate auctions, and have expressed the concern that internal conflicts of interest arising from this may frustrate the auction process. A similar conflict of interest may potentially arise when members exit the Lloyd's market and other members want to buy their Lloyd's portfolio or their LLP, where both seller and buyer are customers of the same members' agent. According to one respondent it was hard to see a situation where a member's agent could advise some of its names to continue on a syndicate and others not to—and if a substantial part of capital were to leave certain syndicates this may effectively end their existence.

¹⁵This does not necessarily mean that individual members often deviate from their members' agents' advice; they may simply agree with their members' agent. The point is that they are able to deviate from this advice if they thought that was in their best interest.

¹⁶Such as the information provided by the ALM or other advisors such as Newton Follis and Patrick Moore and financial analysts such as Moody's, Standard & Poor's, and AM Best.

52. Hampden argued that there was no reason why the merger would have any effect on members' agents' ability to give independent advice or advise some members to continue on a syndicate and others not to:
- (a) The vast majority of HAL's clients had their portfolios of syndicates managed on a bespoke advisory basis. A minority were managed through MAPAs where discretion was given to the MAPA manager. HAL's advice had to be based on the detailed knowledge of each member's financial affairs and their risk and reward characteristics. Some members would be more risk averse while others would be prepared to take more risk in return for greater potential reward. It was perfectly appropriate for one member to be on a particular syndicate which at the margins may be low risk or high risk, while another member may be advised not to be on either the high- or low-risk syndicate.
 - (b) It would not be in HAL's clients' interests to recommend withdrawal of the capacity from a syndicate, which was making profits, but conversely it should, and indeed had, recommended withdrawal of capital from underperforming businesses. The decision to withdraw capacity would not be taken lightly. Unaligned capital was only able to participate on a limited number of syndicates (29 out of 64 for 2006). To seek to limit this number capriciously would not be in its clients' best interests. Moreover, if a withdrawal was likely to lead to a syndicate ceasing to trade it would need to consider whether it was possible to fix the problem, the ability of the syndicate to find alternative sources of capital replacing its capacity and the cost implications of potentially putting the syndicate into run-off.
 - (c) Hampden also noted a comment by Keefe, Bruyette & Woods, that it had continually challenged Lloyd's to name a successful syndicate that had been forced to close because of inadequate support. It was satisfied that no such example existed but instead there were numerous examples of syndicates that were supported for too long.
53. As indicated in paragraph 4, Lloyd's has imposed new requirements on members' agents, including the requirement to publish conflict of interest policies, publishing a code of practice and service standards and devoting adequate resources to deal with syndicate transactions in accordance with the service standards.
54. With respect to the potential conflict of interest arising from members' agents representing both buyer and seller upon a member's exit from the Lloyd's market, Hampden has indicated that in such a case, HAL always acts for the seller and will find another party to represent the buyer.
55. In its recent paper to the Council, the CTP concluded that the same underlying theoretical concerns had existed before the merger, but they had caused no reported problems in practice. The CTP identified no reason to believe that this would change as a consequence of the further reduction in members' agents.