

Market Reform Slip Guidance: How to reflect Broker and (Re)insurer Requirements in the Subscription Agreement

Introduction

Principle 2 of the Contract Certainty Code of Practice (CoP) calls for phasing out the use of stamp conditions that could compromise contract certainty. The Market Reform Slip (June 2006) sought to promote this action by making provision for such conditions under appropriate headings within the various sections of the slip.

The purpose of these guidelines is therefore to assist brokers with the initial compilation of the Subscription Agreement, and brokers and insurers alike to complete the Agreement during risk placement, with a view to avoid the need for Stamp Conditions.

Brokers should ensure that the content of **every** section of the agreement is strictly limited to the requirements of each heading. Insurers should indicate their requirements clearly, under the appropriate headings, and without the use of stamp conditions (although 'clean' stamps, i.e. without conditions incorporated within them, may be used to signify insurer identity).

The Subscription Agreement should document all insurer requirements for the agreement of claims and endorsements, whether these are under collective arrangements such as GUAs or where certain insurers wish to agree such matters for their own proportion only. In this context, the following selective Subscription Agreement headings are those that require particular attention.

Slip Leader

Under this mandatory heading, the name of the slip leader must be clearly identified. If known when the slip is produced it should be entered by the broker. If not, the slip leader must enter it when writing the contract.

There can only be one Slip Leader per contract. However in situations where the Slip Leader is a non-bureau insurer, it may be necessary to have a BUREAU LEADER to facilitate the necessary bureau processing. In these circumstances, the right hand side of the slip should be annotated with the headings OVERALL SLIP LEADER and BUREAU LEADER. In such cases, subsequent slip provisions will need to be specific with regard to which leader is applicable to any Slip Leader agreements.

Insurers should note that being the Slip Leader does **not** automatically create rights or obligations to agree contract changes or claims on behalf of others, ***unless the leader opts to do so under other provisions elsewhere in the slip***, e.g. under the application of a General Underwriters Agreement. A slip leader not wishing to accept such obligations (except for its own participation) must specify such requirement under **BASIS OF AGREEMENT TO CONTRACT CHANGES and / or CLAIMS AGREEMENT PARTIES, in the same way as *any* participating (following) insurer that may also wish to specify their agreement role(s). As a specific slip term, any such requirement will take precedent over a GUA.**

The exception to the above rule is in respect of Claims Agreement by Lloyd's Managing Agents where the parties required to agree claims are dictated by the terms of the Lloyd's Claims Scheme (see Lloyd's Market Bulletin Y3754).

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Other Agreement Parties for Contract Changes, if any

This heading is used solely to **identify those insurers that will agree changes affecting Part Two of the GUA.**

The relevant GUA schedule separates contract changes into three parts – part one includes alterations that the slip leader may agree on behalf of all underwriters, part three details alterations that must be submitted for agreement by all underwriters, and part two alterations are those that are not included in part one and part three. Those parties in addition to the slip leader to agree part two alterations on behalf of the following market must be stated under this heading.

If the GUA (or comparable Leading Underwriter Agreement) is not used then the heading should be omitted. If the heading is not present when a GUA (or other Leading Underwriter Agreement including the words “Agreement Part(ies)”) is used, or the heading is present when a GUA (or comparable Leading Underwriter Agreement) is not used, it will be marked as a fail under the Market Reform Slip checks.

If no underwriters are specified under this heading and it is left blank, those parties required to agree part two alterations will automatically default to all underwriters. Often this is not the intention of leaving the heading blank. A possible solution to avoid this outcome is for the broker to insert “Where no other agreement parties for contract changes are stated herein, the agreement parties will be the slip leader only.” leaving a space for any followers to add their name in below.

Stating “none” or “not applicable” should be avoided. As an alternative a phrase such as “slip leader only to agree part two changes” can be used.

Any insurer wishing to agree all contract changes for their own proportion **should not** state their requirement here - see BASIS OF AGREEMENT TO CONTRACT CHANGES below.

Basis of Agreement to Contract Changes

This is a mandatory heading that must be present to pass Market Reform Slip checks. By this heading, the agreement process for contract changes to the slip must be stated. Therefore, the slip must specify any leading underwriter agreement that applies e.g. NMA, LUAMC, GUA and applicable class of business schedule etc. Alternatively, under this heading it may specify who will agree different types of contract changes.

Unless specified to the contrary elsewhere in the slip the definition of contract changes includes, but is not limited to, endorsements, alterations, amendments, deletions and special acceptances. Where different insurers wish to agree only some of the above items their arrangements must be specific with regards to their intent.

When a GUA is used, a relevant schedule must be used as well. The relevant schedule must be referenced accurately and in full (i.e. dated) separately e.g. General Underwriters Agreement (October 2001) with Non-Marine Schedule (October 2001). For more information on the content of the schedules, visit the Market Reform website (www.marketreform.co.uk)

Where market practice requires, brokers should make provision for insurers that wish to opt out of any leading underwriter agreements (such as the GUA) and agree all contract changes for their own proportion only.

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This can be done by inserting the following provision, ideally

[Leave blank for insurer name] to agree all contract changes in respect of its own participation hereon.

Insurers should insert their names (or ‘clean’ stamps), and initial and date their respective provisions. Alternatively, where there are insufficient blank provisions already in the slip, additional insurers may use ‘And Me’ to indicate the same requirement, similarly applying their name and / or stamp, initials and date.

If brokers are unable to include the provisions in their current templates, Insurers that wish to opt out will need to **write out the provision in full** or apply an equivalent stamp, or follow the ‘And Me’ process outlined above.

Claims Agreement Parties

This heading must be present on all Market Reform open market slips. The name(s) or other identifiers of (all of) the Lloyd’s syndicate(s) and / or (re)insurance company(ies) to be the claims agreement parties should appear under this heading. These will vary depending on the class of business and market.

In respect of contracts with more than one participating Lloyd’s Managing Agent, Xchanging Claims Services must be shown as an agreement party since they are required to agree all claims on behalf of following Lloyd’s syndicates. The first Lloyd’s syndicate should be shown as a claims agreement party, and optionally the second Lloyd’s syndicate in respect of claims which the Lloyd’s claims scheme classifies as “Special Category”.

Where market practice requires, brokers should make provision for company insurers that wish to agree claims in respect of their own participations. This can be done by inserting the following provision, ideally

[Leave blank for insurer name] to agree all claims in respect of its own participation hereon.

Company insurers should insert their names (or ‘clean’ stamps), and initial and date their respective provisions. Alternatively, where there are insufficient blank provisions already in the slip, additional company insurers may use ‘And Me’ to indicate the same requirement, similarly applying their name and / or stamp, initials and date. **It is important to note that Lloyd’s underwriters cannot add themselves as agreement parties in this way, as that would conflict with the Lloyd’s 2006 Claims Scheme (Published 28 February 2006—Market Bulletin Y3754).**

If brokers are unable to include the provisions in their current templates, company insurers will need to **write out the provision in full** or apply an equivalent stamp, or follow the ‘And Me’ process outlined above.

Under this heading the slip should not make reference to the basis of claims agreement (e.g. the Lloyd’s 2006 claims scheme), which should be mentioned under the Basis of Claims Agreement heading.

No further information other than the Claims Agreement Parties should be entered under this heading.

Basis of Claims Agreement

Under this mandatory heading, the claims agreement procedure(s) must be specified, namely the “Lloyd’s 2006 Claims scheme” if there are any subscribing Lloyd’s syndicates and/or the “IUA claims agreement practices”, if there are any subscribing bureau company insurers. Any other risk specific agreement procedures must also be included.

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It is also acceptable where required under this heading to state a phrase such as “Non-bureaux companies to agree claims subject to their own claims agreement procedures”.

Claims Administration

Under this mandatory heading, all claims related information with the exception of identification of agreement parties and the claims agreement procedures must be included. There will be contracts where no extra information is required; in this case this heading should still appear, but with the content left blank.

Rules and Extent of any other Delegated Claims Authority

This heading is mandatory. If any of the claims agreement parties specified earlier have delegated any of their claims agreement rights or procedural obligations to any other party, this is to be specified including any limits that may apply e.g. all claims less than GBP XXXX.

It is the responsibility of the claims agreement insurers, i.e. those that are defined as claims agreement parties, to update this section as necessary.

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