

Reconstruction & Renewal

Settlement Offer

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July 1996

This document is important and requires your immediate attention. If you are in any doubt as to what action you should take, you should take legal, financial or other appropriate professional advice.

The procedure for acceptance of the settlement offer is set out in the accompanying guide.

This document is not a prospectus nor a solicitation of capital. It should be read in conjunction with the accompanying documents. Whilst the Council is of the opinion that the information contained in this document and the accompanying documents is fairly and properly presented, neither the Society, the Council, the Lloyd's Regulatory Board, the Lloyd's Market Board, the Names Committee, the Validation Steering Group, the Settlement Agreement Review Group, the Reserve Group, Equitas and its directors, or any of their respective members, officers and advisers accepts any responsibility or liability for any loss occasioned to any person acting or refraining from action as a result of any statement, fact, figure or expression of opinion or belief contained therein or omission therefrom. In addition, none of the foregoing is acting in a fiduciary capacity with respect to Names.

The contents of this document and the accompanying documents supersede all prior written and oral statements made by any of the foregoing persons to the extent that the contents of these documents are inconsistent with such prior statements.

Lloyd's strongly urges Names carefully to read this document and the accompanying documents and to consult their legal, financial or other appropriate professional advisers as to any action that Names may propose to take on the basis of these documents.

At the present time, the settlement offer is not being made, and this document and the accompanying documents are not being sent, to US Names resident in certain states listed in this document or the accompanying documents. Accordingly, these documents must not be transmitted into those states, nor may they be provided to such Names.

This document and the accompanying documents are for use solely in connection with the settlement offer. Anyone considering underwriting at Lloyd's should not base such a decision on these documents and should seek appropriate advice.

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RECONSTRUCTION AND RENEWAL

A. Introduction

This document contains the settlement offer and the Settlement Agreement. It should be read in conjunction with the accompanying finality statement, form of acceptance and the guide thereto.

Names are urged to consider these documents carefully (in particular, the benefits and risks set out in Chapter 13) and to consult their legal, financial or other appropriate professional advisers before deciding whether or not to accept the settlement offer.

The Council has formally resolved that the Reconstruction and Renewal plan is in the best interests of the Society and, accordingly, is now proceeding with the two principal components of the plan:

- **the settlement offer:** acceptance of the settlement offer requires Names to agree to waive existing and future claims in connection with 1992 and prior business. Full acceptance of the settlement offer will involve Names receiving the benefit of a settlement fund worth approximately £3.2 billion. Approximately £1.1 billion is available to benefit litigating Names who accept the settlement offer and agree to settle their litigation. In addition, Names who accept the settlement offer may be entitled to an allocation of the £2.1 billion of debt credits, including the state credits being made available to certain US Names, to assist them to pay the amounts shown in their finality statements. **Except for Names who are parties to Action Group Settlement Agreements, Names who do not accept the settlement offer will not benefit from any allocation of the combined litigation settlement funds. Nor will they receive any debt credits, nor any refund of the members' special Central Fund contribution;**

- **the Equitas reinsurance (Equitas RITC):** the Equitas Group includes two DTI authorised reinsurance companies (Equitas Reinsurance and Equitas Limited) which have been formed for the purpose of reinsuring liabilities in relation to 1992 and prior business. The premium (calculated as at 31 December 1995) for this reinsurance will be £14.7 billion. **If the conditions of the Settlement Agreement are satisfied, the reinsurance into Equitas will be mandatory for all Names whether or not they accept the settlement offer.**

Life business is excluded from the reinsurance into Equitas and the terms of the Settlement Agreement.

A finality statement and explanatory guide accompany this document. They contain figures for Names' total liabilities, triple release and High Level Stop Loss recovery and refund, settlement fund allocations and PSL recovery (or repayment). These

finality statements do not include all the supporting data (which was included in the June indicative statements) which will be sent to Names in mid August 1996.

Names are urged to read Chapter 5 carefully. It explains why the amount a Name may have to pay may differ from the 'amount due (from)/to you after the above adjustments before taking account of funds at Lloyd's' as shown in his finality statement, for reasons which include the requirement to withhold basic rate tax on the 1992 element of the triple release.

B. Settlement

Settlement fund

The settlement fund consists of:

- combined litigation settlement funds of approximately £1.1 billion; and
- approximately £2.1 billion of debt credits (including state credits).

Further information on the funding of the settlement offer is set out in Chapter 4.

To benefit from allocations from the settlement fund, Names must accept the settlement offer, enter into the Settlement Agreement and pay their finality bills. This is subject to the limited exception in relation to Action Group Settlement Agreements described below. Accepting Names must agree to waive existing and future claims in respect of their 1992 and prior business (including rights against managing and members' agents, E&O insurers, brokers, auditors, Lloyd's, Equitas, advisers and others).

Details of the principles underlying the allocation of the settlement fund are set out in Chapter 2 and Appendix 3.

Settlement offer

Lloyd's hereby offers to enter into the Settlement Agreement with each Name to whom the settlement offer is made. The Settlement Agreement provides that Lloyd's and each accepting Name agree to each of the Participants becoming parties to the Settlement Agreement. The Participants include each of the agents, auditors, brokers, E&O insurers and PSL underwriters who agree to be bound by the terms of the Settlement Agreement. Pursuant to the Settlement Agreement, each Name who validly accepts the settlement offer and who pays his finality bill as described in Chapter 5 will receive the benefit (if any) of:

- the combined litigation settlement funds allocation in respect of **all** his relevant litigating syndicate years of account set out in his finality statement;
- the debt credits (including state credits) set out in his finality statement;
- the PSL recoveries set out in his finality statement; and

- expenses refunds accordance with Appendix 3,

in each case on the terms and conditions of the settlement offer set out in this document, the Settlement Agreement and the accompanying form of acceptance. A summary of the Settlement Agreement is set out in Chapter 3; the full text of that agreement is set out in Appendix 1.

In addition, a Name who accepts the settlement offer will be eligible for a refund of his members' special Central Fund contribution in accordance with the provisions of the New Central Fund Byelaw.

Those Names with PSL policies in respect of 1992 and prior year syndicates which will close as a result of the reinsurance into Equitas, should note that Lloyd's is advised that such policies will terminate in respect of those syndicate years of account. Accordingly, whether or not a Name accepts the settlement offer, he will lose the benefit of any 'unexhausted' PSL cover following the reinsurance into Equitas. Names should consider Section F of Chapter 8 which addresses this point in more detail.

To accept the settlement offer, Names must complete and return a form of acceptance to Lloyd's Central Services Unit at Gun Wharf, Dock Road, Chatham, Kent ME4 4TU by 12 noon (London time) on 28 August 1996.

The principal provisions of the Settlement Agreement, including a Name's entitlement to the benefits of the settlement fund and a Name's waiver of claims, are conditional on:

- the Council resolving that sufficient acceptances of the settlement offer have been received from Names;
- the Council resolving that sufficient funds are available to enable the combined litigation settlement funds and the debt credits (including state credits) to be applied in accordance with the terms of the settlement offer;
- the execution of the Reinsurance Contract by Equitas Reinsurance;
- the board of Equitas Reinsurance resolving that Equitas Reinsurance unconditionally accepts the reinsurance obligations in accordance with the Reinsurance Contract, subject only to receipt of the DTI's consent pursuant to the relevant provisions of the Notice of Requirements;
- the board of Equitas Limited resolving that Equitas Limited unconditionally accepts the retrocession obligations in accordance with the Retrocession Agreement, subject only to receipt of the DTI's consent pursuant to the relevant provisions of the Notice of Requirements; and
- the receipt of the final consents from the DTI referred to above.

In determining whether sufficient acceptances have been received for the purpose of the first condition referred to above, the Council will take account of all relevant

factors, including the extent to which outstanding litigation will be brought to an end and the profile of Names from whom new money is due.

The Settlement Agreement will be binding on a Name upon receipt of his form of acceptance. In addition, he will be required to pay his finality bill by 12 noon (London time) on 30 September 1996 into the escrow account referred to in Chapter 5. If the above conditions of the Settlement Agreement are not satisfied a Name will not receive the benefits from the settlement fund, nor will he be required to release his claims against Lloyd's or any of the other Participants and the monies held in escrow will be released as described in Chapter 5.

A Name who does not validly accept the settlement offer and pay his finality bill as set out above will not receive any of the benefits of the settlement offer, subject to the following limited exception. If any such Name is a member of an action group which commits all of its members to settle that action group's claims, he will receive the benefit of that part of his combined litigation settlement funds allocation relating to those claims and the action group will receive the expenses refunds relating to his membership of that action group. Such a Name will receive no other benefits of the settlement offer. In order for a Name to qualify for these benefits, the relevant action group must, on behalf of all its members, enter into an Action Group Settlement Agreement as described in Chapter 2.

An action group wishing to enter into an Action Group Settlement Agreement must execute and return that agreement to the Secretary to the Council, Lloyd's of London, One Lime Street, London EC3M 7HA by 12 noon (London time) on 26 August 1996.

All Names, whether or not they accept the settlement offer or become a party to an Action Group Settlement Agreement, will be reinsured into Equitas if the conditions of the Settlement Agreement are satisfied.

US Names

In order to resolve disputes with certain US state regulators under US state securities laws, Lloyd's has entered into the State Agreement with 38 US states and the District of Columbia in which Names are resident (but excluding the states of Arizona, Arkansas, Illinois, Indiana, Kentucky, Missouri, New Hampshire, Tennessee, Utah and West Virginia). Under this agreement, Names resident in the participating states who accept the settlement offer and pay their finality bills will receive the benefit of up to £31.4 million of state credits. The state credits are less than the maximum of £40 million previously announced, reflecting the fact that the State Agreement was not entered into by the 10 states referred to above. The allocation of the state credits has been determined by the North American Securities Administrators Association, Inc. (NASAA) on behalf of the participating states. Certain terms of the State Agreement and the allocation principles are described in more detail in Chapter 2 and Appendix 3.

Although Lloyd's remains strongly of the view that participation in the Lloyd's market does not constitute a security, the Council reached the conclusion that entering into

this agreement was appropriate in order to settle state securities regulatory litigation and to facilitate participation by US Names in the Reconstruction and Renewal plan and that, accordingly, the State Agreement is in the best interests of the Society as a whole. The agreement does not settle certain civil actions brought by US Names against Lloyd's, some of which seek to prevent the settlement offer being made to US Names. Lloyd's reserves the right to exclude certain US Names from the settlement offer or to vary the terms thereof, if it deems it necessary to do so to avoid undue legal risk.

Tranche 4

Over 1,000 applications for tranche 4 debt credits have now been approved and are reflected in Names' finality statements. Names whose applications are still being processed will be notified of their position by 14 August 1996. Those Names should wait for this notification before deciding whether or not to accept the settlement offer and their finality statement should be considered in the light of the notification.

Implementation of 'Help for the Hardest Hit'

Lloyd's is committed to helping Names and their widows/widowers who no longer have reasonable housing or reasonable minimum incomes as a result of having paid their Lloyd's losses. Of those Names who have applied for tranche 4 debt credits, over 500 Names have also requested some protection where their funds at Lloyd's are represented by a guarantee supported by a charge on their principal private residence, or where the Names are dependent on the income from their funds at Lloyd's to maintain a reasonable living standard. The process and guidelines relating to the provision of assistance to such Names will be communicated to those Names by 14 August 1996 so that they have sufficient time to decide whether or not to accept the settlement offer by 28 August 1996. Only Names who accept the settlement offer will be eligible for this assistance.

Hardship and FRD agreements

Lloyd's will be writing to Names who have executed hardship agreements outlining the implications of the settlement offer and the consequences of acceptance and rejection. In addition, it will be notifying those Names who are to be given the opportunity of terminating their hardship agreements.

The settlement offer does not require a Name to terminate his hardship agreement. However, those Names offered the opportunity to terminate may do so on condition that they accept the settlement offer, allow their funds at Lloyd's to be used to make payment in respect of their finality bill, and pay their finality bill in full in accordance with the terms and conditions of the settlement offer. Similarly, those Names who have reached certain compromise or settlement agreements with Lloyd's will be given the opportunity to terminate those agreements. Further details in this regard are set out in Chapter 2.

Names to whom a hardship offer has been made and who have not yet executed a hardship agreement will have their finality bill paid by Lloyd's, provided they comply with certain conditions. The conditions are set out in Chapters 2 and 5 include a requirement that such Names accept the settlement offer.

C. Lioncover

Lioncover is a DTI authorised reinsurance company owned by Lloyd's and managed by Syndicate Underwriting Management Limited. It was established in 1987 in order to reinsure the liabilities of a number of syndicates at Lloyd's which were formerly mainly managed by PCW Underwriting Agencies Limited. These syndicates (known as the **PCW syndicates**), like many other Lloyd's syndicates, have incurred substantial long-tail liabilities in the United States. The reserving project has estimated Lioncover's liabilities substantially in the same manner as syndicates' liabilities. The PCW syndicates purchased reinsurance from other Lloyd's syndicates and other reinsurers. Until recently the claims made by Lioncover under some of these reinsurances were disputed. The majority of these disputes have now been settled.

It remains Lloyd's intention, in due course, to reinsure Lioncover into Equitas and the Equitas premium (calculated as at 31 December 1995) of £14.7 billion includes a provision for this. This will only be effected when substantially all of the remaining reinsurance disputes have been resolved.

D. Equitas RITC

The premium (calculated as at 31 December 1995) for the reinsurance into Equitas Reinsurance of the 1992 and prior business, including Lioncover and Centrewrite, will be £14.7 billion. However, the amount of the premium which will actually be received by Equitas Reinsurance will be substantially lower than this amount reflecting the fact that, in the ordinary course of business since 31 December 1995, claims have been settled, reinsurance recoveries have been made, expenses have been incurred and investment income received and there have been changes in the values of the relevant syndicate assets. It will also reflect the fact that Lioncover may not be reinsured into Equitas for some time and that Equitas has agreed to forego the payment by Lloyd's of £100 million in respect of debt credits on the terms described in Section H of Chapter 4. Further information on the determination of the Equitas premium is set out in Chapter 6.

The reserving project produced a 'best estimate', being an estimate which is neither conservative nor optimistic, of the insurance liabilities as at 31 December 1995 (on an undiscounted basis). The Council and Equitas retained Tillinghast, a leading firm of consulting actuaries, to analyse whether the processes used by the reserving project were reasonable for the purpose of producing this estimate. Tillinghast's letter of advice is set out in full in Appendix 4. A description of the reserving project's work is set out in Chapter 6. In order to determine the premium, the insurance liabilities, together with an estimate of Equitas' future operating expenses, have been discounted as described in Chapter 6.

The combination of the settlement offer and the Equitas RITC will provide Names with 'finality': that is, a final reckoning of their liabilities in respect of 1992 and prior business. **It is not within the power of Lloyd's to grant Names an absolute release from their liabilities to policyholders.** However, Names who wish to cease to be members of the Society will be able to do so (provided they do not have outstanding Lloyd's liabilities) and on ceasing to be a member will also benefit from the undertaking to be given by Lloyd's that no further demands will be made by Lloyd's in respect of their 1992 and prior business. Further information on the 'finality' being offered, including the DTI's powers to regulate former members, is set out in Chapter 9. Chapter 10 deals with the issue of 'orphans' and run-off syndicates which may prevent Names from being able to cease membership of the Society even following the reinsurance of 1992 and prior liabilities into Equitas.

The reinsurance of these liabilities into Equitas is also designed to create a 'firebreak' between those liabilities and the continuing market. To reinforce this 'firebreak', the Council will prohibit the 1993 and later years of account of any syndicate from reinsuring liabilities of Equitas and from entering into any reinsurance of losses that could arise from or by reference to the proportionate cover provisions of the Reinsurance Contract as explained in Section I of Chapter 7. Notwithstanding the existence of this 'firebreak', the continuing market will continue to be exposed in a number of ways to 1992 and prior liabilities. Further details of these future contingent liabilities are set out in Chapter 11.

Names may have previously concluded that the structure of Equitas was intended to provide Names with some of the features of shares in Equitas, particularly regarding economic value and control, while avoiding the need to comply with US securities laws. Names may also have anticipated that Equitas might be able to be transformed in the future into a more conventional structure, to extend its scope of operation and that Names' potential to receive a return premium might become transferable. **These propositions do not reflect the current structure or intentions regarding Equitas and do not reflect the significant changes to the Equitas structure that have been made since the Equitas concept was initially developed.** The present structure does not give Names either economic value in, or any control over, Equitas and there is no intention to transform Equitas or to extend its scope of operations. In addition, rights to the return premium are not assignable and there is no expectation that such rights will become assignable. Names should rely solely on the contents of this document for a description of the Equitas structure and not on what they may have previously understood.

Information concerning the Equitas Group, its governance and control, operations and the principal contractual arrangements is contained in Chapter 7.

E. Benefits and Risks

Names are advised to consider carefully the information contained in this document in order to make a balanced assessment of the settlement offer, including the discussion of certain benefits and risks of the Reconstruction and Renewal plan as set out in Chapter 13.

F. Recommendation

The Council has a duty to exercise its powers reasonably and in good faith in what the Council believes is in the best interests of the Society. In reaching the decision to implement the Reconstruction and Renewal plan, the Council has had regard to all relevant interests, including those of the different categories of members, agents, brokers and policyholders. The Council's deliberations inevitably involved balancing these interests and recognising that some compromises are needed by some constituencies for the sake of what the Council believes is in the best interests of the Society as a whole.

The Council has tested the Reconstruction and Renewal plan against the alternative of the Society ceasing to trade and remains convinced that this alternative would inflict severe damage and uncertainty on all categories of members and would not result in members being able to avoid their liabilities.

The Council has taken financial advice in relation to the Reconstruction and Renewal plan from Lazard Brothers, whose letter is set out in Appendix 4. Throughout the process, the Council has taken legal advice from Freshfields.

The Council is convinced that the Reconstruction and Renewal plan is in the best interests of the Society as a whole. The plan can only be implemented if the Settlement Agreement becomes unconditional. Accordingly, while each Name must consider his own individual circumstances and is urged to seek the advice of his professional advisers, the Council recommends acceptance of the settlement offer.

SETTLEMENT AGREEMENT

Each Name who validly executes and returns a form of acceptance will become party to the Settlement Agreement and will waive his claims, however they might arise, in respect of 1992 and prior business. This Chapter summarises the main provisions of the Settlement Agreement, which is set out in full in Appendix 1. Names are urged to read the Settlement Agreement and to discuss it with their professional advisers.

The Settlement Agreement has been reviewed by representatives of the various interested parties, including by the Settlement Agreement Review Group (SARG), advised by the law firm Wilde Sapte. The SARG has reviewed the structure of the settlement and the terms of the Settlement Agreement, with particular attention to the ways in which the interests of the Names might be affected. It has also consulted with the lawyers representing various action groups. Its conclusions will be communicated to Names shortly.

A. 1992 and Prior Business

The Settlement Agreement, like the Reinsurance Contract, applies to Names' 1992 and prior business. It covers all liabilities under contracts of insurance or reinsurance originally allocated to the 1992 year of account or any earlier year of account, which includes any such liabilities reinsured to close into the 1993 or any later year of account (but excluding any liabilities re-signed, or re-allocated pursuant to a premium transfer, into 1993 or any later year). Life business is excluded from the reinsurance into Equitas and the settlement offer.

B. Application of Debt Credits and Combined Litigation Settlement Funds (Clause 3)

Each Name's debt credit and combined litigation settlement funds allocations (other than expenses refunds) are set out in his finality statement. If a Name validly accepts the settlement offer, Lloyd's will apply any debt credit and combined litigation settlement funds allocations to meet that Name's obligations as reflected in his finality statement. This is, however, subject to one very important proviso.

Even where a Name validly accepts the settlement offer, Lloyd's will not be obliged to apply any debt credit and combined litigation settlement funds allocations to meet a Name's finality bill, unless that Name has paid his finality bill in accordance with Chapter 5. Where such a Name does not pay his finality bill he will still be bound by the terms of the Settlement Agreement, including the waiver of claims by him against Lloyd's, agents and others.

Names accepting the settlement offer who are members of action groups that have won favourable judgments from the courts and have an entitlement to receive (or may have an entitlement to receive) payments (usually held in solicitors' client accounts) will give instructions to pay any share and interest they have in those monies to Lloyd's (as trustee of the premiums trust funds). If, for any reason, those monies are not paid to

Lloyd's, Names will have to make up the resulting shortfall from other sources in order to benefit from their debt credit and combined litigation settlement funds allocations.

It is vital that all Names make arrangements as soon as possible to ensure that they are able to pay their finality bills given the importance of prompt payment to the success of the Reconstruction and Renewal plan. This requirement is likely to be waived only in very exceptional circumstances (for example, where a Name's allocation of tranche 4 debt credits has not yet been determined). Where such circumstances prevail, the Council can, at its discretion, extend the time for payment.

A Name's entitlement to expenses refunds will be paid as described in Chapter 2 above, but irrespective of whether a Name has paid the balance of his finality bill.

C. Waiver of Claims by Lloyd's (Clause 3)

If a Name validly accepts the settlement offer and pays his finality bill, then Lloyd's will waive any Central Fund debts that Name may have in respect of his 1992 and prior business. If that Name satisfies all other obligations he has at Lloyd's in respect of any other years of account in which he underwrote, then he will be free to cease to be a member of Lloyd's (as described in Chapter 9) and Lloyd's undertakes to make no further demands on him in respect of such business. Lloyd's is also waiving any claim for costs it may have against an accepting Name arising out of *Clementson* litigation referred to in Chapter 11.

Lloyd's will also waive certain claims against other parties to the Settlement Agreement, including agents, auditors and brokers. However, this waiver will not affect Lloyd's right to continue or commence any regulatory or disciplinary action against such parties or their directors or employees.

D. Waiver of Claims by Names (Clause 4)

The settlement offer is being made to Names in full and final settlement of claims by them, however they might arise, in respect of their 1992 and prior business. The Settlement Agreement contains a broad definition of claims used for this purpose. It covers, for example:

- past, present and future claims, including the enforcement of any judgments or awards already obtained and counterclaims;
- claims which are known as well as those which are unknown or unsuspected at the date of the Settlement Agreement;
- claims in any jurisdiction;
- any possible causes of action, including negligence, recklessness, wilful default, breach of contract, misrepresentation, breach of fiduciary duty, breach of trust, breach of securities laws and other statutes, deliberate concealment and fraud; and

- claims for damages (including actual and punitive damages), interest, costs, contributions, set off or any other relief.

Names who accept the settlement offer will waive such claims against:

- Lloyd's;
- Equitas;
- agents;
- agents' E&O insurers;
- auditors who have contributed to the auditor settlement fund; and
- Lloyd's brokers.

The waiver includes past and present directors, officers, partners and employees of Lloyd's, Equitas, the agents, the auditors and the Lloyd's brokers, except to the extent that any particular individuals are expressly excluded. It also covers relevant group companies, subsidiaries and related partnerships. In addition, the waiver covers past and present members of the Council and advisers, lawyers, attorneys, consultants and secondees to the Council, Lloyd's and Equitas.

Where agents have not contributed to the settlement fund (for example, because they are insolvent), the Settlement Agreement contains an assignment by Names accepting the settlement offer to Lloyd's of all litigation rights against such agents and Lloyd's will be free to determine whether or not to pursue them. Any recoveries will be retained by Lloyd's. This recognises the need for Lloyd's to bring to a close the litigation in the Lloyd's market in order to establish a secure base for future trading, whilst at the same time balancing the need to ensure that those responsible for causing the losses which the market has suffered in the recent past are required to pay if they are in a position to do so.

In addition, Names who accept the settlement offer will waive certain claims or potential claims against Citibank and Royal Trust Corporation of Canada, in their capacities as trustees of the Lloyd's American Trust Funds (LATFs) (and other relevant trusts) and Lloyd's Canadian Trust Funds respectively related to their 1992 and prior business. The position in respect of brokers is dealt with below.

It is possible to illustrate some of the types of claims Names who accept the settlement offer will be giving up by reference to certain of the claims made to date. For example:

- claims against a managing agent in respect of the closure of a syndicate year of account at an inadequate premium;
- claims against a managing agent in respect of the negligent underwriting of LMX, APH or any other business;

- claims against a managing agent in respect of inadequate disclosure of information;
- claims against members' agents for the negligent actions of the agents which managed syndicates which they advised Names to join;
- claims against members' agents in respect of advice and information given or not given to Names to join Lloyd's, or relating to a Name's selection of syndicates on which to participate, or the level of participation on any syndicate;
- claims against members' agents in respect of advice given or not given to Names as to the purchase of PSL cover, or a failure to act in accordance with instructions from a Name to purchase such cover;
- claims against auditors in relation to the preparation or audit of syndicate accounts, the closure of any year of account, or any other financial advice provided to the syndicate, including actuarial advice;
- claims against brokers in relation to the negligent placing of insurance or reinsurance business, including claims based on material non-disclosure;
- claims arising from any action to enforce any judgment in relation to any of the above, including any orders as to costs;
- claims against Lloyd's for alleged failure to regulate the actions of agents in the market;
- claims against Lloyd's by Names to avoid their General Undertakings;
- claims against Lloyd's, including those for damages, arising under EC law;
- claims against Lloyd's by Names to avoid or rescind their memberships of Lloyd's, including on the grounds of their alleged fundamental mistake as to the essential nature of Lloyd's;
- claims against Lloyd's and agents for alleged failure, whether fraudulently or otherwise, to disclose to Names information which it, or any Council member, or any members of any market working party, had about the full extent of Names' exposure to certain policyholder claims (for example, in relation to asbestos);
- claims against Lloyd's and agents for alleged inadequate disclosure, or alleged misrepresentation, whether fraudulent or otherwise, relating to statements made or not made as a consequence of which a Name joined or remained a member of Lloyd's;
- claims against Lloyd's and agents for alleged breaches of any securities or related laws or other statutory claims in the US or elsewhere;

- ❑ claims against Citibank in relation to the allegedly improper administration of the LATFs, including allegations of failure to account properly, the pooling of funds and inter-Name lending; and
- ❑ claims against Lloyd's US general counsel, LeBoeuf, Lamb, Greene & MacRae, L.L.P., in relation to negotiations with state or federal government agencies, or the preparation or filing of any reports with such agencies, including but not limited to annual statements, US tax returns and Lloyd's US tax reports.

The above examples are for illustration only and should not be construed in any way as an admission of any liability whatsoever by Lloyd's or any of the other parties referred to and should not be considered a complete list of claims being waived under the Settlement Agreement.

There are limited exceptions to the waiver of claims by Names in respect of their 1992 and prior business. These are set out in the definition of Accepting Name's Claim in the Settlement Agreement and include:

- ❑ claims under PSL policies (which are covered separately in the Settlement Agreement and the PSL Administration Agreement);
- ❑ claims against auditors in respect of financial advice given to a Name in his personal capacity other than as a member of a syndicate at Lloyd's (for example, tax advice), save where that advice relates to the Name's membership of Lloyd's; and
- ❑ claims assigned to Equitas under the Reinsurance Contract and any claims under that or related contracts.

The Reconstruction and Renewal plan, including the mandatory reinsurance into Equitas and the assessment of its reserving requirements, the structuring of the settlement offer and the allocation of the debt credits and combined litigation settlement funds, and the validation of the proposals and the assessment of the alternatives, have raised complex and difficult issues in respect of which many judgments have had to be made, often balancing competing interests. Names who accept the settlement offer will also waive any claims they may have against Lloyd's, Council members, Equitas, the Equitas Trustees, the members of various committees who have assisted in the process (for example, the Names Committee) and any of their advisers, relating to the Reconstruction and Renewal plan. This waiver does not, however, include claims arising out of the Settlement Agreement or the Reinsurance Contract.

The implementation of the Reconstruction and Renewal plan also involves a complex movement of money and other assets in order to meet Names' obligations in respect of their Equitas premiums. In order to ensure that the conditions of the Equitas reinsurance and the Settlement Agreement are satisfied as soon as possible after the final date for acceptance of the settlement offer, the transfer of such money and other assets needs to be carried out expeditiously. Accordingly, a Name who accepts the offer will give Lloyd's and others the authority required to make such transfers,

avoiding where relevant some of the formalities which might otherwise delay the process, and will consent to the amendments to the premium trust deeds which will also facilitate the payment process. Further information is provided in Chapters 4 and 5. Names accepting the offer will also waive any claims they may have against Citibank, Royal Trust Corporation of Canada and the Substitute Agent for payments made in respect of such Names' finality bills.

Neither Lloyd's nor the Council is providing any assessment of the merits of any claims which Names have or might have and which will be waived through the Settlement Agreement. Names should discuss this with their legal advisers.

E. Waiver of Claims by Contributors and Brokers (Clause 5)

The agents, E&O insurers, auditors and brokers who are parties to the Settlement Agreement will waive any claims against each other, Lloyd's and Equitas which arise out of Names' 1992 and prior business. For example, where a members' agent is liable to a Name, that members' agent will waive any contribution claim he may have against a managing agent or a participating auditor.

In addition, the same parties will waive claims against Names who accept the settlement offer. For example, if a broker has a costs order against a Name in respect of a claim which has been dismissed, the broker's claim in respect of that order will not be enforceable by the broker against a Name who accepts the settlement offer. The Settlement Agreement contains provisions to protect such a Name where he is jointly liable for a costs order with Names who have not accepted the settlement offer and against whom any costs order can be enforced.

F. Equitas (Clause 6)

The rights and obligations in respect of Equitas are principally set out in the Reinsurance Contract and other Equitas documents (and are discussed in more detail in Chapter 7). Accordingly, Equitas is not giving any general waivers of claims under the Settlement Agreement, and claims under the Reinsurance Contract are expressly excluded from the waivers given by Names.

A Name's obligation to pay his Equitas premium will arise under the Reinsurance Contract. However, as noted above, payment of a Name's finality bill is a condition of a Name receiving the benefit of the debt credit and combined litigation settlement funds allocations. Accordingly, a Name, in accepting the settlement offer, will acknowledge his obligation to pay the premium. In return, Equitas will acknowledge that on payment of his finality bill as described in Chapter 5, the Name will have no further liability to it in respect of 1992 and prior business (save that he and his agent will still have to account for syndicate assets to Equitas, for example reinsurance recoveries).

Under the Reinsurance Contract claims against brokers will be assigned to Equitas. It is intended that Equitas will agree to waive some of these claims. In broad terms, the effect of the agreement will be to allow Equitas to claim against brokers in respect of

any negligence or other wrongful conduct in the purchase of reinsurances for Lloyd's syndicates from companies outside the Lloyd's market, except where those reinsurances are, at the date of the Settlement Agreement, the subject matter of claims against brokers or other parties. In addition, the waiver will not affect the brokers' obligations to collect reinsurance recoveries and other monies on behalf of syndicates and this will continue after the Reinsurance Contract has become effective. Any claim against a broker not assigned to Equitas under the Reinsurance Contract will be waived by a Name who accepts the settlement offer.

G. PSL (Clause 7)

Names who accept the settlement offer will appoint Equitas as their agent to collect certain of their PSL recoveries and apply them to meet their Equitas premium or, in limited cases, assign the right to receive such amounts to Equitas. The policies covered by these appointments and assignments and the credit Names will be given in respect of those policies are set out in their finality statements. This is part of the overall resolution of claims under PSL policies in respect of 1992 and prior liabilities which is considered in more detail in Chapter 8.

As such rights might already have been assigned, for example to Names' premiums trust fund trustees, or the assignment of such rights may be prohibited by the new special reserve funds, the Settlement Agreement contains provisions to facilitate the appointment or assignment referred to above. Furthermore, Names who accept the offer will waive any claims that any prior assignments of the rights to Lloyd's, as premiums trust fund trustees, are invalid or unenforceable.

Names with PSL policies in respect of 1992 and prior year syndicates which will close as a result of the reinsurance into Equitas will be required to waive any right to make any further claims on those policies as referred to in more detail in Chapter 8.

H. Hardship and FRD Names (Clause 8)

The position in respect of Names with hardship, FRD or other similar compromise or settlement agreements is described in Chapter 2. Nothing in the Settlement Agreement will affect the rights and obligations of Lloyd's and the relevant Names under such agreements, save that Lloyd's waives its rights to expenses refunds due in respect of Accepting Names with hardship or FRD agreements.

I. Residual Litigation (Clause 9)

It is recognised that even if the settlement offer becomes wholly unconditional there may be some residual litigation involving Lloyd's, agents or others, including persons who are not parties to the Settlement Agreement.

The circumstances in which residual litigation may arise involving parties to the Settlement Agreement and the other Participants who benefit from the waivers include the following:

- Names who accept the settlement offer may continue to bring claims against persons who are not included in the Settlement Agreement (for example, non-contributing auditors), or who are not otherwise covered by the waivers. Such claims are expressly preserved in the Settlement Agreement. Such persons may bring third party or contribution claims against parties to the Settlement Agreement;
- Names who do not accept the settlement offer may bring claims against such parties, who may in turn wish to bring third party or contribution claims against other parties; and
- Names who do not accept the settlement offer may also bring claims against persons who are not included in the Settlement Agreement, who may in turn bring third party or contribution claims against parties to the Settlement Agreement.

The Settlement Agreement will govern the position of the parties and other Participants if residual litigation of this nature arises. It cannot, of course, bind non-parties to any particular course of action.

There are two key principles in this regard:

- if a party to the Settlement Agreement can be sued even after the settlement offer has become wholly unconditional, that party must be free to protect itself, which may mean seeking a contribution from other parties to the Settlement Agreement in respect of any loss that party, has suffered; and
- the amount contributed to the combined litigation settlement funds by parties to the Settlement Agreement is in full and final settlement of claims by Names who accept the settlement offer and those parties should not be exposed to further liability to such Names, whether directly or indirectly.

Accordingly, if a claim by a Name who has not accepted the settlement offer either directly or indirectly leads to a claim against a party, that party will be able to sue any other party to the Settlement Agreement. This is an exception to the waiver of claims between contributors described above.

Where an Accepting Name sues a third party who is not a party to the Settlement Agreement, any monies recovered by that Name will be held in trust and used to indemnify any party to the Settlement Agreement or other Participant who is sued by that third party and is obliged to contribute to the amount the non-party has had to pay to that Name. The monies recovered by the Name will, in any event, be held in trust for a minimum of three years. The detailed procedure to be followed in these circumstances is set out in the Settlement Agreement.

J. Disclosure (Clause 12.2)

The settlement offer is being made in full and final settlement of any and all claims, however they might arise, in respect of Names' 1992 and prior business. Accordingly, so as to avoid such claims being brought indirectly against Lloyd's or other parties to the Settlement Agreement at some future date, a Name who accepts the settlement offer will acknowledge that Lloyd's and such other parties, including agents, auditors and brokers, have no responsibility to him to make any statements or disclosures in respect of the settlement offer or the Settlement Agreement, or in relation to any statements which are made in connection therewith.

Accordingly in accepting the settlement offer, a Name will acknowledge that in relation to the Settlement Agreement and the making of the settlement offer:

- no party to the Settlement Agreement owes any duty to disclose any matter;
- no party owes any duty of care in respect of any statements or representations which are made;
- no party will be entitled to rescind, avoid, terminate or cancel the Settlement Agreement on the grounds of any misrepresentation, misstatement, mistake or non-disclosure;
- no party shall have any liability to any Name for any misrepresentation, misstatement, mistake or non-disclosure; and
- any claim a Name may have in respect of any of the above is waived and released.

K. English Law and Jurisdiction (Clauses 13)

The Settlement Agreement is governed by English law and a Name who accepts the offer will irrevocably agree to the English courts having exclusive jurisdiction to determine any disputes in relation to the agreement.

G. Collection of Amounts Unpaid by Names

Sums which are not paid by Names in accordance with the procedures set out above will be the subject of legal proceedings by Lloyd's.

A Name who accepts the settlement offer but, nevertheless, fails to pay his finality bill by 30 September 1996 (or any additional payment as described above within 28 days of a demand being made for it), will be subject to legal proceedings, under the Settlement Agreement, by Lloyd's to recover the amount remaining unpaid by him, together with any interest due and associated legal costs. An accepting Name who fails to pay by the 30 September 1996 deadline will be obliged to pay the amount shown in the 'total liabilities' line of his finality statement without the assistance of any debt credit or litigation settlement fund allocations (though judgment monies held in a solicitors' account on his behalf and interest on them will be applied for his benefit). In the case of a Name who has paid the members' special Central Fund contribution, he will also not become eligible for a refund of any part of that contribution made by him. An accepting Name who pays by 30 September 1996 but fails to make any additional payment subsequently notified to him (and any interest charged on it) within 28 days of notification or such longer period as Lloyd's may, in its absolute discretion allow, will be liable for that additional payment and interest plus any amount of debt credits he has lost through failure to pay by the deadline.

A Name who does not accept the settlement offer will be liable on the following bases:

- Lloyd's will, whether as assignee of the rights of Equitas Reinsurance under the Reinsurance Contract or as its agent, take proceedings for the amount due from the Name under that contract. As described above, this will be, in effect, for the total amount due from the Name to Equitas Reinsurance less any sums actually received by Equitas Reinsurance on account of that Name;
- in addition, Lloyd's will take proceedings to recover from the Name any Central Fund or other liabilities outstanding; and
- the Name may also be subject to specific cash calls in relation to specific liabilities that he may have in relation to various members' and managing agents' obligations which remain unsatisfied.

These claims will include interest and costs.

Unless a non-accepting Name has made payment in full of all his obligations by 30 September 1996 or an accepting Name has paid by that date the amount described in Section B, Lloyd's will start, forthwith, the process of realisation and draw down of his assets at Lloyd's, except as required by certain agreements entered into by Lloyd's.

H. Payment out of Surpluses to Names

This Chapter has explained how, and how much, a Name whose finality statement shows that he has an amount owing, should pay and explains why the amount payable may turn out to be more or less than the amount specified. Similar variations may