

# Showdown looms for Lloyd's of London

by John Hoefle

On June 21, Lloyd's of London sent letters to its 34,000 members worldwide, announcing the latest version of its "Reconstruction and Renewal" restructuring plan, and giving the members, known as "Names," a deadline of Aug. 28 to accept the plan. That plan, which is an attempt to cheat American and other investors out of billions of dollars, has set into motion a showdown with U.S. securities regulators.

The centerpiece of Lloyd's R&R restructuring plan is the formation of a new reinsurance company named Equitas, which would take over the outstanding liabilities from Lloyd's syndicates prior to 1993, effectively absolving Lloyd's from any responsibility for perhaps hundreds of billions of dollars of future asbestos and pollution claims, on top of the \$12 billion Lloyd's Names have already lost since 1988.

In a letter to Names, Lloyd's Chairman David Rowland stated that, while the R&R plan was not perfect, "It offers better prospects than continued litigation. It offers assistance not otherwise available for those Names who have borne the heaviest losses and it offers the Names the chance to carry on with their lives, relieved of the uncertainty caused by their membership of Lloyd's."

As Colorado Securities Commissioner Philip Feigin has noted, one must study carefully every word Lloyd's writes, since what the words actually say often differs significantly from what they *appear* to say. Lloyd's claims that the R&R program will offer Names "finality" by bringing to an end their ongoing liability from "open year" syndicates, but that alleged finality depends upon the success of Equitas, a dubious proposition.

Lloyd's itself has admitted that the level of potential future claims is "unquantifiable," depending upon a variety of factors, including future decisions by U.S. legislators and courts, yet Lloyd's has allegedly quantified those same claims as part of its self-serving Equitas calculations.

Asked if Equitas were adequately capitalized to meet its future obligations, Charles Sturge, of the London firm Chatsets—whose analyses of Lloyd's have proved considerably more accurate than Lloyd's official statements—replied, "I really don't know. It's all subjective. Whether Equitas is properly capitalized or not will only be proved in 10 or 15 years time."

Part of the capitalization for Equitas is to come from the Names. Lloyd's has warned that it intends to draw down letters of credit and other funds deposited by Names, and would

begin efforts to collect any other funds it claims are owed by the Names, as part of R&R.

## Regulatory battle

That would bring Lloyd's immediately into conflict with securities regulators in at least 15 U.S. states (Arizona, Arkansas, California, Colorado, Florida, Illinois, Louisiana, Missouri, New Mexico, Ohio, Pennsylvania, Tennessee, Utah, Virginia, and West Virginia) which have taken administrative or legal measures to prevent such collection, on the basis that the sale of memberships by Lloyd's violated state securities laws, including the sales of unregistered securities, and the sale of securities without applicable state licenses. Several states have also charged Lloyd's with fraud, for failing to disclose material information and making misleading statements to Names.

On Feb. 22, the California Corporations Commission went to court seeking to place a \$500 million lien on the \$12 billion Lloyd's American Trust Fund at Citibank. California Insurance Commissioner Chuck Quackenbush promptly filed a notice to intervene in the case, claiming the Corporation Commission "has no jurisdiction" in the matter, and warning that were the lien to be granted, it would "render insolvent numerous insurance companies doing business in California." The case was dismissed on a technicality unrelated to the merits of the case, and was re-filed April 8. The suit charges Lloyd's with committing fraud against California Names, as well as violations of securities laws by Lloyd's, its principal U.S. law firm LeBoeuf Lamb, and trust fund manager Citibank.

In addition, the U.S. Securities and Exchange Commission has intervened against Lloyd's, filing an *amicus curiae* brief in the appeal of *Richards v. Lloyd's of London*, a suit brought by 574 Names against Lloyd's which charged Lloyd's with fraud and violations of federal racketeering statutes. A federal judge in California had dismissed the Richards suit on the grounds that the Names' agreement with Lloyd's contained a "forum selection" clause requiring that any legal disputes be heard in England, under English law. The SEC, in its brief, argued that the lower court had erred, because the forum selection clauses violated U.S. securities laws and are therefore null and void. The state securities regulators, acting through the North American Securities Administrators Association, filed their own *amicus* brief supporting the SEC's position, while Quackenbush filed a brief arguing that the SEC has no jurisdiction in the matter.

While insisting that securities regulators have no jurisdiction, Lloyd's is clearly worried. The City of London mouthpiece *Financial Times* devoted a full page and an editorial June 24, to lobby for the R&R plan. It warned that, should the Americans prevail in the "formidable U.S. legal system," it could "spell disaster" for Lloyd's. Such dire warnings are just part of the negotiating strategy at Lloyd's, but trouble is indeed looming for this part of the corrupt British Empire.