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NOTE: REGULATORY CRISIS AT LLOYD'S OF LONDON: REFORM FROM WITHIN

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SUMMARY:

... For three hundred years, Lloyd's maintained a reputation as perhaps the safest place in the world to insure risk. ... For example, the capital that guarantees the risk underwritten by each Lloyd's underwriting syndicate has traditionally been provided by Names. ... The conversation between Lloyd's broker and active underwriter takes place in the underwriting area at Lloyd's known as "the Room." ... The last of these scandals involved a broker-controlled managing agency that exposed one of its syndicates to excessive financial risk by arranging reinsurance disproportionate to the syndicate's income. ... The Lloyd's Committee denied that the divestment clause would upset the delicate balance of relationships within the market, arguing instead that the broker should be the agent of the insured and not the agent of the underwriter. ... Furthermore, the "run-off" reinsurers, such as the Outhwaite syndicate, that specialized in reinsurance-to-close for asbestosis policies, exposed Names to extraordinary amounts of risk. ... The new regulatory regime must reconcile the varied interests at work in the marketplace as well as the feeling among aggrieved Names that failure of regulation is at the root of so many of the current problems. ... The SRO must also be willing to provide information to the SIB and the DTI. ...

TEXT:

[*1924]

INTRODUCTION

Lloyd's of London n1 ("Lloyd's" or "the Society") is the most well-known insurance market in the world. n2 For three hundred years, Lloyd's maintained a reputation as perhaps the safest place in the world to insure risk. n3 From a modest start in a London coffee house, where men gathered to protect against the risks of ocean trade by buying and selling marine insurance policies, n4 Lloyd's has grown into a worldwide market for highly sophisticated insurance and reinsurance transactions. n5 Recently, Lloyd's has been in a state of crisis. n6 Due to a string of catastrophes in the late 1980's, Lloyd's suffered enormous losses. n7 The unlimited liability of Names n8 ("Names"), the individuals who provide the market's capital, has been a contributing factor in the market's difficulties. n9 Names faced large cash calls as the number of catastrophe claims rose. n10 Some Names have been driven to bankruptcy and even suicide as a result. n11 Many Names blame a lack of regulatory oversight in the market for their difficulties. n12 In April 1993, Lloyd's leadership responded to the crisis with a Business Plan n13 ("the Business Plan") that, among other things, created a new, stricter role for the Regulatory Board, one that would emulate outside regulation. n14 The Business Plan explained that the Regulatory Board, along with a Market Board, was part of a new governing structure set up at Lloyd's in January, 1992. n15 Because Lloyd's is a self-regulated market, the Regulatory Board is internal, though this may soon change. n16 This Note examines the question of whether Lloyd's should be allowed to continue to regulate itself, or whether the Lloyd's Act of 1982, n17 which guarantees Lloyd's right to self-regulation, n18 should be overturned. Part I discusses how Lloyd's market structure and self-regulatory structure contributed to the present crisis. Part I also details Lloyd's history and explains its trading system. Part II describes changes to the Lloyd's regulatory system that were initiated by the Business Plan. Part II also addresses criticisms of Lloyd's system of self-regulation and possible alternatives to the present system. Part III argues that a continued system of self-regulation will be effective, if modified in the correct ways, and suggests appropriate changes. This Note concludes that the regulatory system presently in place at Lloyd's is sufficient to properly regulate the market, and that reformers' time and effort should be spent making substantive regulatory changes within that system, rather than debating legislative reform.

I. LLOYD'S STRUCTURE AND THE CRISIS

The crisis at Lloyd's was precipitated not only by catastrophe claims, n19 but also by structural weaknesses that existed in the market. n20 The Lloyd's market structure grew out of its unique historical beginnings n21 and is subject to certain stresses that do not affect other insurance markets. n22 Lloyd's, like many financial institutions in the City of London (the "City"), has traditionally been a self-regulated market. n23 This right to self-regulate was codified in the Lloyd's Act of 1982. n24 The present crisis has revealed the extent of systemic problems in the Lloyd's market, many of which stem from the fact that self-regulation, in practice, has meant little or no regulation at all. n25

A. Basic Structure of the Lloyd's Market

Lloyd's of London is an insurance market, not an insurance company. n26 Lloyd's is a unique market and a historical anomaly. n27 For example, the capital that guarantees the risk underwritten by each Lloyd's underwriting syndicate has traditionally been provided by Names. n28 Names pledge their personal wealth in order to be permitted to underwrite risks. n29 Their business is conducted by the underwriting professionals in the market of Lloyd's. Names are actually individual traders, not passive investors, and are subject to unlimited liability. n31 They have relinquished control over the decision-making with respect to their underwriting activities. n32

1. The Business of Lloyd's

Lloyd's has been operating since its inception according to [*1928] the basic principle of insurance: the diffusion of risk. n33 If one wished to protect oneself from the risk of the loss of, for example, a ship returning from China laden with silk and spices, one found a group of underwriters each of whom was willing, for the price of a premium, to insure a percentage of the risk. n34 The idea was that by spreading the risk, one might provide that no single underwriter's liability for claims would be so great that he would be unable to meet his obligations. n35 As Lloyd's grew in size and sophistication, market professionals began to specialize. n36 Despite the development of the current system of independent Lloyd's brokers, who act as the sales force, n37 and underwriting syndicates, n38 which are professionally managed, the basic principle remains the same. n39 Today, if one wishes to insure a ship, one speaks with an insurance broker, who speaks directly with a licensed Lloyd's broker n40 who specializes in such matters. n41 The broker, in turn, speaks with professional underwriters, also specialists, to negotiate a price for which each of the underwriters will accept a portion of the risk. n42 The conversation between Lloyd's broker and active underwriter n43 takes place in the underwriting area at [*1929] Lloyd's known as "the Room." n44 Many layers of brokers and reinsurance underwriters usually exist between the insured and those who pay the final cost of a claim. n45 The underwriters at Lloyd's are grouped into syndicates. n46 Each syndicate is divided into active underwriters and Names. n47 The active underwriters do business in the Room where they accept risks. n48 The Names are capital providers, individuals who accept unlimited liability in exchange for the chance to earn large underwriting profits. n49 It is their money that underwrites the risk. n50 Some Names are also working members, but the majority are external Names who do not work in the market. n51 Syndicates are managed by managing agents n52 that employ the professional underwriters who accept risk on behalf of the Names. n53 Another kind of agent, known as a members' agent, n54 [*1930] manages the placing of Names on various syndicates. n55 The business affairs of the Names have traditionally been managed completely by market professionals, whose accountability to the Names themselves was slight. n56 The entire system operated in a secretive way, n57 relying to an enormous extent on trust, n58 and remained unchallenged until the recent crisis. n59

2. The Role of the Names

Whereas, traditionally, the ranks of the Names were filled mainly by the British upper-class, n60 financial requirements for membership were relaxed in the 1970's and 1980's. n61 The capacity of the market increased immensely at that time, when the number of Names increased from about 12,000 to over 30,000. n62 Being invited to join Lloyd's, with its history, patrician atmosphere, and aura of exclusivity, was considered an honor similar to being asked to join one of England's most exclusive clubs. n63 Another attractive feature of Lloyd's was its reputation as an impeccable blue-chip investment. n64 The Lloyd's system of trading involves the potential for high profits. n65 Although traditionally, only the wealthy were members of Lloyd's, n66 the upper middle-classes also became attracted to Lloyd's, n67 particularly under the Labour government of the 1970's, when the tax benefits were substantial. n68 Many North [*1931] American Names also joined during this period, n69 along with many others from outside England. n70 The membership expansion included some who were not well-prepared for the financial burdens when the losses accumulated and the cash calls began. n71 To join Lloyd's, a prospective Name must demonstrate a certain amount of personal wealth, an amount at its lowest level of UK37,500 for a class of "mini-Names." n72 While Lloyd's would not include the value of one's home as part of net worth, it began, during the period of expansion in the 1970's and 1980's, to accept a bank

guarantee on one's home. n73 Many people were thus able to join Lloyd's in a manner that contravened the spirit of rules that Lloyd's had in place to protect Names against the possible loss of their homes. n74 Once membership is offered, a "Rota meeting" n75 is held to explain the risks of unlimited liability. n76 Each Name is personally liable to the extent of his or her personal wealth for all [*1932] claims. n77 Even death is no escape, as the liability passes to the estate. n78 Furthermore, even if Lloyd's collapsed and became insolvent due to its current difficulties, each Name would remain individually liable in full. n79 After the Rota Meeting, a Name settles on several "lines" n80 that he or she wishes to underwrite, such as thirty lines of UK10,000 each. n81 A Name must then put up only one-third of the total UK300,000, to be deposited in the Premium Trust Funds, n82 which are similar to an insurance company's reserves. n83 From this point on, a Name can earn profits not just on the amount he places on deposit, but on the total he pledges, because each Name is personally underwriting risks up to the full UK300,000. n84 Furthermore, the UK200,000 not on deposit can be invested elsewhere, while simultaneously earning profits at Lloyd's. n85 The tax benefit comes from offsetting underwriting losses against taxable income. n86 Under the Labour government of the 1970's, when the top tax rate reached a high of ninety-eight percent, Lloyd's became an attractive investment. n87

3. The Tradition of Self-Regulation in the City

Lloyd's operates under a system of self-regulation. n88 This system has historical roots, n89 and was codified in the 1982 Lloyd's [*1933] Act, after much debate in Parliament. n90 Lloyd's is the foremost example of the system of self-regulation that has traditionally governed the financial institutions of the City. n91 Lloyd's is one such institution that has successfully resisted regulatory changes in recent years. n92 Self-regulation in the past meant that practitioners in London financial institutions policed themselves. n93 In other words, a gentleman's word was his bond, and those who broke the rules were shunned and could no longer participate in the City's business. n94 With the advent of technology and the globalization of the marketplace, and the resultant fraying of personal ties, fraud increased. n95 The beginning of the end of the old regime arrived in the 1980's with the massive deregulation known as the "Big Bang." n96 The "Big Bang" was a move away from restrictive practices that were making the London securities market uncompetitive in the world marketplace. n97 This deregulation of the City's financial services industry was followed by its re-regulation under the expansive Financial Services Act ("FSA") passed in 1986. n98 The FSA was passed because some practitioners were able to abuse [*1934] the previous system of self-regulation that existed in the securities industry. n99 The FSA was a move away from self-regulation, although there was an effort to avoid an agency regime like that of the Securities and Exchange Commission n100 ("SEC") in the United States. n101 Instead, the FSA retained elements of the system of self-regulation. n102 The FSA was intended by its framers to provide a statutory framework for the continued self-regulation of the investment industry that would allow more oversight, but also allow the market to remain competitive. n103 The FSA replaced all prior regulation of the investment industry, combining much of what had existed previously with new civil liability provisions. n104 The FSA also provided that five Self Regulatory Organisations n105 ("SROs") be set up to govern the affairs of the financial markets. n106 The Securities Association and the Association of Futures Brokers and Dealers merged in 1991 to form the Securities Association, n107 which now is the primary regulator of the London Stock Exchange and futures trade. n108 The three remaining Self Regulatory Organisations are independent and between them regulate the rest of the financial services market in the City. n109 [*1935]

Lloyd's of London was exempted from the Financial Services Act. n110 Lloyd's successfully argued that its business was insurance underwriting, and that Names were individual underwriters. n111 Lloyd's argued that Names were not investors n112 and that Lloyd's did not conduct "investment business," which was the main concern of the Financial Services Act. n113 Lloyd's was allowed to retain its right to self-regulation that was codified in the 1982 Lloyd's Act. n114

B. The 1982 Lloyd's Act

The Lloyd's Act of 1982 was the latest in a series of five Lloyd's Acts dating from 1871. n115 The 1871 Act incorporated the Society under the name "Lloyd's of London," and formed a ruling Committee ("Committee") to attend to management and to exercise all the powers of the Society, subject to certain restrictions. n116 Other powers were conferred by subsequent Lloyd's Acts in 1911, 1925, and 1951. n117 The Lloyd's Act of 1982 was, among other things, an act to establish a Council of Lloyd's ("Council") and to define its functions. n118 The Lloyd's Act of 1982 did change some of the functioning of the market but, more important for the purposes of the present discussion, it codified the practice of self-regulation. n119 The debate at the time of its passage focused on what form Lloyd's regulation should take. n120 [*1936]

1. Events Prior to the Passage of the Act

A series of scandals occurred at Lloyd's in the 1970's. n121 These scandals precipitated passage of the Lloyd's Act of 1982. n122 The last of these scandals involved a broker-controlled managing agency that exposed one of its syndicates to excessive financial risk by arranging reinsurance disproportionate to the syndicate's income.

n123 Evidence of fraud and skimming profits was also found by the Lloyd's arbitration panel that investigated the incident. n124 The offending broker was expelled from the market through a cumbersome process promulgated by the 1871 Lloyd's Act. n125 Changes in the current self-regulatory system were necessary to prevent further scandals. n126 An inquiry was commissioned and headed by Sir Henry Fisher, a former High Court judge. n127 The resulting Fisher Report did not address the question of whether self-regulation was appropriate for the market. n128 Instead, changes were proposed that did not infringe upon the right of self-regulation. n129 [*1937]

The principal change recommended by Fisher was that the Committee, formed under the 1871 Act, be replaced by a smaller council to oversee the regulatory process. n130 The new council would be composed of sixteen working members, eight external Names, and three members from outside the market. n131 The council would have broad powers of inquiry and discipline over brokers, underwriters, and agents. n132 The oversight of the daily affairs of the market would be administered by a smaller committee of the sixteen working members on the council. n133 A more controversial change, however, was one that had also been recommended in a similar, earlier inquiry by Lord Cromer. n134 Fisher proposed that brokers no longer be allowed to own managing agencies because of inherent conflicts of interest in this arrangement. n135 Fisher did not address the ownership of members' agencies by managing agencies where the conflict of interest was perhaps greater because of the attraction for members' agents to place Names only on syndicates they themselves owned. n136 Nor did Fisher address the duty of Lloyd's agents to Names, or the need for more disclosure, or the practice of agents gaining substantial profit commissions even in years of overall underwriting losses. n137

2. The Debate over Passage of the Lloyd's Act of 1982

In 1982, during the passage of the latest Lloyd's Act, Fisher's proposals were debated at length in Parliament. n138 One issue affecting passage of the Lloyd's Act of 1982 was the relationship of certain Members of Parliament ("MPs") to the Lloyd's market. n139 Many of the Conservative Tories in the British Parliament are culturally, socially, and politically linked to [*1938] the members of Lloyd's. n140 In fact, some MPs are also members of Lloyd's. n141 The Lloyd's leadership supported the passage of the Lloyd's Act of 1982 by Parliament. n142 A large segment of the Lloyd's market, however, opposed the bill and mustered opposition in the House of Lords. n143 While many brokers supported the bill in public in order to further its overall passage, many opposed the requirement that brokers divest themselves of ownership of managing agencies. n144 This divestment clause was thought by other members of the Lloyd's community to be essential to the success of the self-regulatory powers of Lloyd's. n145 Parliamentary petitions were sought condemning the divestment clause, notably by broker Alexander Howden's chairman Kenneth Grob. n146 A House of Commons committee favored the retention of the divestment clause. n147 The Lloyd's Committee denied that the divestment clause would upset the delicate balance of relationships within the market, arguing instead that the broker should be the agent of the insured and not the agent of the underwriter. n148 Lloyd's argued that the divestment clause would regularize the relationship between a broker, the broker's clients, and the underwriting capital base of the market. n149 The brokers who opposed the divestment clause argued that the conflicts of interest being singled out by reformers were arbitrary in a market full of such conflicts. n150 Further, the brokers argued that such a market created a unique revenue-earning environment by maintaining existing [*1939] relationships in the market. n151 The Lloyd's Act of 1982 passed with the divestment clause intact. n152 The substance of the law incorporates Fisher's reforms. n153 The Council of Lloyd's n154 was created with sixteen working members, eight external Names, and three nominated members. n155 The Council was given powers over the management of the Society's affairs and regulation of its members and their conduct. n156 The Council was also given broad power to adopt bylaws for any purpose, including making provision for and regulating the admission, suspension, and disciplining of members of the Society, Lloyd's brokers, underwriting agents, and others. n157 The Lloyd's Act of 1982 was unable to prevent scandal, however. n158 Kenneth Grob of Alexander Howden, an opponent of change during the Parliamentary hearings, was implicated only a [*1940] few short months after the passage of the Lloyd's Act in one of the worst scandals in Lloyd's history. n159 Grob was accused of misappropriation of underwriters' funds, precisely the ill that the divestment clause sought to prevent. n160 The misappropriated funds totalled nearly US\$ 55 million. n161

C. The Late 1980's: Downturn in the Lloyd's Market

Insurance is a cyclical business, n162 and Lloyd's proved not to be immune to the cycle. n163 The string of disasters that occurred in the late 1980's were damaging to Lloyd's. n164 Because of the extent of the catastrophe coverage provided at Lloyd's by the London Excess of Loss n165 ("LMX" or "spiral") market, losses were great. n166 Other damage stemmed from the long-tail n167 market where open-year n168 claims increased under pollution and asbestosis policies. n169 The resulting cash calls to Names to pay for these losses led to an unprecedented amount of litigation. n170

1. The Insurance Cycle

The insurance industry operates in cycles. n171 Premium rates [*1941] increase, or harden, during periods when demand is increasing but capacity, the amount of capital available to underwrite risk, is low. n172 As profits increase, capacity also increases due to greater participation in the market. n173 As a result, the market turns soft and premium rates go down as underwriters slash prices in an effort to compete for business. n174 When prices become too low, capacity is again driven from the market and prices again begin to harden. n175 A soft market is not good for business. n176 As capacity increases, and business becomes more competitive, incentives rise to repackage already insured risks for reinsurance in order to generate profits in the form of commissions. n177 The incentives also rise to accept unreasonable risks in order to generate underwriting profits. n178 When the series of disasters occurred in the late 1980's, the capacity of the market was nearly at its peak level. n179

2. Disasters

The series of accidents and natural disasters that occurred in the late 1980's led to record losses. n180 First, the Piper Alpha oil rig explosion in the North Sea killed 165 people and caused millions of dollars in damages. Soon after, Hurricane Hugo hit the Eastern seaboard of the United States, causing over US\$ 5 billion in damages. n182 Between 1987 and 1990, the unprecedented number of disasters included the Exxon Valdez oil spill in Alaska, n183 the earthquakes in San Francisco and Australia, n184 a [*1942] typhoon in Japan, n185 and windstorms in Northern Europe. n186 The disasters precipitated losses in the worldwide insurance market of over US\$ 40 billion. n187 Lloyd's was not alone among insurers in suffering the business effects of these catastrophes. n188 As a worldwide market for high-risk excess casualty reinsurance, n189 however, Lloyd's may have felt more pressure than the United States and continental European insurance companies. n190 The spiral market was that in which underwriters wrote excess casualty policies n191 that insure catastrophic loss over and above a certain amount. n192 Market professionals reinsured the risks repeatedly, each time adding a new layer of protection and each time taking a commission. n193 The practice ran counter to the principles of insurance, which demand that risk be diffused and carefully assessed. n194 In the insulated world of the spiral market, risks were reinsured at a level far removed from the underlying policies. n195 Therefore, the risks were often not fully understood by the underwriters. n196 Furthermore, the risks became concentrated in fewer hands as they travelled up the spiral to the small group of underwriting syndicates willing to continue to reinsure catastrophe risk. n197 A great deal of money was made in this area of the market until the series of catastrophes in the late 1980's toppled it. n198 Layers of protection disappeared and the cash calls began. n199 [*1943]

3. Further Flaws in the Market

The spiral market was but one of Lloyd's difficulties. n200 Other structural flaws in the market augmented the problems at Lloyd's. n201 These problems arose with respect to the reinsurance-to-close ("RITC") and open-year situations. n202

a. Reinsurance-to-Close

A syndicate purchases RITC at the end of one year to reinsure any risks underwritten in policies under which claims may still be forthcoming after the end of the year. n203 The underwriter looks to his or her book of business at the end of each year and makes a determination of possible claims incurred but not reported that a syndicate may face under certain outstanding policies. n204 The underwriter then purchases reinsurance to cover those risks so the accounts can be "closed" for the year. n205 The next year's underwriting Names will, in theory, not be subject to liability for those claims. n206 The difficulty lies in determining how much reinsurance to buy to close out the year. n207 The cost of the reinsurance premiums may make the difference between underwriting profits or losses for the syndicate, so the underwriter has an incentive to [*1944] make a low estimate. n208 If he guesses wrong, and later years bring unanticipated claims under the policy, the current underwriting Names on the syndicate must pay the claim regardless of whether they were members of the syndicate, or even of Lloyd's, at the time the policy was written. n209

b. Open-Years

Another difficulty with reinsurance-to-close arises if the underwriter cannot make a reasonable guess as to the possible forthcoming claims or cannot afford the reinsurance to cover those anticipated claims. n210 In that situation, the years are left "open" and it becomes impossible for the syndicate's Names to resign from Lloyd's. n211 Any Name on a syndicate with open-years must remain in the market until all valid claims are paid. n212 Syndicates underwriting risks for latent disease and industrial pollution, called long-tail risks, face claims that arise under casualty policies written as long as forty to fifty years ago. n213 There are Names who have open-years from decades ago n214 and who may be liable for large asbestosis and pollution claims based on awards given by the U.S. courts under general liability policies. n215

4. Litigation

Names who pledged personal, non-liquid assets, such as their homes n216 in order to join Lloyd's during a period of enormous expansion in the market were faced with large claims. n217 Despite their acceptance of unlimited liability, many Names considered the risks underwritten for their accounts to be beyond [*1945] what they had been prepared to accept when they joined. n218 These Names had once enjoyed the cachet that came with being "at Lloyd's." n219 When the periodic checks they received were replaced by more frequent calls for larger amounts of money, many Names sued. n220 These Names, who were recruited in the 1980's, claim the working members recruited them with malicious intent, knowing that the long-tail asbestosis and pollution claims were imminent and requiring extra capital to diffuse the costs of the anticipated claims. n221 Names allege they were fraudulently induced to join Lloyd's without being adequately informed of the risks. n222 They also allege breach of the duty of care on the part of managing agents placing risk for their accounts. n223 The Names Defence Association n224 claims to have evidence that the problem with large claims arising under long-tail policies was brought to the attention of the Lloyd's Council in the early 1980's. n225 The litigation costs to all parties resulting from these disputes have [*1946] been substantial. n226

5. Lack of Adequate Regulation

A pattern that developed over time at Lloyd's with respect to self-governance contributed to the current problems. n227 The market professionals were wary of publicity, and a certain air of mystery attached itself to the workings of the Lloyd's market. n228 The market often functioned smoothly and the market professionals were accustomed to making a profit. n229 The leaders were advocates of a laissez faire market who preferred to manage their own affairs and to correct their own mistakes. n230 In practice, this meant there was little or no regulatory oversight of the market. n231 Lloyd's market professionals were not required to and did not disclose much information to the external Names. n232 The system relied in large measure on trust. n233 This system later proved to be inadequate to protect the interests of the Names, as is evidenced by their substantial losses. n234 After the Lloyd's Act of 1982 was passed, the Alexander Howden affair was not the only scandal that occurred in the market. n235 Names' profits were skimmed off into offshore accounts by the most senior and respected members of the Lloyd's community. n236 The best profit-making syndicates were all filled by [*1947] insiders, according to some allegations. n237 Furthermore, the "run-off" reinsurers, n238 such as the Outhwaite syndicate, n239 that specialized in reinsurance-to-close for asbestosis n240 policies, exposed Names to extraordinary amounts of risk. n241 The financial consequences were devastating to some Names. n242 Some at Lloyd's seemed unaware of these matters until losses had mounted. n243 The measures taken only attacked problems after they had occurred. n244 Lloyd's leadership never took the appropriate preventive measures. n245 Some commentators maintain that if Lloyd's is to continue its tradition of never failing to pay a valid claim n246 and, if Lloyd's intends to continue doing business in the future, confidence in the market must be fully restored. n247 Lloyd's leaders agree that the problems must be addressed in order to continue to attract [*1948] future capital providers to underwrite risks. n248 Along with the April 1993 announcement of the worst losses in its three hundred year history, n249 Lloyd's announced a Business Plan to address these problems. n250

II. REGULATION AT LLOYD'S

The current leadership is still reticent regarding certain matters Lloyd's faces during this crisis. n251 They do admit, however, the need for change at Lloyd's. n252 The old regulatory system contributed to the crisis. n253 The current leaders acknowledge the benefits of reform, n254 even if Lloyd's leaders have not been traditionally inclined towards it. n255 The leadership initiated changes within the structure of self-regulation at Lloyd's. n256 Yet, critics question the efficacy of the self-regulatory system. n257 [*1949] The Names Association has pressed the need for an independent regulatory organization that would provide protection for the Names similar to that provided by the Securities and Investment Board ("SIB"). n258 Parliamentary hearings were held in February 1995 to re-examine the question of whether Lloyd's should be allowed to continue to regulate itself. n259

A. The Business Plan and the Self-Regulatory System at Lloyd's

The Business Plan institutes changes that affect the process of adopting a new regulatory regime. n260 The first-time introduction of limited liability corporate capital and the development of the run-off reinsurance company, Equitas, are among the biggest changes. n261 The question of solvency and the continued litigation by Names are further issues being addressed by Lloyd's leadership. n262

1. The Business Plan

The regulatory climate at Lloyd's today is changing, though currently still within the confines of the self-regulatory system guaranteed by the Lloyd's Act of 1982. n263 At the start of 1993, a new system of governance was adopted by the Council. n264 Four months later, in April 1993, the changes were detailed in the Business Plan. n265 The governing Council is now composed of fewer committees. n266 There are two new boards. n267 The first is a Market Board that administers the daily business of the market, [*1950] and the other is a

Regulatory Board that oversees regulatory matters. n268 The stated goal of the Regulatory Board is to emulate as closely as possible the role of an outside regulatory agency in order to restore the confidence of future capital providers. n269 The new regulatory regime must reconcile the varied interests at work in the marketplace as well as the feeling among aggrieved Names that failure of regulation is at the root of so many of the current problems. n270 The success of the regulatory changes is contingent on the success of the Business Plan's other ventures. n271

2. Factors Affecting the Scope of Regulatory Change

Many factors affect the scope of the regulatory changes at Lloyd's. n272 The new role of limited liability corporate capital n273 in the marketplace is a major development, n274 as is the effort to create a run-off reinsurance company for old-year risks. n275 Other problems include ensuring Lloyd's solvency n276 and confronting [*1951] the continuing litigation. n277

a. Corporate Capital

A change that affects both the Market and the Regulatory Board is the admission of limited liability corporate capital to the Lloyd's market. n278 The admission of corporate capital runs contrary to the traditions of the past and is evidence of the maturation of the marketplace. n279 The April 1993 Business Plan explained the need for new capital in order to keep the market active. n280 Limited liability corporate membership vehicles were developed by many of the City's merchant and investment banks, some in conjunction with brokers or managing agents, n281 and other corporate capital vehicles were U.S. institutions. n282 The basic form of the new corporate capital vehicles is an investment trust. n283 One-half of a trust's capitalization is invested in underwriting syndicates and the other half in investments outside Lloyd's in order to act as a guarantee for the funds placed on deposit at Lloyd's. n284 The new corporate capital provided for the 1995 underwriting year is UK331 million, giving Lloyd's a total new capacity of UK593 million. n285 [*1952]

Traditional Names have also been given the opportunity to incorporate in order to take advantage of the new limited liability regime. n286 Shares in syndicates are to be traded like stock in an effort to release their inherent value. n287 Some speculate that the entire market will eventually consist of limited liability vehicles of one form or another. n288 The impact on the regulatory process of these incorporated vehicles, particularly the large investment trusts run by professional managers, has already been large. n289 The corporate capital providers are accustomed to a different regulatory regime, one involving far more transparency in the marketplace. n290 The new rulemakers have emphasized the needs of the corporate capital in their public statements about the increased disclosure under the new regulatory regime. n291

b. The Equitas Project

Another important initiative developed by the Business Plan is the Equitas project, formerly known as NewCo. n292 Equitas is a response to the problem of Names' continuing liability due to open years of account. n293 Equitas will be a reinsurance run-off company that will allow Names eager to resign from Lloyd's to purchase reinsurance ending their liability for pre-1985 long-tail liability claims. n294 The goal is to achieve economies of scale and [*1953] to provide negotiating leverage by consolidating the claims-handling process. n295 Consolidation is also aimed at improving cash-flow and aiding in long-term investment strategy. n296 Equitas will provide important leverage in negotiations with litigating Names, who can be offered a way to cap their losses through Equitas. n297 Further, corporate capital must be protected from liability for these old claims. n298 Because the value of anticipated claims for latent disease and pollution are still unknown, however, the venture contains risks. n299 If Equitas' reserves prove insufficient to meet the claims, individual Names, or even corporate vehicles participating in certain syndicates, could be forced to assume the liabilities. n300 The future of Lloyd's as an active business is considered by many market professionals to depend on the success of the Equitas venture. n301 Despite a current return to buoyant trading and even some underwriting profits in recent months, such as in the marine market, where premiums are hardening, n302 the project is far from finished. n303

c. The Solvency Issue

The Lloyd's market is subject to outside oversight, which includes the solvency tests administered each Fall by the Department of Trade and Industry n304 ("DTI") under the Insurance [*1954] Companies Act of 1982. n305 The first solvency test is an assets against projected liabilities test. n306 The test was passed by Lloyd's in recent years through certain creative accounting measures, such as revaluing the Lloyd's Building in London and other assets, including artwork. n307 A recent initiative by Lloyd's leadership would treat uncollected debt owed by Names for claims as assets of Lloyd's. n308 This practice mirrors the practice of banks that treat recoverable debts as assets, and may make it easier for Lloyd's to pass its solvency tests. n309 The second test is performed at the Name level. n310 Each Name must show that his or her underwriting assets at Lloyd's are sufficient to meet his or her underwriting liabilities. n311 Due to the huge losses of recent years and the reluctance of some Names to pay more cash calls, this test could be a more difficult one to pass. n312 A recent proposed rule change

would require any money [*1955] awarded by the English courts to Names in the course of their litigation with managing and members' agents to be paid into the Premium Trust Funds n313 on deposit at Lloyd's until all valid claims are met. n314 The reason for the proposed change is that Lloyd's leadership fears Names will not pay their claims after they receive the awards. n315 An additional effect of the proposed rule change, however, is that funds awarded in negligence cases n316 will be kept in escrow until any legal challenges to the proposed rule change can be resolved in the courts, a process that may take several months. n317 Lloyd's argues that, in the interim, these funds may be included as assets in order to pass the second DTI solvency test. n318 The DTI's approval of the proposed rule change, however, which was expected to be easily granted, was recently delayed in order to allow closer analysis by the DTI. n319 Lloyd's has postponed its pursuit of the rule change in favor of a new settlement agreement. n320 As a market analyst noted, the question is not Lloyd's solvency, but what the DTI will accept. n321 Solvency was a major topic at recent Parliamentary hearings on the issue of financial services regulation. n322 The House of Commons committee heard testimony from David Rowland, the Chairman of Lloyd's, during the first week of February 1995. n323 When asked whether Lloyd's would pass its solvency tests this year, Mr. Rowland replied that, while it had once been unthinkable to imagine otherwise, there was at least a theoretical danger of insolvency. n324 He also cautioned the aggressive questioners [*1956] about Lloyd's large role in the British economy, noting that, as more suspicions are raised about the prospect of insolvency, more Lloyd's customers will be lost to competitors. n325 On January 8, 1995, Exxon switched most of its insurance renewals away from Lloyd's, one of the largest rejections of Lloyd's in recent years. n326 The hearings in Parliament underscored concerns that the current system may not be effective to protect participants in the market from negligent and fraudulent acts. n327 Along with solvency, the Treasury select committee conducting the review of Lloyd's examined the question of misrepresentation to Names based on inadequate disclosure, allegations of insider trading, and recruitment of Names in order to allow the market to absorb the costs of long-tail liabilities. n328 It also examined the role of the DTI and the responsibility of the government, as well as the broader question of Lloyd's being allowed to continue to police itself. n329

d. Litigation

Litigation by Names also influences the regulatory changes being enacted. n330 The Gooda Walker Action Group, a group of litigating Names who lost a great deal of money in the LMX spiral market, won its case on appeal against its former managing agents. n331 The Gooda Walker plaintiffs charged that the managing agents on the Gooda Walker syndicates breached their duty of care by accepting risks they should have avoided. n332 In their pleadings at the trial level, the plaintiffs alleged, inter alia, that a competent underwriter in the spiral market would have written only a limited volume or proportion of excess of [*1957] loss business, paid close attention to vital facts, taken steps to plan its business accordingly, and obtained information regarding the nature of the risks. n333 The Appeal Court found that the managing agents had been negligent in accepting high-risk business. n334 The duty of care owed to the Names by their agents was found to have been breached, with the resultant damage totalling millions of pounds. n335 The Action Group's members were recently awarded interim damages of over UK200 million, the largest ever awarded by the British courts. n336 Those Names on the Outhwaite syndicates n337 who did not take part in an earlier Outhwaite suit in 1991 are also litigants. n338 The House of Lords is currently reviewing their claim that, because of deliberate concealment by their managing and members' agents, they are entitled to sue on claims arising from underwriting activity in 1982. n339 Such claims would otherwise be time-barred. n340 At present, there are approximately forty-five Action Groups n341 and over 300 Lloyd's-related cases pending in the British courts. n342 This figure does not include the claims by U.S. Names, most of which have thus far been dismissed for lack of jurisdiction in the United States. n343 [*1958]

One result of large damage awards is that Lloyd's loses leverage in its bargaining with the Names. n344 Lloyd's leadership has repeatedly said that it seeks a negotiated settlement of Name's claims. n345 A settlement offer by Lloyd's leadership to all aggrieved Names totalling over UK900 million was rejected last year as too low. n346 Another settlement offer is to be announced soon. n347 Lloyd's argues in favor of settlement on the theory that because the claims against agents will be paid under Errors and Omissions ("E&O") policies, the Names are, in effect, suing each other. n348 The E&O coverage may also be insufficient to meet all the claims. n349 The result is a rush by Names to seek redress in the courts. n350 Counsel for the Gooda Walker Action Group stated that their strategy involved getting through the trial quickly in order to receive payment before the money ran out. n351 E&O insurers claim that the Gooda Walker Action Group has overstated the value of the award and that they will only pay UK115 million of the interim award. n352 Thirty members' agencies have retained counsel and threatened to sue the E&O underwriters if they refuse to pay. n353 As the Names prevail in the courts, the pressure on the Lloyd's leadership to negotiate a settlement grows. n354 The Names Association has said that any settlement must involve caps on their maximum liability and sufficient com- [*1959] pensation for their losses. n355 Recently, Lloyd's offered a settlement involving a cap on liabilities to some U.S. Names whose case against Lloyd's alleging fraud is still pending in a California court. n356 Lloyd's official position is that it has always sought a negotiated settlement, but some Names suggest that recent developments in the U.K. courts

have prompted the offer by Lloyd's. n357 A ruling in November 1994 by the Appeal Court n358 that a full hearing must be held on whether Lloyd's contravened European competition law means that Lloyd's cannot pursue non-paying Names through the courts until the cases are tried. n359 If the cases are resolved against Lloyd's, Names may never have to pay the claims at all. n360 Names argue Lloyd's is trying to get paid before it is too late, and some are resisting settlement, even with the cap. n361

B. Criticisms of and Alternatives to the Present Changes

Lloyd's has many critics, among the most vocal of which are aggrieved Names and members of Parliament. n362 There are several alternatives to the changes being sought under the existing statutory framework. n363 These include regulation by an outside agency and repealing Lloyd's exemption from the Financial Services Act. n364

1. Criticisms

The Chairman of the Regulatory Board was the subject of [*1960] criticism during the recent Parliamentary hearings. n365 One Labour MP, Diane Abbott, accused Sir Hardcastle of being disinterested and willing to overlook anything that happened at Lloyd's before his tenure began. n366 She specifically cited Sir Hardcastle's failure to investigate allegations that a market committee responsible for disseminating information related to asbestos claims had failed to do so and had instead used the information to its own advantage. n367 Sir Hardcastle countered that the allegations were fully investigated and found meritless. n368 Other critics of the self-regulatory system include Christopher Stockwell, Chairman of the Supergroup of Lloyd's Names, who claims Lloyd's leaders benefitted from insider dealing. n369 Mr. Stockwell declined to mention anyone by name before the Treasury select committee. n370 The Lloyd's Names' Associations' Working Party n371 ("LNAWP"), the group headed by Mr. Stockwell, has called for a regulatory regime with sanction power, a rapid and productive approach to enforcement, and the ability to compensate victims. n372 Additional demands of the LNAWP include proper capitalization for all Lloyd's agencies and sufficient E&O coverage, even if an agency ceases trading. n373

2. Alternatives

One alternative to the present regulatory scheme might be a statutory scheme. n374 A system similar to the U.S. Securities and Exchange Commission, n375 an agency with broad monitoring powers exercised through disclosure requirements and prosecutorial powers to investigate fraud, is one possibility. n376 [*1961] Under the Securities Exchange Act of 1934, in order to register securities on an exchange, issuers are required to disclose the following: any information about the issuer or a party in control or acting as a guarantor of the issuer that the Commission may require, including, inter alia, the organization and financial structure and nature of the business, information regarding securities management and holdings by security holders, remuneration to officers and others, material contracts, balance sheets, profit and loss statements, and any further financial statements deemed necessary by the Commission. n377 There are further requirements for supplementary and periodic disclosure of relevant information under Section 15(d). n378 Section 21 provides civil and criminal liabilities for violations such as trading on material non-disclosed information, or insider trading. n379 The agency alternative was specifically rejected by British lawmakers during passage of the Financial Services Act. n380 This alternative might find favor, however, with the corporate capital providers who are accustomed to doing business in a more transparent market atmosphere than has traditionally existed at Lloyd's, n381 and with disgruntled Names who are wary of self-regulation. n382 In the United Kingdom, oversight could be brought under the purview of the DTI n383 or the Serious Fraud Office. n384 Another alternative is to repeal Lloyd's exemption from the Financial Services Act n385 and bring Lloyd's regulation in line with that of investment markets in the United Kingdom. n386 The FSA requires that firms be authorized to do investment business in the United Kingdom. n387 Authorization is obtained from one of the Self-Regulating Organizations n388 ("SROs") or by a Regog- [*1962] nized Professional Body n389 ("RPB"), which must itself be recognized by the Securities and Investment Board ("SIB"). n390 The SIB has powers to enforce compliance and to approve the rules of the self-regulating bodies. n391 Once an SRO is recognized by the SIB, however, the SRO becomes the primary regulating body. n392 An SRO seeking to be recognized by the SIB, must have rules that provide adequate investor protection n393 and oversee the enforcement of those rules. n394 An SRO must provide for public representation in its governance; n395 the ability to investigate complaints; fairness and integrity. n396 The SRO must also be willing to provide information to the SIB and the DTI. n397 The SIB's general functions are to decide whether members are "fit and proper" to engage in investment business, to devise means of enforcement of rules, and to create fair procedures regarding admission and punishment of members. n398 The DTI would have a large role in monitoring Lloyd's under the FSA as the ultimate statutory authority. n399 The DTI, however, has publicly voiced its support for the present self-regulatory system at Lloyd's. n400 During the parliamentary hearings, n401 Jonathan Spencer of the DTI stated that the role of the DTI is policyholder

protection, not investor protection. n402 Furthermore, some critics of the FSA argue that it has been ineffective in preventing fraud since its enactment. n403 [*1963]

III. SELF-REGULATION IS ENOUGH REGULATION

The way Lloyd's does business is changing as the role of limited liability corporate capital grows. n404 Lloyd's, however, will remain a particularly complex and unique trading system. n405 The level of professional expertise remaining in the market is high, despite the negligent and fraudulent acts of some participants. n406 Furthermore, the laissez faire marketplace that the hands-off leadership of the past decade defended was probably a myth. n407 The reality of systemic failure of regulation has come to the fore. The fact that failure occurred in the past, however, is not an effective argument against self-regulation in the future. It would be inappropriate to impose statutory changes on the current regulatory system at Lloyd's, as the head of the DTI's insurance division, Jonathan Spencer, recently affirmed in his testimony before Parliament. n408 Spencer agrees that statutory changes are presently not worth the diversion of time and effort. n409 Instead, Lloyd's should concentrate on issues of regulatory and commercial substance. n410

A. The Adoption of Effective Regulation is Process-Driven

The regulatory failures in the Lloyd's market are being addressed by leaders dedicated to implementing effective changes. n411 The economics of the situation demand that changes to the regulatory system be made. n412 Confidence must [*1964] be restored in order to continue to attract a capital base. n413 Without a capital base, Lloyd's will cease to do business. In order to restore the needed confidence, Lloyd's must adopt effective regulation. n414 Market forces alone may not be sufficient to ensure prosperity. n415 Some economists believe a form of managed economics is essential to the success of any market. n416 Although this argument acknowledges the need for oversight, it does not imply a need for restrictive governmental regulation.

There are scholars who argue that regulation inhibits the very forces that are favored in a free market and that regulation hinders allocative efficiency. n417 Although there may be policy concerns in a marketplace other than allocative efficiency, such as fairness and the absence of fraud, there is a need for carefully crafted regulation. A conservative regulatory program would impact positively on the smooth functioning of the business of the marketplace.

1. Effective Demand

The process of adopting regulation favors the least-restrictive approach, according to one view that can be applied to the set of facts surrounding the Lloyd's market. n418 There are polit- [*1965] ical economists who argue that the adoption of regulation is to be viewed as taking place in a competitive marketplace of its own. n419 According to this view, the group with the highest effective demand in the marketplace will obtain the most benefits under the system of regulation as adopted. n420 This view also posits a small group as likely to be that with the highest effective demand because of the low costs associated with organizing and obtaining information. n421 In the past, the regulation that existed at Lloyd's consistently favored the small group at the leadership level with the lowest information and organization costs. n422 Regulation favored this group at the expense of the others in the market, the Names. n423 The "small group" can be expanded to include the Names and the corporate capital providers. A group comprised of both market professionals and external Names can achieve the highest effective demand. The regulation that is thereafter adopted will naturally favor the entire group.

2. Divergent Interests at Lloyd's

Groups competing to achieve the highest effective demand will be some MPs and loss-making Names who remain unconvinced. n424 The difficulty is to align the interests of the Names and the Lloyd's leadership. n425 A settlement of Names' litigation claims would promote this alignment. n426 For the new settlement proposal to prove effective, it is important that the Names recognize themselves as a group with aligned interests. The fact that [*1966] the suits against Lloyd's actually impact on other Names should be taken into account by them. n427 If generosity of spirit is not enough to convince them of their dependence on one another, the limited funds of the Errors and Omissions underwriters should. Without a settlement, some Names may get nothing if they are not the first to win awards in court. n428 A further effort towards achieving unity between the working and external members of Lloyd's would be to publish a regulatory framework that includes some of the stated goals of the Lloyd's Names Association Working Party, like sanction power and victim compensation. n429 The situation at Lloyd's changes frequently. A working document rather than a set of policy goals, however, would impress upon those Names and incorporated members, with whom the Lloyd's leadership needs to align itself, that the leadership is serious about reform. Any such document would be subject to revision and amendment, but it would be an implementation, rather than a statement of policy.

B. The Changes Necessary to Restore Confidence in Lloyd's

The primary policy goal of the Lloyd's Regulatory Board is to create more transparency in the way the marketplace does business. n430 Already, greater disclosure requirements have been implemented. n431 There has been a re-emphasis of agents' duties to Names. n432 There are many other changes which need to be made.

1. Names' Rights and the Duty of Care

Names must have the right to examine information that they find pertinent to the decision to join or resign from a particular syndicate. The strict duty to disclose must extend beyond quarterly reports and similar periodic forms of disclosure. Names must have rights to information similar to those provided [*1967] to shareholders of a public corporation in the United States. n433 Similarly, those rights should be qualified. Market professionals must be not be subjected to harassment.

Because of the duty of care that the courts held is owed to the Names by managing and members' agents, n434 broad disclosure rules make business sense as well. Each agent should provide an investor relations office to the keep the capital providers informed. The central market already provides reports on global syndicate financial results, n435 but there could also be a central office to handle inquiries.

2. Changing Standards

The admission of Names to the Society must be closely monitored. Financial requirements are again becoming more stringent. n436 While the problem of Names leaving the market is currently more pressing than that of new Names entering, n437 if more capital is to be sought under the current system, this issue must be addressed further. It is sensible to determine what form the market will take in the future before devoting a great deal of energy to substantive change in this area.

The unlimited liability of Names must be eliminated entirely. While investors in a corporation give up their control rights in exchange for limited liability, n438 Names give up control and still accept unlimited liability. n439 This arrangement no longer makes commercial sense. It would be a gesture of good faith to lessen the burden placed on Names by adherence to the doctrine of caveat emptor. To do so would emphasize Lloyd's recognition of its regulatory duty to protect Names. Any new Name seeking to join Lloyd's should be required to join as part of a limited liability arrangement. [*1968]

Professional standards for working underwriters n440 must be made stricter. Licensing procedures could be implemented that mirror those of the State Insurance Commissions n441 in the United States. Qualification programs are being implemented, n442 but incentive programs need to be in place as well. Compensation of the working underwriters must be tied in part to profitability.

While many agree that the incorporated capital vehicles will make transparency and disclosure commonplace, n443 there must be disclosure with respect to these vehicles as well. The leadership has expressed its commitment to the underwriting Names who remain at Lloyd's, assuring them that their interests will not be sacrificed in favor of the incorporated vehicles. n444 The incorporated vehicles should be required to disclose financial information and analysts' reports to the Names with whom they share syndicates. Names will then have an advantage in deciding whether to remain as members of a particular syndicate.

There must be stronger reserve requirements. Jonathan Spencer of the DTI called for stronger reserve requirements for European Union-based insurers as part of tougher solvency requirements for those European Union insurers that face uncertainty about their liabilities. n445 Any reforms should be extended to Lloyd's.

There must be an end to open-years. If the Equitas project is successful in reinsuring the market's run-off risks, the reinsurance-to-close system should be replaced as soon as possible. Names should be allowed to resign at the end of each year, if they so choose.

The key to effective self-regulation, as the Lloyd's leadership [*1969] has argued, n446 is to create a regulatory system with real independence. n447 Such a system can be created under the current statutory regime, n448 if the leaders and the membership of Lloyd's recognize their common interest. Recognizing this common interest will allow them to reach the common goal of continuing success for Lloyd's, which will benefit all parties.

CONCLUSION

Lloyd's fought against outside regulation for reasons beyond the self-interest that has characterized much of its dealings in the last decade. Lloyd's has been a practicing marketplace for over three hundred years. Those in the marketplace are uniquely suited to oversee their own affairs. If Lloyd's survives, all the capital providers in the market may eventually be limited liability incorporated vehicles, leading to greater transparency in the market. Without unlimited liability, Lloyd's will rely on efficiency and expertise to give it a competitive edge. Effective self-regulation will foster the competitive virtues of the Lloyd's market. This solution will restore confidence in the market, which is critical to the survival of Lloyd's.

FOOTNOTES:

- n1. See Adam Raphael, *Ultimate Risk* 18-26 (1994) (discussing Lloyd's origins). Lloyd's of London is an insurance market. *Id.* at 18. It began in a seventeenth-century London coffee house owned by Mr. Edward Lloyd. *Id.* at 19-20. Merchants met for coffee and to swap rumors regarding the maritime trade. *Id.* at 21. This "intelligence" became the basis for the marine insurance policies that were the first policies bought and sold at Lloyd's. *Id.* at 21-22. From these modest origins, Lloyd's grew into one of the largest insurance markets in the world. *Id.* at 22. Today, as a full-service, world-wide market for insurance, Lloyd's retains many traditions. *Id.* at 17-18. There are still "waiters" in eighteenth-century uniforms who work in the "Room," where the underwriting business is done. *Id.* at 17. There is the Lutine Bell, taken from a French frigate surrendered to the British by royalists during the French Revolution and later sunk. *Id.* at 18. It hangs in the center of the Room and is traditionally rung to alert the market of news of an overdue ship, once for bad news, twice for good. *Id.* Lloyd's has been publishing shipping intelligence since Edward Lloyd first published his newsheet, *Lloyd's News*, in 1696. *Id.* at 21. Lloyd's has a proud history of never failing to pay a valid claim, and a tradition based on three centuries of honor and fair dealing. *Id.* at 18. The Lloyd's market is proud of its reputation and history. *Id.* Faced with difficulties in recent years it is struggling to restore its good name. *Id.* at 41.
- n2. *Id.* at 1.
- n3. *Id.*
- n4. *Lloyd's of London, Lloyd's: A Portrait* 16 (on file with Author).
- n5. *Id.* at 2-3.
- n6. Richard W. Stephenson, *Lloyd's Tries to Insure Its Future*, *N.Y. Times*, Apr. 30, 1993, at D1. In April 1993, Lloyd's announced the worst losses in its over 300-year history, over US\$ 4 billion in 1993 and an expected US\$ 1.5 billion for 1994. *Id.*; see *Lloyd's of London, Planning for Profit: A Business Plan for Lloyd's of London 2* (1993) [hereinafter *Business Plan*] (acknowledging severity of losses).
- n7. See Julian Barnes, *The Deficit Millionaires*, *New Yorker*, Sept. 20, 1993, at 77-78 (detailing catastrophes).
- n8. See *Lloyd's: A Portrait*, supra note 4, at 24 (explaining system of unlimited liability).
- n9. See Barnes, supra note 7, at 74 (explaining effects of losses on Names).
- n10. See Raphael, supra note 1, at 178 (explaining effect of catastrophe losses on Names).
- n11. Raphael, supra note 1, at 7-8.
- n12. Joanne Hart, *Lloyd's Facing Double Scrutiny*, *Evening Standard*, Jan. 30, 1995, at 31 (discussing fact that Names who face billions of pounds of losses, blame lack of external regulation).
- n13. See generally *Business Plan*, supra note 6 (detailing plan for Lloyd's future).
- n14. See *id.* at 15 (detailing new management approach).
- n15. *Id.*
- n16. See *id.* at 30 (stating that fully independent regulation is not possible under present statutory scheme).
- n17. *Lloyd's Act*, 1982, ch. 14 (Eng.).
- n18. *Id.* pmbl. (Eng.).
- n19. Barnes, supra note 7, at 78 (detailing catastrophes).
- n20. Jonathan Mantle, *For Whom the Bell Tolls* 4 (1992). "Massive losses caused by a series of natural catastrophes compounded by lack of regulation and doubtful market practices had brought Lloyd's to its knees." *Id.* "The 1989 and 1990 losses are the result of catastrophes such as Hurricane Hugo, the San Francisco earthquake, the Exxon Valdez spill and the Piper Alpha Oil Rig disaster and the spiral effect of excess of loss reinsurance which have had a dramatic effect on the bottom line." Daniel M. Bianca, *Understanding Lloyd's*, 679 *PLI/Comm* 31 (1993).
- n21. See Raphael, supra note 1 (reciting Lloyd's history).
- n22. Mantle, supra note 20, at xi-xii.
- n23. See *In the Beginning Was the Word*, *Observer*, Jan. 16, 1994, at 5 [hereinafter *In the Beginning*] (reciting history of self-regulation in City).
- n24. *Lloyd's Act*, 1982, pmbl. (Eng.).
- n25. See Clare Sambrook, *Names Are "Insider Dealing Victims"*, *Daily Telegraph*, Jan. 31, 1995, at 25 [hereinafter *Insider Dealing Victims*] (quoting Lloyd's critic on lack of regulation).
- n26. See Raphael, supra note 1, at 2-3 (describing Lloyd's as market, and comparing its present situation to that of insurance companies). "There are four principal markets at Lloyd's: marine, non-marine, aviation and motor." *Understanding Lloyd's*, supra note 20, at 2.
- n27. Mantle, supra note 20, at xi-xii. "Lloyd's is an insurance institution unlike any other." *Id.*; Raphael, supra note 1, at 17. "Step inside, and you will see frock-coated waiters resplendent in blue uniforms straight out of the eighteenth-century coffee house, contrasting with soberly suited brokers swarming up and down the escalators." *Id.*
- n28. Raphael, supra note 1, at 48.

There are two kinds of Name: working Names, the professionals who work in the market as underwriters, brokers and agents ... and - the majority - external Names who are, in effect, passive investors. Most are British, but no fewer than eighty-five countries are represented at Lloyd's.... Those who put their capital at risk in the market may regard themselves as investors, but technically they are sole traders. Each Name trades on his own account, with unlimited personal liability.

Id. (emphasis added).

A Lloyd's Name bestows complete authority for his insurance business on the active underwriter writing business for the syndicate on which the Name participates. The Name effectively places his or her personal wealth in the hands of someone who will usually be a complete stranger. The passive underwriter is known as an "outside" or "external" Name, to distinguish him or her from underwriters actively working in the market, or "working" Names. Nevertheless, the Names, either inside or outside Lloyd's, are collectively "Underwriters at Lloyd's" and it is from them ... that Lloyd's derives its capacity to write insurance.

Understanding Lloyd's, supra note 20, at 2.

n29. Raphael, supra note 1, at 49. "To become a Name, the investor does not have to hand over capital, he merely has to show that he possesses it." Id.

n31. See id. at 48 (explaining Name is liable "down to his last shirt button").

n32. Id. at 49. "Names are placed on [underwriting] syndicates by members' agents, who are responsible for supervising the Names' affairs, and who act as the link between the Name and the underwriter." Id. It is, or has been, a relationship of total trust. Id. Such a unique relationship demands "utmost good faith," and indeed, *Uberrima Fides*, or Utmost Good Faith, has long been Lloyd's trading standard. Id. at 1.

n33. See Raphael, supra note 1, at 176 (stating that concentration of risk violates basic principle of insurance: diffusing risk).

n34. See *Lloyd's: A Portrait*, supra note 4, at 16 (describing means of insuring ships and cargoes in 17th century).

n35. See *Lloyd's of London: Information Pack*, *Lloyd's Today* 9 (1994) (on file with Author) [hereinafter *Information Pack*] (stating market is based on risk-spreading).

n36. See *Lloyd's: A Portrait*, supra note 4, at 24 (explaining coffee house merchant of past gave way to professionals).

n37. Id. at 2. The system of syndicates and brokers is as follows: syndicates are comprised of individual underwriters and managed by professionals. Id. Independent brokers, registered at Lloyd's, act as a commissioned sales force. Id.

n38. Id.

n39. See *Information Pack*, supra note 35, at 9 (stating market is based on risk-spreading).

n40. See *Lloyd's: A Portrait*, supra note 4, at 2 (noting Lloyd's accredited brokers' intimate knowledge of market).

n41. Id.

n42. See id. at 2 (explaining business brought to specialist underwriters by Lloyd's brokers). "The syndicates in each [of the four markets] is headed by prominent active underwriters from that market and each has within it recognized expert underwriters in subcategories of risks in that market such as satellites, professional liability, livestock mortality, fine arts and so on." *Understanding Lloyd's*, supra note 20, at 2.

n43. See *Mantle*, supra note 20, at xi (stating broker takes risk onto floor of Room seeking underwriters to provide cover).

n44. Id.

n45. Raphael, supra note 1, at 175. "By layering risks vertically according to value as well as spreading them horizontally among dozens of reinsurers, no single underwriter need expose himself or the Names he represents to intolerable losses in the event of a series of catastrophes." Id.

n46. Eileen M. Dacey, *Litigation Issues Unique to Lloyd's* 2 (Feb.-Mar. 1995) (paper delivered at Practising Law Institute 12th Annual Insurance, Excess and Reinsurance Coverage Dispute Program).

n47. See Raphael, supra note 1, at 46 (describing management of syndicates).

n48. See *Mantle*, supra note 20, at xi (stating that active underwriters write policies on floor of Room).

n49. See Raphael, supra note 1, at 48 (explaining role of Names).

n50. Id.

n51. Id.

n52. See id. at 45 (explaining role of managing agent).

n53. Id.

n54. See id. at 49 (explaining role of members' agent).

Concerns have been voiced about possible conflicts of interests in situations where managing agencies own members' agencies. An advantage to such an arrangement is that the members' agent will be closer to the business being written in the Room and have more direct contact with the active underwriters on that agency's syndicates, thus giving the agent broad information with which to protect his client. However, the managing agent may have a perceived obligation to keep the syndicates running. Ian Hay Davidson, Lloyd's first Chief Executive, has drily noted:

The Name who goes direct to a managing agent will be sure of getting on to the syndicates managed by that agent, but is likely to be the last to hear when it is time to come off those syndicates. He will have the advantage that the desire of other agents for places [for their Names] on his own agent's syndicates will give him reciprocal access to a wider range of syndicates. There is no simple answer: some Names prefer to talk to the organ grinder; others prefer to deal through the monkey.

Understanding Lloyd's, supra note 20, at 4.

n55. Raphael, supra note 1, at 49.

n56. See id. (describing lack of information available to Names).

n57. See id. at 43 (describing culture of secrecy).

n58. See id. at 49 (describing relationship of total trust between Names and those who underwrite on their behalf).

n59. See id. at 2 (describing disappearance of "utmost good faith" as losses mounted).

n60. See Barnes, supra note 7, at 78 (describing new breed and rising number of Names).

n61. Id.

n62. Id.

n63. Id.

n64. See Mantle, supra note 20, at 4 (describing Lloyd's as blue-chip institution).

n65. See Raphael, supra note 1, at 51 (describing advantages of Lloyd's system of trading).

n66. See Barnes, supra note 7, at 78 (describing new breed and rising number of Names).

n67. Id.

n68. Raphael, supra note 1, at 51.

n69. See Mantle, supra note 20, at 33 (marking January 1, 1969, as date first U.S. Names joined).

n70. Raphael, supra note 1, at 48. "Most [Names] are British, but no fewer than eighty-five countries are represented at Lloyd's. There are sizeable numbers of Names in the United States, Australia, Ireland, Canada, South Africa, and New Zealand. There are even Names in such unlikely capitalist havens as North Yemen, China, and Tonga." Id.

The cynical might suggest that we have seen the result of past Lloyd's membership drives in the current crops of American, Canadian and Antipodean members. It seems unfair to raise such a sensitive subject when Lloyd's is earnestly trying to present an up-beat message, but the problem with admitting any member (individual or corporate) whose assets and wealth are largely based outside the jurisdiction of the English courts, does raise the spectre of whether it will be possible to recover those assets and wealth in the event of it ever becoming necessary to bankrupt that Name.

Deborah A. Tompkinson, Challenge at Lloyd's, 706 PLI/Comm 123 (1994).

n71. See Mantle, supra note 20, at 6 (describing effects of late 1980's catastrophes on new Names).

n72. See id. at 33 (describing entrance requirements for "mini-Names" admitted during expansion).

n73. See id. at 5 (stating a bank guarantee sufficient to cover deposit)

n74. Barnes, supra note 7, at 80. "The financial conditions for joining were now less stringent and the rules more laxly monitored. (In theory, you were not allowed to put up your principal residence as part of the wealth you showed, but Lloyd's happily accepted a bank guarantee instead, and since the bank guarantee was based upon a charge on your house the effect was the same.) New money rushed to join Lloyd's." Id.

n75. See id. at 83 (describing Rota Committee meeting where effects of unlimited liability are explained to Names by Lloyd's members).

- n76. *Id.*
- n77. *Id.*
- n78. See Raphael, *supra* note 1, at 52 (explaining that death is no escape from Names' extant liabilities).
- n79. See Business Plan, *supra* note 6, at 2 (explaining effect on Names if Lloyd's should fail).
- n80. Mantle, *supra* note 20, at xii. "The members or "Names' at Lloyd's commit themselves to underwriting a certain sum of business each year: say 500,000. This 500,000 is divided into smaller sums or "lines' of 10,000 or 20,000 on a spread of thirty or forty syndicates." *Id.*
- n81. *Id.* at xii.
- n82. Information Pack, *supra* note 35, at Fact Sheet 1.
- n83. See *id.* (describing Lloyd' security).
- n84. Mantle, *supra* note 20, at xii. "The members share syndicates' profits according to the size of their "lines' and the success of the active underwriters." *Id.*
- n85. See *id.* at 5 (describing how Lloyd's allowed money to be earned on twice).
- n86. See Raphael, *supra* note 1, at 51 (describing tax consequences of Lloyd's membership).
- n87. *Id.*
- n88. Business Plan, *supra* note 6, at 30 (describing statutory position). "[A] number of ... City institutions ... still regulate themselves. By far the largest is ... Lloyd's of London" In the Beginning, *supra* note 23, at 5.
- n89. See In the Beginning, *supra* note 23, at 5 (discussing history of self-regulation in City).
- n90. See John Moore, Attempts to Change Lloyd's Bill "A Wrecking Operation', *Fin. Times*, Feb. 1, 1982, at 3 [hereinafter Wrecking Operation] (describing Parliamentary maneuvers).
- n91. See In the Beginning, *supra* note 23, at 5 (discussing history of self-regulation in City).
- n92. See Patrick M. Creaven, Inside Outside Leave Me Alone: Domestic and EC-Motivated Reform in the U.K. Securities Industry, 60 *Fordham L. Rev.* S285 (1992) (describing regulatory changes in City pursuant to Financial Services Act); see also Insider Dealing Victims, *supra* note 25, at 25 (stating Lloyd's exemption from Financial Services Act).
- n93. See In the Beginning, *supra* note 23, at 5 (describing self-regulatory practice).
- n94. See *id.* (stating that those who failed to honor their contracts were shunned and ostracized).
- n95. *Id.*
- n96. See Creaven, *supra* note 92, at S285 (describing deregulation and re-regulation of City financial institutions in 1980's).
- n97. See *id.* at S287-88 (describing market fears regarding uncompetitiveness).
- n98. Financial Services Act (1986) (Eng.).

The Financial Services Act is the most comprehensive overhaul of investor protection legislation for 40 years.... The objectives were stated to be Efficiency, Competitiveness, Confidence and Flexibility.... The Act modifies and extends its pre-existing investor protection laws and includes reforms relating to listing of securities, offers of unlisted securities, takeovers, insider dealing, collective investment schemes and reciprocity with other countries in respect of financial services.

J. Iain Murray, Globalization of Government Securities Market: The "Big Bang' and the United Kingdom Domestic Market, the Financial Services Act, and the New Regime for U.S. Government Securities, 555 *PLI/Corp* 619 (1987).

n99. See Creaven, *supra* note 92, at S286 (describing reasons for adopting FSA). "Although the FSA provided for continued self-regulation of the industry, it included provisions for stronger government guidance than in the pre-Big Bang era." *Id.* at S289.

n100. Securities Act of 1934, 15 U.S.C. 78a-78ff (1988 & Supp. V 1993)

The Commission ... shall ... have power to make such rules and regulations as may be necessary or appropriate to implement the provisions of this title for which [it] is responsible or for the execution of the functions vested in [it] by this title, and may for such purposes classify persons, securities, transactions, statements, applications, reports, and other matters within their respective jurisdictions, and prescribe greater, lesser or different requirements for different classes thereof.

Id.

n101. See Creaven, *supra* note 92, at S285 (describing efforts by drafters to avoid agency alternative). “FSA regulation ... represents a middle ground between full agency regulation and earlier complete self-regulation.” *Id.* at S289.

n102. See *id.* (stating FSA provided for continued self-regulation).

n103. See *id.* (stating FSA provided for self-regulation and kept U.K. competitive).

n104. *Id.* at S285.

n105. See *id.* at S292 (discussing SROs assumption of majority of self-regulation in U.K. investment industry).

n106. See *In the Beginning*, *supra* note 23, at 5 (describing self-regulatory practice).

n107. See *id.* at 5 (discussing SROs, including Securities Association, primary regulator of London Stock Exchange).

n108. *Id.*

n109. *Id.*

n110. Jonathan Prynne & Sarah Bagnall, *Lords Fuel Lloyd’s Debate*, *Times*, June 30, 1994, available in LEXIS, News Library, NON-US File.

n111. See *id.* (stating Lloyd’s argument that Names are underwriters, not investors).

n112. *Id.*

n113. Creaven, *supra* note 92, at S285 (describing FSA role in new regulatory regime for U.K. investment industry).

n114. *Lloyd’s Act, 1982*, pmbl. (Eng.).

n115. *Id.*

n116. *Lloyd’s Act, 1871*, pmbl. (Eng.).

n117. *Lloyd’s Act, 1982*, pmbl. (Eng.).

n118. See *id.* at I-25 (reciting purposes of Lloyd’s Act).

n119. *Id.*

n120. See Raphael, *supra* note 1, at 68-69 (describing reforms adopted by Parliament).

Key clauses of the Bill are facing an unprecedented degree of opposition in the House of Lords from sectional interests of the Lloyd’s market.

A large part of the Lloyd’s market has ranged itself against the Lloyd’s establishment in an effort to prevent the legislation incorporating clauses vital to the effectiveness of the self-regulatory powers....

A House of Commons committee insisted that Lloyd’s included the divestment clauses because it had identified conflicts of interest which could undermine Lloyd’s self-regulatory powers which the market is seeking in its new regulation....

The divestment clauses attempt to regularise the relationships between a broker, the broker’s client, and the underwriting capital base of the market, to restore Lloyd’s market character and identity, and to eliminate the possibility of abuse through conflicting interests within Lloyd’s.

Those opposing the divestment clauses argue that the delicate fabric of the relationships within Lloyd’s will be damaged.... Of more direct concern, brokers and underwriters, in defending the status quo within Lloyd’s, have pointed out other conflicting interests within the market. These conflicting interests are serious and have far-reaching implications. Lloyd’s and outside regulatory agencies will need to examine them closely.

John Moore, *Support Grows for Howden as Lloyd’s Bill Enters Crucial Stage*, *Fin. Times*, May 24, 1982, at 21 [hereinafter *Support Grows*].

n121. See generally, Raphael, *supra* note 1, at 60-67 (discussing Savonita Affair, Sasse Affair, and Moran scandal).

n122. See *id.* at 66-67 (discussing Christopher Moran). “The Moran case proved that it was no longer practicable to run a modern international market with regulations fashioned in the nineteenth century.” *Id.* at 67.

n123. See *id.* at 66-67 (discussing Moran scandal).

n124. *Id.*

n125. *Id.*

n126. *Id.*

n127. See *id.* at 67-69 (describing Fisher’s commission).

n128. *Id.*

n129. *Id.*

n130. *Self-Regulation At Lloyd’s, Report of the Fisher Working Party 1-3* (May 1980).

n131. *Id.*

n132. *Id.*

n133. Id.
n134. See Raphael, supra note 1, at 68 (comparing Fisher's terms of reference with earlier Cromer report).
n135. Id.
n136. Id.
n137. Id.
n138. Wrecking Operation, supra note 90, at 3.
n139. See Support Grows, supra note 120, at 21 (stating key clauses in bill faced unprecedented opposition in House of Lords from sectional interests favoring Lloyd's).
n140. See Raphael, supra note 1, at 245 (describing Lloyd's relationship with Tories as "traditionally cosy").
n141. See Jonathan Prynne, Lloyd's Regulation Move Fails, Times, June 28, 1994, available in LEXIS, News Library, NON-US File (stating 200 peers in House of Lords thought to be Names).
n142. See Wrecking Operation, supra note 90, at 3 (describing Lloyd's leadership steering bill through Parliament).
n143. See Support Grows, supra note 120, at 21 (stating key clauses in bill faced unprecedented opposition in House of Lords from sectional interests favoring Lloyd's).
n144. Id.
n145. Id.
n146. Id.
n147. Id.
n148. Id.
n149. Id.
n150. Id.
n151. Id.
n152. See Self-Regulation at Lloyd's, Fin. Times, Sept. 23, 1982, at 20 (explaining decision that brokers' and managing agents' functions must be separated). "At one time, the majority of both managing agents and members' agents were owned by brokers. Under the Lloyd's Act of 1982, brokers were required to divest their managing agencies but could retain their members' agencies." Understanding Lloyd's, supra note 20 at 4.
n153. Lloyd's Act, 1982, ch. 14, 10-11 (Eng.).
n154. Id.
n155. Id.
n156. Id.
n157. Id.
n158. See Self-Regulation at Lloyd's, supra note 152, at 20.

Rarely [has a scandal] penetrated so deeply as [the Alexander Howden affair]. Not only are the amounts of money extremely large - Alexander and Alexander has alleged that as much as \$ 55m may have been misappropriated over a period of years - but one of the leading firms of Lloyd's brokers is involved, and in suspending Mr. Ian Posgate, Lloyd's has taken severe disciplinary action against one of the members of its own ruling committee.

Another strange aspect is that several of the key figures involved took a leading part in the presentation of evidence last year to a Parliamentary Committee, during the process of enactment of new legislation to reinforce the self-regulatory powers of Lloyd's....

In the event it was decided that [the] functions [of broker and managing agent] must be separated. That decision is clearly justified by recent events. Even so, it is bound to rankle in political circles that such prominent figures in the parliamentary proceedings should now be the subject of serious allegations involving precisely the misuse of underwriters' funds over which they had control....

In the circumstances the market must either take shelter beneath an umbrella of statutory controls or, as we would prefer, face up to the problems and costs of a much more sophisticated structure of self-regulation.

Id.

n159. Id.

n160. Id.

n161. Id.

n162. See Business Plan, supra note 6, at 6 (stating insurance is highly cyclical).

n163. See Dacey, supra note 46, at 1 (stating Lloyd's not immune to cycle).

n164. See Barnes, supra note 7, at 78 (describing effects of catastrophes).

n165. See id. at 78 (explaining LMX market).

n166. Id.
n167. See id. (explaining “long-tail” market).
n168. See Raphael, supra note 1, at 206 (explaining that open-years are years of account that cannot be closed due to potential claims under policies whose terms have expired).
n169. See id. at 99 (describing effect of asbestos claims). “Asbestos in all but the highest dust concentrations is an insidious killer.” Id. at 100. General coverage policies written over many years have been interpreted broadly by U.S. courts. Interview with Dennis Mahoney, Deputy Chairman, Alexander Howden Group, London (July 20, 1994). The result has been seemingly endless litigation. Id. Without tort reform in these areas, there may be a massive redistribution of wealth at the cost of the entire insurance industry. Id. “The magnitude of losses faced by insurers that issued coverage to asbestos manufacturers was illustrated by a 1993 decision announced by CNA Financial Corp. and Chubb Corp. to collectively pay over \$ 3 billion to Fibrebrand Corp. to settle asbestos personal injury claims.” Ruthe Gastel, Occupational Disease: Insurance Issues, Insurance Information Institute Reports, June 1994.
n170. See Raphael, supra note 1, at 7-8 (discussing Names’ suits).
n171. Kevin Pratt, Lloyd’s Ensures a Brighter Future, Sunday Times, Feb. 12, 1995, available in LEXIS, News Library, NON-US File (discussing insurance cycle).
n172. Id.
n173. Id.
n174. Id.
n175. Id.
n176. Adrian Ladbury & Stacy Shapiro, London Market Competition is Returning, Bus. Ins., Jan. 16, 1995, available in LEXIS, News Library, US File.
n177. See Barnes, supra note 7, at 78 (arguing business written in LMX market when no “real” business available due to high capacity).
n178. Id.
n179. Id.
n180. See id. (describing effects of catastrophes). “[A series] of catastrophes ... racked up more than \$ 40 billion in insurance losses between 1987 and 1990.” Id. at 174; see also Business Plan, supra note 6, at 2 (stating current results worst in Lloyd’s history).
n182. Id. at 74.
n183. Id.
n184. Id.
n185. Id.
n186. Id.
n187. Id.
n188. Id. “Insurers all over the world were shaken” by the disasters. Id.
n189. See id. at 174-75 (explaining development of Lloyd’s market as specialist reinsurance market for high-level risk).
n190. See id. (discussing reinsurance market).
n191. Id. at x.
n192. See Barnes, supra note 7, at 78 (explaining spiral market).
n193. See Raphael, supra note 1, at 4 (discussing basic concerns of insurance).
n194. Id.
n195. See id. at 176 (describing spiral market).
n196. Id.
n197. Id.
n198. See id. at 178-79 (detailing expanding capacity in LMX market and ultimate demise).
n199. Id.
n200. See Raphael, supra note 1, at 205-06 (describing open-year and reinsurance-to-close problems).
n201. Id.
n202. Id.
n203. Id.
n204. Id.
n205. Id.
n206. See id. (explaining potential liabilities based on insufficient RITC and open years).

The three year accounting system is integral to Lloyd’s and a way to delineate the extent of claims on policies written. It adds stability and finality and has given rise to a specialized coverage known as “reinsurance to

close.” At the end of the year, the accounts of the year three years previous are “closed” and reinsurance procured on unsettled liabilities. Reserves are kept against known claims and a certain amount designated for insured risks which have taken place but which have not yet been reported. This category of expected losses is known as “incurred but not reported” or IBNR. It represents a “tail” of unmatured liabilities and has for several years been a particular problem as asbestos and environmental coverage claims carry with them a long “tail” and much uncertainty.

Understanding Lloyd’s, *supra* note 20 at 5.

n207. *Id.* at 205.

n208. Raphael, *supra* note 1, at 205.

n209. See *id.* at 205-06 (explaining potential liabilities based on insufficient RITC and open years).

n210. *Id.*

n211. *Id.*

n212. *Id.*

n213. *Id.*

n214. See *id.* at 205-06 (describing results of claims on forty-year old policies).

n215. See Robert Stowe, *Paying the Yankee Piper*, *Fin. World*, July 6, 1993, at 28 (discussing U.S. court awards for asbestos and pollution claims). “The Keene Corp., facing 98,000 pending claims was granted an injunction barring it from future judgements.... To date, 17 other former asbestos manufacturers have declared bankruptcy.” Ruthe Gastel, *Occupational Disease: Insurance Issues*, *Insurance Information Institute Reports*, June 1994.

n216. Raphael, *supra* note 1, at 49.

n217. See Barnes, *supra* note 7, at 78 (describing Names’ and their losses).

n218. See Raphael, *supra* note 1, at 206 (describing horror Names felt upon discovery of extent of their liabilities).

n219. See Mantle, *supra* note 20, at 5 (describing appeal of Lloyd’s membership).

n220. Raphael, *supra* note 1, at 218 “[As] the losses at Lloyd’s escalated, the 30 percent of Names on whom 70 percent of the losses had fallen were faced by a choice: pay up or fight. Many determined to sue” *Id.*

n221. See *Insider Dealing Victims*, *supra* note 25, at 25 (discussing Names’ allegations).

n222. *Deeny v. Gooda Walker Ltd.*, 1994 P.14 (Eng. Q.B.) (Oct. 4).

n223. *Id.*

n224. Stacy Shapiro, *Lloyd’s Regulation Hit: Execs Ask Parliament for Time to Complete Current Reforms*, *Bus. Ins.*, Feb. 13, 1995, at 3.

n225. See *id.* at 3 (discussing Names organization’s submissions to Parliament).

[The Lloyd’s Names Defence Association] report is a chronological diary of the information and intelligence which had been collected by and was known to Lloyd’s during the last several decades and it also details what Lloyd’s did as a result of that information. By inference, therefore, it also provides the means to determine what Lloyd’s should have done but did not. Each entry in the final report is a factual extract.... A layman reading this report is drawn to only one conclusion, that from around the mid 1970’s the key working Names and Council members at Lloyd’s concealed material information from the mass of underwriters and external Names. (It is this long continuing concealment of material information which allowed many subsequent malpractices to develop throughout the Lloyd’s market. These included such abuses as misleading time and distance policy accounting, the LMX spiral, and preferential trading privileges for influential working Names....).

Financial Services Regulation, *Minutes of Evidence Before the Treasury and Civil Service Committee, House of Commons, Session 1994-95 (Feb. 1, 1995) (Letter from Names Defence Association) [hereinafter Names Defence Association Letter]*.

n226. See Raphael, *supra* note 1, at 220 (stating number of Names suing Lloyd’s, possible length of litigation, and cost per hour of City’s leading lawyers).

n227. See *id.* at 62 (discussing traditional laissez faire attitude of Lloyd’s leadership).

n228. See *id.* at 43 (discussing secrecy surrounding Lloyd’s).

n229. *Id.*

n230. See *id.* at 62 (discussing traditional laissez-faire attitude of Lloyd’s leadership).

n231. See *Insider Dealing Victims*, *supra* note 25, at 25. “For a long period of time self-regulation became voluntary regulation or no regulation at all.” *Id.*

n232. See Raphael, *supra* note 1, at 43 (describing non-working Names’ ignorance of events at Lloyd’s).

n233. See *id.* at 57 (describing degree of trust and criticizing market practices).
n234. See *id.* at 57 (criticizing market practices).
n235. See Self-Regulation at Lloyd's, *supra* note 152, at 20. "Lloyd's is looking not so much accident prone as chronically under-regulated." *Id.*
n236. See Raphael, *supra* note 1, at 86 (discussing Peter Cameron-Webb affair).

The investigators appointed by Lloyd's to inquire into the PCW frauds told [Lloyd's] ... that it was apparent to them that many members of Lloyd's in senior positions had only the sketchiest notion of their legal obligations to act at all times in the best interests of their Names, and not to make secret profits at their expense.

Id. at 86.

n237. See Insider Dealing Victims, *supra* note 25, at 25 (reciting Names' allegations).

Sorting and analysing the final [Names Defence Association] project database reveals many damning facts. For example, for many years, virtually every managing agency ran a series of parallel and baby syndicates, all doing essentially the same type of business. (These enabled unscrupulous underwriters to abuse external Names by, for example, collecting several sets of management fees and expenses for essentially the same business).

Names Defence Association Letter, *supra* note 225 at 56.

n238. Raphael, *supra* note 1, at 126 (describing run-off policies).

n239. *Id.*

n240. See *id.* at 111 (describing syndicates specializing in asbestos).

n241. See *id.* at 99 (describing effect of asbestos claims).

n242. *Id.*

n243. See *id.* at 131 (stating underwriter believed risk was good one at time).

n244. See *id.* at 133 (describing actions taken by members' agents after extent of Outhwaite losses began to become known).

n245. See *id.* at 149 (discussing failed effort by Lloyd's deputy chairman to warn of asbestos risks in 1982).

Who goes bust will be decided by the courts. But it is, at the very least, disturbing that so few managing and members' agents followed the advice of Lloyd's deputy chairman, Murray Lawrence, in his letter of 18 March 1982 that they should "inform their Names of their involvement with asbestosis claims and the manner in which their syndicates' current and potential liabilities have been covered." The failure to do this led many thousands of unwitting Names to join long-tail syndicates throughout the 1980's. Many professionals at Lloyd's realized the dangers. Very few outsiders did.

Id.

n246. Stacy Shapiro, Lloyd's Will Continue Paying "All Valid Claims", *Bus. Ins.*, May 23, 1994, at 29.

n247. See Business Plan, *supra* note 6, at 6 (describing profit opportunity at Lloyd's). "Names will only continue to underwrite at Lloyd's and new capital providers will only join if there is a convincing case that Lloyd's syndicates can now achieve levels of return on capital that compare favourably with other investment opportunities." *Id.*

n248. See The End of the Name, *Economist*, Sept. 18, 1993, at 107 [hereinafter End of the Name] (discussing advent of corporate capital).

n249. See Stephenson, *supra* note 6, at D1 (discussing announcement of losses and Business Plan).

n250. *Id.*

n251. See Sarah Bagnall, Poker Game Will Determine Future of Divided Lloyd's, *Times*, Feb. 15, 1995, available in LEXIS, News Library, NON-US File [hereinafter Poker Game] (discussing negotiating stances of interested parties to any possible settlement).

n252. See Shapiro, *supra* note 224, at 3 (discussing Lloyd's leaders testimony in Parliament).

n253. *Id.*

n254. Id.

Mr. Radice: The market is basically changing, is that right? Mr. Rowland: Enormously. I think one of the enormously healthy things which we have done - and I mean "we" the market helped by our regulatory colleagues laying down the rules - is to blow the doors of the market open to a different form of capital. If we are analysing the past as to what went wrong, it is sad to have to say so but the old capital was weak and members' agents representing that capital did not exercise the discipline on the market they should have done, because it is after all capital which has the strongest influence in terms of conduct of anything which it owns or it should have.

Financial Services Regulation, Minutes of Evidence Before the Treasury and Civil Service Committee, House of Commons, Session 1994-95 (Feb. 13, 1995) (Testimony of David Rowland, Chairman of Lloyd's of London) [hereinafter Rowland].

n255. Raphael, *supra* note 1, at 68. One former chairman at the time of the Fisher report said:

If the people at Lloyd's had to be dragooned, policed and watched at every turn; if it really came to the point where one expected good faith, honesty and decency to be the exception rather than the rule, then one might well wonder whether it was worth carrying on at all.

Id.

n256. See Business Plan, *supra* note 6, at 30 (describing new regulatory regime).

n257. See Jonathan Prynne & Sarah Bagnall, Lords Fuel Lloyd's Debate, *Times*, June 30, 1994, available in LEXIS, News Library, NON-US File (describing calls in Parliament for end to self-regulation at Lloyd's). "[Self-regulation] at Lloyd's has been almost non-existent in recent years and market abuses have flourished." Names Defence Association Letter, *supra* note 225, at 56.

n258. Sarah Bagnall, Lloyd's Names Call for New Regulatory Regime, *Times*, Dec. 5, 1994, available in LEXIS, News Library, NON-US File; see Creaven, *supra* note 92, at S291 (describing SIB).

n259. William Gleeson, Lloyd's Top Brass Face Grilling by MPs, *Independent*, Feb. 6, 1995, at 25. The report of the Treasury Committee conducting the inquiry is not yet available. Hart, *supra* note 12, at 31.

n260. Business Plan, *supra* note 6, at 30 (discussing new regulatory regime).

n261. Id. at 3-5 (summarizing features of Business Plan).

n262. Id.

n263. See Time to Complete, *supra* note 252, at 3 (discussing Lloyd's leaders' testimony on current regulation).

n264. Business Plan, *supra* note 6, at 2.

n265. See *id.* at 15 (detailing new system of governance).

n266. Id.

n267. Id.

n268. Id. at 30.

n269. See *id.* (discussing new regulatory regime).

n270. See Hart, *supra* note 12, at 31 (discussing Names anger at lack of regulation).

n271. See Business Plan, *supra* note 6, at 3-4 (summarizing Business Plan).

n272. Id.

n273. See *id.* at 56-57 (discussing first-time admission of limited liability incorporated capital vehicles as providers of underwriting capacity at Lloyd's).

There was an immediate scramble among the large financial institutions, Lloyd's brokers and agents, to launch corporate vehicles. Although a few fell by the wayside, most were launched successfully. Those which were withdrawn were, by and large, those which were overambitious and sought to set up funds of hundreds of millions of pounds. A few, such as LIMIT and Angerstein, went through despite raising funds which fell short of their target. The most popular were the smaller vehicles and those which were strongly tied to a successful and respected managing agency with guaranteed access to choice syndicates, such [as] Hiscox.

To date, all the Corporate Names have been set up as investment trusts. An investment trust is not a trust properly so-called but a limited liability company, the shares of which must be listed on the London Stock Exchange. Shareholders own shares in the company, not in its underlying investments.

Challenge at Lloyd's, *supra* note 70, at 5.

n274. *Id.*

n275. Ralph Atkins, Payment for Past Excesses: Ralph Atkins on Equitas, A New Company to Take Over Billions of Pounds of Old Liabilities at Lloyd's, *Fin. Times*, Feb. 8, 1995, at 20.

n276. Clare Sambrook, Lloyd's Future is Now the All-Risks Question: Is the Insurance Market Solvent? Clare Sambrook Hears its Embattled Chairman Discuss the Unthinkable, *Daily Telegraph*, Feb. 11, 1995, at 2 (discussing solvency at Lloyd's).

n277. See Robert Tyerman, Lloyd's Nears Names Offer, *Sunday Telegraph*, Feb. 19, 1995, at 1 (discussing Names' suits against Lloyd's).

n278. See Business Plan, *supra* note 6, at 56-57 (discussing first-time admission of limited liability incorporated capital vehicles as providers of underwriting capacity at Lloyd's).

n279. End of the Name, *supra* note 248, at 107.

n280. See Business Plan, *supra* note 6, at 56-57 (discussing first-time admission of limited liability incorporated capital vehicles as providers of underwriting capacity at Lloyd's).

n281. See Richard Lapper, Trusts Begin to Issue Lloyd's Prospectuses, *Fin. Times*, Oct. 22, 1993, at 10 (discussing investment trusts at Lloyd's).

n282. See U.S. Investors Provide Lloyd's with New Capital, *Fin. Post*, Dec. 22, 1994, at 6 (discussing U.S. corporate investment at Lloyd's).

n283. See Kevin Pratt, Lloyd's Ensures A Brighter Future, *Sunday Times*, Feb. 12, 1995, available in LEXIS, News Library, NON-US File (discussing form of corporate capital vehicles investing at Lloyd's).

As an extension of the corporate capital idea, flexibility has been added with the approval of a scheme allowing corporate vehicles owned by a single investor ("corporate syndicates") and set up to invest in a single syndicate only. New corporate syndicates will be permitted on a "stand-alone" basis. Agencies are not allowed to move to a single member basis but are permitted to set up parallel syndicates.

Challenge at Lloyd's, *supra* note 70, at 9.

n284. *Id.*

n285. William Gleeson, Lloyd's Nets Pounds 593m, *Independent*, Dec. 17, 1994, at 14.

n286. See Stowe, *supra* note 215, at 28 (discussing capital to be provided by newly incorporated Names).

n287. See Lloyd's May Allow "Names" to Trade Syndicate Shares: FT, *Agence France Presse*, Feb. 19, 1994, available in LEXIS, News Library, NON-US File (discussing trading Lloyd's syndicate shares).

n288. See End of the Name, *supra* note 248, at 107 (discussing role of corporate capital).

n289. See Sarah Bagnall, Lloyd's Sets New Voting Rights, *Times*, Dec. 10, 1993, available in LEXIS, News Library, NON-US File (discussing adoption of proportional voting rights, reflecting introduction of corporate capital).

n290. See End of the Name, *supra* note 248, at 107 (discussing corporate capital providers' expectations regarding regulation of marketplace).

n291. New Name for the Game, *Banker*, Jan. 1994, available in LEXIS, News Library, NON-US File. "Those at Lloyd's charged with introducing corporate capital have concentrated on the needs and requirements of the traditional corporate finance market" *Id.*

n292. See Atkins, *supra* note 275, at 20 (discussing Equitas project). "The aim is that by the end of this year, liabilities on insurance policies sold in 1985 and before, together with sufficient reserves to meet claims, will be 'reinsured' - or moved - into Equitas" *Id.*

n293. *Id.*

n294. *Id.*

n295. *Id.*

n296. *Id.*

n297. Atkins, *supra* note 275, at 20.

n298. See End of the Name, *supra* note 248, at 107 (discussing corporate capital exposure to long-tail claims).

n299. *Id.* at 107. "[Lloyd's] is doing its best to assure [corporate investors] that they will not be stung by past long-term liabilities. It hopes to set up [Equitas], a central vehicle to take on all pre-1985 liabilities" *Id.*

n300. *Id.* at 107. “[Lloyd’s promise not to levy against new corporate capital members without a vote] ... gives corporate investors some reassurance that they will not be stuck with the bill for past losses. Yet, [if losses are too great] corporate members may have to provide something extra.” *Id.*

n301. Ralph Atkins, *People: Hutter up to Speed on Lloyd’s-Speak: Ralph Atkins Meets Heidi Hutter, the Cool-Brained Diplomat Behind the Development of Equitas*, *Fin. Times*, Feb. 20, 1995, at 10 [hereinafter *Up to Speed*].

n302. Janet Porter, *Marine Insurance Recovery Points to Profit for Lloyd’s*, *J. of Com.*, Feb. 2, 1995, at A7.

n303. See *Up to Speed*, *supra* note 301, at 10 (discussing *Equitas* project).

n304. Creaven, *supra* note 92, at S291-92 (discussing role of DTI as regulatory body).

n305. *Insurance Companies Act, 1982, ch. 50 (Eng.)*; see Sambrook, *supra* note 276, at 2 (discussing solvency tests).

The first [solvency test] weighs up all Lloyd’s assets against expected claims, a test Mr. Rowland told the select committee “we passed with a substantial margin.” In the second, each of the 30,000-odd Names, from boxer Henry Cooper to entrepreneur Sir Freddie Laker and Mr. Rowland himself, must show sufficient assets to pay claims on policies issued on their behalf. If individual Names cannot, as 9,000 could not in December 1993, Lloyd’s central fund - made up of levies on all the Names - makes up the difference.

Id.

n306. *Id.*

n307. Stacy Shapiro, *S&P Sizes Up Lloyd’s Survival of the Fittest Syndicates Leads to a Stronger Market*, *Bus. Ins.*, Sept. 26, 1994, at 65.

Lloyd’s has mortgaged its assets and manipulated accounting figures to pass this test. Specifically, it revalued its assets, including its building, works of art and publishing subsidiary Lloyd’s of London Press Ltd. to boost its assets by 300 million pounds (\$ 472.1 million). In addition, ... the DTI allowed Lloyd’s to reduce its 1991 global loss by eliminating “double counting” from its results. This occurs when a syndicate is reinsured by another syndicate and both have reserved for the same loss....

Lloyd’s members had to pay for the double count ... [but] Lloyd’s has been able to use 180 million pounds (\$ 266.4 million) of this amount as an asset

Id.

n308. Ralph Atkins, *Lloyd’s May Consider Names’ Debts as Assets*, *Fin. Times*, Feb. 20, 1995, at 7.

n309. *Id.*

n310. See Sambrook, *supra* note 276, at 2 (discussing solvency tests).

n311. *Id.*

n312. *Id.*

n313. See Fact Sheet 1, in *Information Pack*, *supra* note 35, (describing Premium Trust Funds).

n314. Clare Sambrook, *Rowland Says Lloyd’s Faces Solvency Worry*, *Daily Telegraph*, Feb. 7, 1995, at 23.

n315. Helen R. MacLeod, *Names Slam Lloyd’s Plans to Reroute Litigation Money*, *J. of Com.*, Feb. 7, 1995, at A9.

n316. See *id.* (discussing recent Gooda Walker decision).

n317. *Id.*

n318. See Sambrook, *supra* note 276, at 2 (discussing solvency tests).

n319. *Heseltine Delays Lloyd’s Rule Move*, *Times*, Feb. 23, 1995, available in LEXIS, News Library, NON-US File.

n320. Alfred Doll-Steinberg, *Lloyd’s Names Need Offer They Cannot Refuse*, *Times*, Feb. 17, 1995, available in LEXIS, News Library, NON-US File.

n321. See Sambrook, *supra* note 276, at 2 (discussing solvency tests).

n322. *Id.*

n323. *Id.*

n324. *Id.*

n325. *Id.*

n326. See Doll-Steinberg, *supra* note 320 (discussing Exxon’s renewals).

n327. See Time to Complete, supra note 224, at 3. “The Lloyd’s executives were grilled by members of the Treasury and Civil Service Committee last week, which is investigating the adequacy and enforcement of the United Kingdom’s financial services regulation.” Id.

n328. See William Gleeson, Lloyd’s Top Brass Face Grilling by MPs, Daily Telegraph, Feb. 6, 1995, at 25 (discussing content of Parliamentary review).

n329. See Insider Dealing Victims, supra note 25, at 25 (discussing hearings).

n330. Doll-Steinberg, supra note 320. “Lloyd’s reaction to the Gooda Walker decision result was to announce that it would change its rules so that Lloyd’s could have first call on the money due to the litigating names.” Id.

n331. Deeny v. Gooda Walker Ltd., 1994 P.14 (Eng. Q.B.) (Oct. 4).

n332. Id. at 14.

n333. Id. at 23.

The [defendant’s] pleading listed a number of matters which were alleged to be material when considering the standard of care to be applied in underwriting. These were as follows:

- (i) Names at Lloyd’s knowingly accept unlimited liability;
- (ii) Underwriting is a risk business;
- (iii) Underwriters assume risk in consideration of premium, and it is no part of their business to reinsure all the risks that they have assumed.
- (iv) Lloyd’s Regulations had no requirements for recording aggregate exposure or calculating probable maximum loss.

Id. (emphasis added).

n334. Id. at 12.

n335. Id.

n336. Clare Sambrook, Gooda Walker Names Win a Record L210m, Daily Telegraph, Feb. 15, 1995, at 26.

n337. See Raphael, supra note 1, at 126 (discussing Outhwaite syndicate).

n338. See Hart, supra note 12, at 31 (discussing recent Outhwaite litigation).

n339. Id.

n340. Id.

n341. Lloyd’s Litigation-The End of the Beginning, Wilde Sapte Law, Jan. 1995, at 6 [hereinafter End of the Beginning].

n342. Id.

n343. Susana Antunes, Lloyd’s Faces New Threat From US, Evening Standard, June 21, 1994, at 31; see Bonny v. Society of Lloyd’s, 3 F.3d 156 (1994). “In the present case, we are satisfied that several remedies in England vindicate plaintiff’s substantive rights while not subverting the United States’ policies of insuring full and fair disclosure by issuers and deterring the exploitation of United States investors.” Id.; see Roby v. Corporation of Lloyd’s, 996 F.2d 1353 (1993).

n344. See Doll-Steinberg, supra note 320, available in LEXIS, News Library, NON-US File (discussing impact of litigation on Lloyd’s bargaining position).

n345. See Tyerman, supra note 277, at 1 (discussing new settlement offer).

n346. Stacy Shapiro, Lloyd’s Bracing for Litigation After Settlement Fails, Bus. Ins., Feb. 21, 1994, at 1.

n347. Tyerman, supra note 277, at 1.

n348. Business Plan, supra note 6, at 28-29.

n349. Ralph Atkins, Lloyd’s Names Win Pounds 210m Damages Payout, Fin. Times, Feb. 15, 1995, at 22.

n350. See End of the Beginning, supra note 241, at 7 (discussing strategy for Gooda litigation).

n351. Id.

n352. Clare Sambrook, Gooda Names “Face Shortfall of L95m”, Daily Telegraph, Feb. 28, 1995, at 25.

n353. See Tyerman, supra note 277, at 1 (discussing possibility of new settlement offer).

n354. See Doll-Steinberg, supra note 320 (discussing effect of Names’ litigation on Lloyd’s).

n355. See Poker Game, supra note 251 (discussing Names’ demand for caps on liability); see Stacy Shapiro, Gooda Ruling Sets Precedent, Bus. Ins., Oct. 10, 1994, at 1 (discussing sufficient payout).

n356. William Gleeson, Lloyd’s Offers Cap on Liability to Names, Independent, Feb. 10, 1995, at 32.

n357. Id.

n358. Society of Lloyd’s v. Clementson, 1994 P.1 (Eng. C.A.) (Nov. 10).

n359. Id.

n360. Id.

n361. Id.

n362. Clare Sambrook, MP Fires Broadside at Lloyd's Watchdog, Daily Telegraph, Feb. 14, 1995, at 24.

n363. See Insider Dealing Victims, supra note 25, at 25 (discussing regulation at Lloyd's); see also Lloyd's Facing Double Scrutiny, supra note 12 at 31 (questioning whether Lloyd's should be allowed to continue to regulate itself).

n364. See Insider Dealing Victims, supra note 25, at 25 (discussing regulation at Lloyd's).

n365. See MP Fires Broadside at Lloyd's Watchdog, supra note 362, at 24 (describing MP's critiques of Lloyd's).

n366. Id.

n367. Id.

n368. Id.

n369. See Insider Dealing Victims, supra note 25, at 25 (discussing Stockwell testimony at Parliamentary hearings).

n370. Id.

n371. See Bagnall, supra note 258 (explaining LNAWP).

n372. Id.

n373. Id.

n374. No Need to End Lloyd's Self-Regulation-U.K. Official, Reuters, Feb. 15, 1995, available in LEXIS, News Library, NON-US File [hereinafter No Need to End Self-Regulation].

n375. See Securities Exchange Act of 1934, 15 U.S.C. 78w (1988 & Supp. V 1993) (describing SEC's power under Act).

n376. Id.

n377. Securities Exchange Act of 1934, 15 U.S.C. 78 12(b).

n378. Id. 15(d).

n379. Id. 21.

n380. Creaven, supra note 92, at S285.

n381. See End of the Name, supra note 248, at 107 (discussing corporate capital).

n382. Hart, supra note 12, at 31.

n383. Creaven, supra note 92, at S291-92.

n384. See Criminal Justice Act, 1987, ch. 38 (Eng.) (enumerating powers to investigate fraud).

n385. Financial Services Act (1986) 42 (Eng.).

n386. Creaven, supra note 92, at S285.

n387. See id. at S291 (discussing requirements for authorization to conduct investment business).

n388. Creaven, supra note 92, at S285.

n389. Id.

n390. Id.

n391. Id.

n392. Id.

n393. Id.

n394. Id.

n395. Id.

n396. Id.

n397. Id.

n398. Id.

n399. See No Need to End Self-Regulation, supra note 374 (discussing DTI's spokesman's testimony on Lloyd's continued self-regulation).

n400. Id.

n401. See Hart, supra note 12, at 31 (discussing Parliamentary hearings on Lloyd's continued self-regulation).

n402. See John Murray, Lloyd's Passes Solvency Test, Independent, Feb. 16, 1995, at 33 (discussing DTI spokesman's testimony at Parliamentary hearings).

n403. Creaven, supra note 92, at S296.

n404. See End of the Name, supra note 248, at 107 (discussing role of corporate capital).

n405. Id.

n406. Raphael, supra note 1, at 296. "The show ain't over until the fat lady sings." Id.

n407. Id. at 262. "In private, members of the new regime were even more scathing about their predecessors' laissez-faire practices." Id.

n408. See No Need to End Self-Regulation, supra note 374 (discussing DTI spokesman's testimony at Parliamentary hearings).

n409. Id.

n410. Id.

n411. See Time to Complete, supra note 224, at 3 (discussing Lloyd's leaders testimony in Parliament).

n412. Business Plan, *supra* note 6, at 2. “Our current results are the worst in Lloyd’s history. Many members have been brought to the brink of financial ruin, many more are fearful of the future. Confidence in the Society has been shaken. It is now time to take radical action.” *Id.*

n413. *Id.* at 2. “Should membership and market not unite behind this plan then Lloyd’s may have no future.” *Id.*

n414. *Id.* at 30. “The Regulatory Board has also developed a new set of regulatory principles that will raise standards further and provide greater protection for the interests of capital providers and policyholders alike.” *Id.*

n415. See Robert L. Heilbroner, *The Worldly Philosophers* 279 (1986) (1953) (discussing views of John Maynard Keynes).

n416. *Id.* at 279. “While Keynes espoused a policy of managing capitalism, he was no opponent of private enterprise.” *Id.*

n417. Stephen Breyer, *Regulation and Its Reform* 185-86 (1982) (describing virtues of competitive marketplace).

A “least restrictive alternative” approach to regulation ... would view regulation through a procompetitive lens. It would urge reliance upon an unregulated market in the absence of a significant market defect. In summary form, they include the market’s tendency to minimize economic waste by allowing for continuous individual balancing of economic costs and benefits ... , the carrot-and-stick incentives the market provides for greater efficiency ... , and the incentives it provides for innovation and the channeling of innovation into socially desirable directions.

Id.

n418. *Id.* at 104. “[The regulating body] must choose between the greater control and involvement that detailed regulations imply and the administrative simplicity and greater flexibility of the more general rule.” *Id.*

n419. Sam Peltzman, *Toward a More General Theory of Regulation*, in *Chicago Studies in Political Economy* 234-36 (George J. Stigler ed., 1988). “The common role of regulation ... is as a fulcrum upon which contending interests seek to exercise leverage in their pursuit of wealth.” *Id.*

n420. *Id.* at 235. “The essential commodity being transacted in the political market is the transfer of wealth ... [and] the market here, as elsewhere, will distribute more of the good to those whose effective demand is highest.” *Id.*

n421. See *id.* at 236 (explaining small group dominance).

n422. See *Insider Dealing Victims*, *supra* note 25, at 25 (discussing lack of regulation and increased profits for insiders).

n423. *Id.*

n424. See *Time to Complete*, *supra* note 252, at 3 (discussing Names’ complaints regarding regulation and discussing attacks by MPs).

n425. See *Doll-Steinberg*, *supra* note 320 (discussing Names’ litigation). “The next offer really ought to be the last: the consequences of failure to agree could prove too costly for both sides.” *Id.*

n426. *Id.*

n427. See *Business Plan*, *supra* note 6, at 29 (explaining assets being sought through litigation belong to other Names).

n428. See Helen R. MacLeod, *U.K. Court Places Burden of Old Claims on Lloyd’s Investors*, *J. of Com.*, Feb. 13, 1995, available in LEXIS, News Library, US File (explaining E&O coverage not enough for all Names).

n429. See *Bagnall*, *supra* note 258 (describing goals of LNAWP).

n430. See *Business Plan*, *supra* note 6, at 31 (listing goals of new regulatory regime).

n431. See *id.* (detailing stricter disclosure requirements).

n432. *Id.*

n433. Solomon et al., *Corporations Law and Policy* 830 (1994) [hereinafter *Corporations*].

N434. *Deeny v. Gooda Walker Ltd.*, 1994 P.12 (Eng. Q.B.) (Oct. 4).

n435. See *Lloyd’s of London Global Results* 10 (1993) (stating global syndicate results).

n436. See *Raphael*, *supra* note 1, at 49 (stating minimum financial requirement is now UK250,000).

n437. See *Dacey*, *supra* note 46, at 1 (stating current membership).

n438. See *Corporations*, *supra* note 433, at 1 (sketching features of corporation).

n439. See *Raphael*, *supra* note 1, at 48 (discussing Names’ acceptance of unlimited liability).

n440. See *Business Plan Progress Report* 21 (May 1994) [hereinafter *Progress Report*] (describing commitment to improved standards of professionalism in market).

n441. See, e.g., *N.Y. Ins. Law* 20.1-20.2 (McKinney 1994) (discussing theory and functions of New York State Insurance Department).

n442. See *Progress Report*, *supra* note 440, at 21 (describing standards of professionalism).

n443. See End of the Name, supra note 248 (discussing effect of corporate capital).

n444. See Progress Report, supra note 440, at 7 (describing benefits to all of admission of corporate capital).

n445. See Ralph Atkins, DTI Calls For Action on Insurer Insolvency, Fin. Times, Feb. 16, 1995, at 8 (discussing DTI proposals regarding solvency of European Union insurers).

n446. See Business Plan, supra note 6, at 30 (describing plans for new regulatory regime).

n447. Id.

n448. Id.