



Silent Cyber:

Understanding Changing Insurance Markets and
Recommendations to Protect Your Cyber Coverages

Thursday, May 21st at 11 AM Eastern



MARSH



Silent Cyber:

Understanding Changing Insurance Markets and Recommendations to Protect Your Cyber Coverages

Visit www.advisenltd.com at the
end of this webinar to download:

- Copy of these slides
- Recording of today's webinar

Mark your Calendars!



Advisen Transforming Insurance **FREE WEBINAR**

The NIST Cybersecurity Framework and its role in Cyber Risk Management and Cyber Insurance

Thursday, May 28, 2020
10AM EDT/4PM CET

ZURICH

REGISTER NOW



LIVE WEBINAR

Decreasing Cyber Risk through Compliance in the Enterprise

Wednesday, June 3 | 10 AM ET

REGISTER NOW

OneTrust GRC INTEGRATED RISK MANAGEMENT **Advisen** Transforming Insurance



Technology-based Active Security Management

LIVE WEBINAR
June 9 @ 11 AM ET

REGISTER NOW

Advisen Transforming Insurance **ZURICH**

Register for all upcoming webinars at
www.advisenltd.com/media/webinars

ARE YOU A RISK MANAGER?

We have something just for you



**Risk Managers and Insurance
Buyers now get FPN Pro FREE**

LEARN MORE

Today's Moderator



Chad Hemenway

Managing Editor
Advisen

Email at chemenway@advisen.com

Today's Panelists



Nicola Barnett

Head of Product Development,
UK FINPRO,
Marsh



Julian Miller

Partner
DAC Beachcroft



Robert Parisi

US Cyber Product Leader
Marsh

MARSH JLT SPECIALTY


DAC BEACHCROFT

Silent Cyber: Managing Cyber Coverage within a Changing Insurance Market

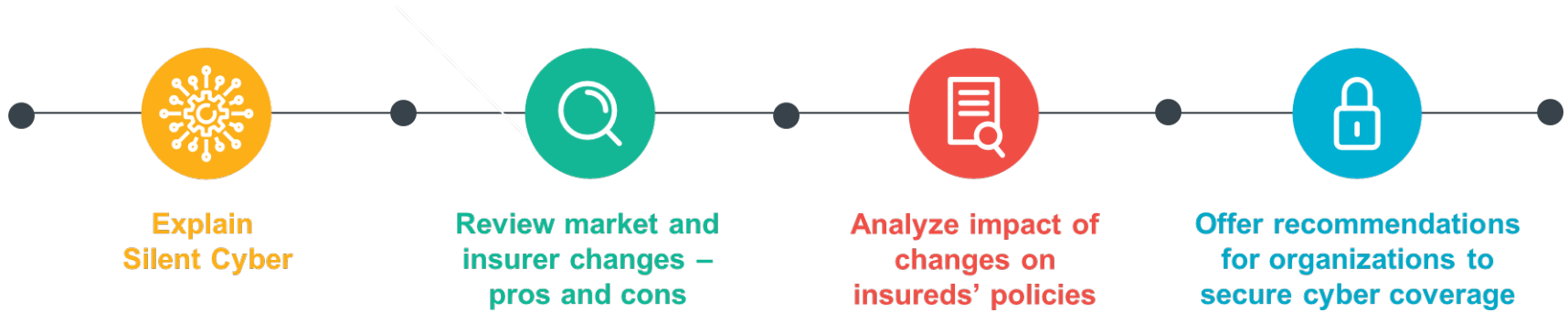
May 21, 2020


DAC BEACHCROFT

 MARSH

Setting the Stage: Why Silent Cyber Should be on Your Agenda

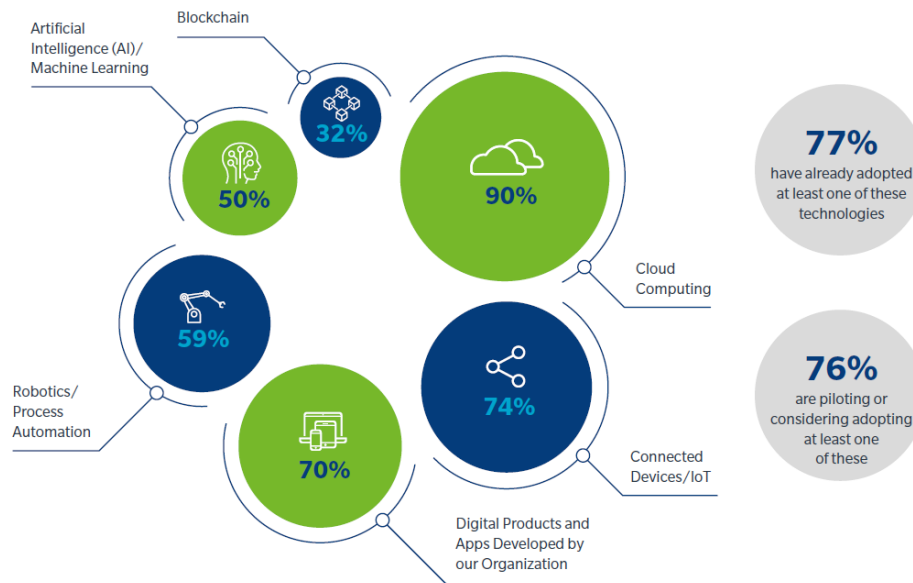
Today's Agenda



Silent Cyber: Situation Overview

- New technology brings new risks – and blurs the line between physical and cyber risk.
- Insurance (policy wordings) have traditionally lagged behind the evolution of technology.
- Insurers are now affirming or excluding cyber risks from non-cyber policies.
- Proposed exclusions are impacting coverage, sometimes overreaching to exclude physical risks merely because technology was in the chain of causation.

3 out of 4 companies are eagerly embracing new technologies, despite potential risks.



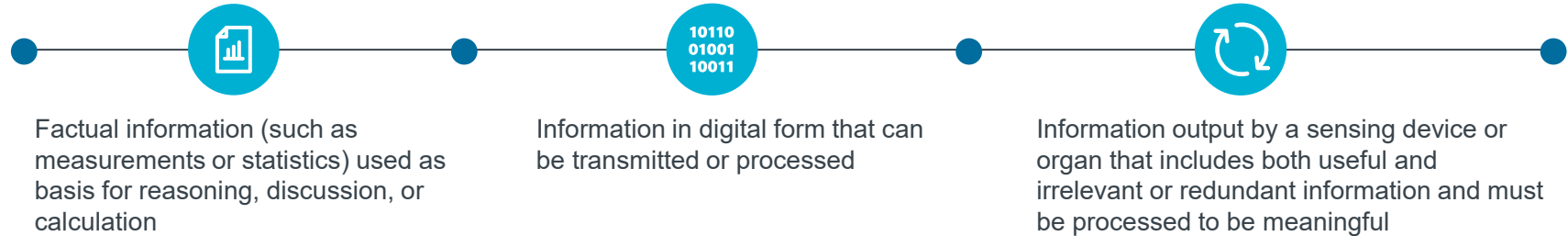
Source: Marsh Microsoft 2019 Global Cyber Risk Perception Survey

What is Cyber Risk?

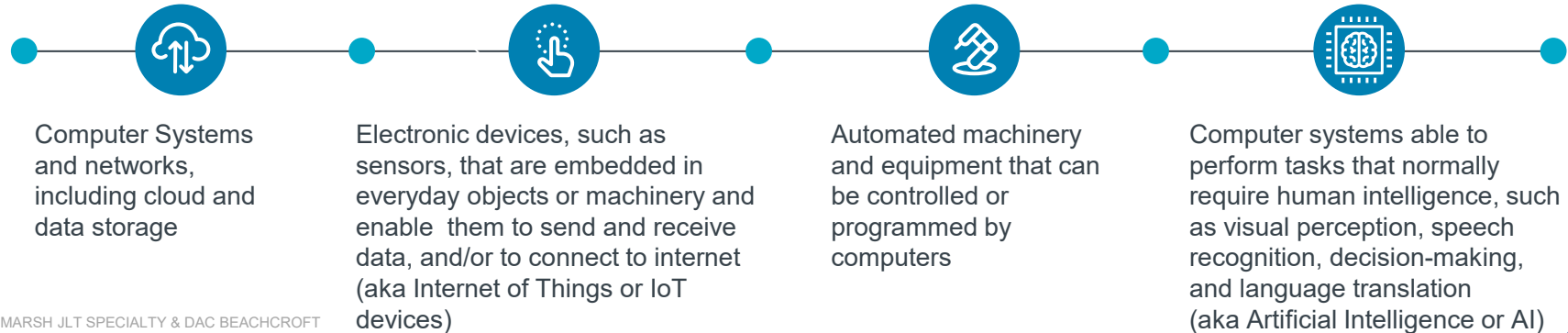
What Is Cyber Risk?

“The possibility of loss or injury of, relating to, or involving data or technology”

What is Data?



What is Technology?



How Does Cyber Risk Manifest in Loss?

Consequences of Cyber Risk

Cyber Event



Malicious attacks or accidental events impacting data, computer networks, or technology.

Leading to:

Impact



Encrypted
Data



Security
Breach



Privacy
Violations



Regulatory
Investigations



Phishing
/ Fraud



Bricked
Computers



Property
Damage



Property
Damage



Property
Damage



Bodily
Injury

Leading to claims for:

Consequence



1st
Party Costs



Loss
of Income



3rd
Party Liability



Fines
& Penalties



Extortion
Demands



Negligence
in Services



Shareholder
Litigation

What is Silent Cyber?

Consequences of Cyber Risk

Cyber Event



Malicious attacks or accidental events impacting data, computer networks, or technology.

Leading to:

Impact



Encrypted Data



Security Breach



Privacy Violations



Regulatory Investigations



Phishing / Fraud



Bricked Computers



Property Damage



Property Damage



Property Damage



Bodily Injury

Leading to claims for:

Consequence



1st
Party Costs



Loss
of Income



3rd
Party Liability



Fines
& Penalties



Extortion
Demands



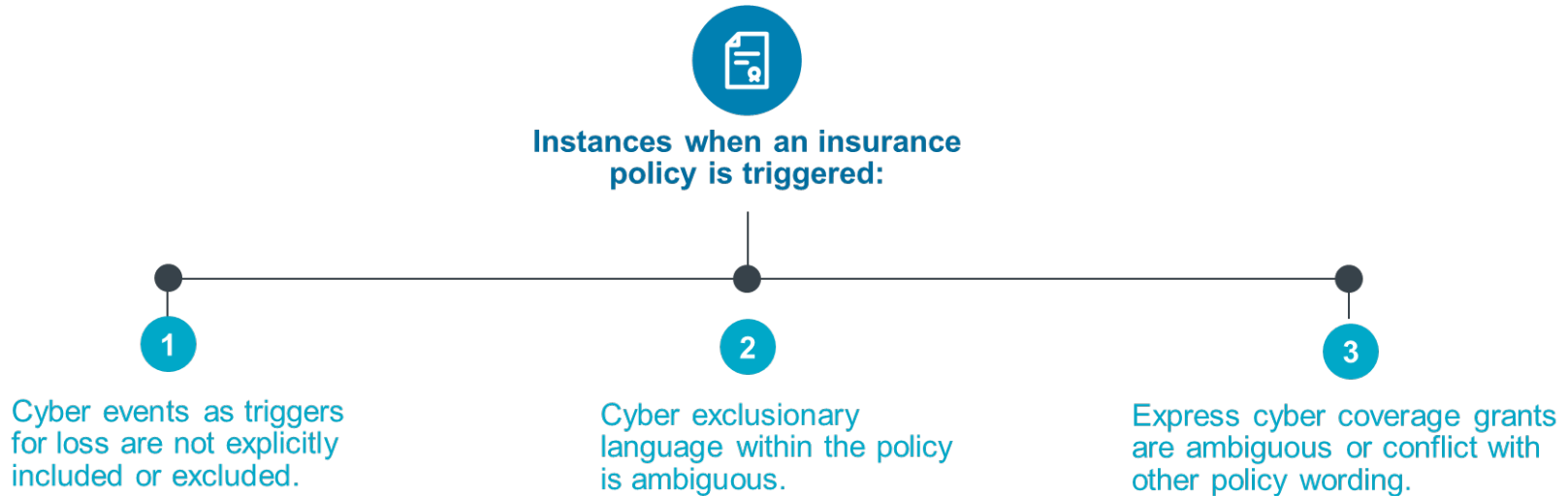
Negligence
in Services



Shareholder
Litigation

Defining Silent Cyber or “Non-affirmative” Cyber

Potential cyber exposures within traditional property and liability insurance policies which may not implicitly include or exclude cyber risk, but could theoretically pay claims for cyber losses in certain circumstances.



Examples of Silent Cyber Triggers in Non-Cyber Policies



Property

Covers real and personal property and business interruption from physical loss or damage to tangible property.



Malware attack scrambles the data in a programmable controller, leading to a fire in a production facility.



Casualty

Marine, aviation, automotive – third-party bodily injury and property damage.



Software update to key operating systems has bad code, causing systems to go offline during operation, leading to crashes and causing the operators/owners to incur liability.



General Liability

Third-party bodily injury, property damage liability, advertising and personal injury.



Cyber-attack causes a store's heating system to overheat causing an explosion. Bodily injury and property damage ensue.



Directors & Officers

Coverage for litigation or regulatory action arising out of failure to disclose, misrepresentations, or breaches of fiduciary duty.



A publicly traded company experiences a data breach, ultimately leading to a stock drop and a securities class action lawsuit follows.

Why are Insurers Concerned?

Insurers' Concerns Driving Silent Cyber Changes

Non-affirmative wording in policies can result in inadvertent coverage of cyber exposures and thus unmeasured and unexpected risk in insurers' portfolios:

- **Coverage disputes**
 - Claims stemming from cyber events under non-cyber policies that didn't expressly address cover for cyber exposures.
- **Pricing**
 - Underwriting may not accurately consider cyber risks for insureds.
 - Risk exposure of insured not adequately measured.
 - Pricing doesn't reflect cyber risk.
- **Accumulation**
 - "Silent" risk accumulation/aggregation not identified or measured.
 - Exposure to systemic risk.



ISN'T SILENT CYBER A GOOD THING FOR POLICYHOLDERS?

- Lack of clarity may create mistaken belief that coverage exists where it does not.
- Different interpretation by insurers of non-affirmative language can lead to claims disputed and legal action.

How Are Insurers & Regulators Responding?

Insurer & Regulator Actions to Address Silent Cyber Risk

- Risk concern over silent cyber exposure moved **UK regulators** to take steps to remove the “silence.”
- **January 2019: Prudential Regulatory Authority (PRA)** instructed insurers to “have action plans to reduce the unintended exposure that can be caused by non-affirmative cyber cover.”
- **July 2019: Lloyd’s** Market Bulletin Y5258 required all policies be **clear** on coverage for **losses caused by a cyber event** – either **providing affirmative coverage** or **excluding coverage**.
 - Lloyd’s **problematic definition of cyber risk** makes an arbitrary distinction between acts of misfeasance and malfeasance.
- **EIOPA** (European Insurance and Occupational Pensions Authority) likely to issue **similar directive**.
- **January 2020: Lloyd’s** Market Bulletin Y5277 confirmed **phased implementation** across all classes. (see next page)
- Rating agencies such as **Fitch** have cited failure to manage non-affirmative cyber risks & exposures as **ratings criteria**.



LLOYD’S DEFINITIONS

- **Cyber Risk:** *any risk where the losses are cyber-related, arising from either **malicious acts** (e.g. cyber-attack, infection of an IT system with malicious code) or non-malicious acts (e.g. loss of data, accidental acts or omissions) involving either tangible or intangible assets.**
- **Non-Affirmative Cyber:** *policies where no exclusion exists and no express grant of coverage.*

**Defined by UK Prudential Regulation Authority*

Insurers are Complying with Silent Cyber Mandate by...

1

Affirming all physical cyber exposure within policy, regardless of technology involvement

Advantages:

- No coverage reduction or need for alternative
- Single policy for all triggers
- No disputes over cyber definition

Disadvantages:

- Sub-limits for intangible cyber losses
- Doesn't cover full gamut of cyber risk & sub-limits for intangible cyber losses may dissuade insureds from purchasing cyber policy required for full cover.
- Higher premium?

2

Affirming all physical cyber exposure but sub-limited

Advantages:

- Some coverage ensured

Disadvantages:

- Coverage previously unlimited now sub-limited

3

Excluding all cyber exposure

Advantages:

- Clarity

Disadvantages:

- Premium reduction unlikely
- Possible inadvertent exclusion of technology perils
- Physical loss cover may not be replicable

4

Excluding all cyber exposure but inserting write-backs for certain perils/losses

Advantages:

- Better than absolute exclusion

Disadvantages:

- Not as comprehensive as total cover affirmation
- May not write back in all previously covered perils
- Likely to attract additional premium

“Silent Cyber”

Updated Lloyd’s Timetable as of January 2020

Phased Compliance By Class of Business

| Phase 1: 1 st Party Property Damage Incepting On or After 1 January 2020 | Phase 2: Policies Incepting On or After 1 July 2020 | Phase 3: Policies Incepting On or After 1 January 2021 | Phase 4: Policies Incepting On or After 1 July 2021 |
|--|---|--|--|
| <p>Class of Business</p> <ul style="list-style-type: none"> • Energy (Construction, Offshore/Onshore Property) • Nuclear • Power Generation • Cargo* • Fine Art • Marine Hull and War • Specie • Yacht • Difference in Conditions • Property • Engineering • Livestock and Bloodstock • Terrorism <p><i>*Risk code V</i></p> | <p>Class of Business</p> <ul style="list-style-type: none"> • Accident & Health • Contingency • Space • Political Risks, Credit & Financial Guarantee • BBB/Crime • Property (Cat XL, Pro Rata, Risk XS) • Agriculture & Hail • Livestock Excess of Loss | <p>Class of Business</p> <ul style="list-style-type: none"> • Airline • Aviation (Products/Airport Liabilities, XL, Cargo*, General) • Directors & Officers • Cyber (addressing clarity for any traditional coverage provided by extension to a cyber policy) • Employers Liability/WCA (Non-US) • Energy Offshore & Onshore Liability • Extended Warranty • Financial Institutions • Legal Expenses • Marine Liability • Medical Expenses • Medical Malpractice** • UK Motor and Overseas Motor • NM General Liability • Pecuniary • Professional Indemnity • Personal Accident XL • Motor XL • Nuclear • Cargo • Terrorism | <p>Class of Business</p> <ul style="list-style-type: none"> • Marine XL • Casualty Treaty • Medical Malpractice* • Employers Liability/WCA (US) • Marine War |

Did Insurers Get It Right?

Problematic Initial Response by Insurers

- Confusion and haste as insurers rush to comply.
 - Lack of consistency across markets / lines regarding affirming / excluding / sub-limiting cover.
- Flawed definition of cyber risk by PRA & Lloyd's.
 - Focuses on type of event (malicious vs. non-malicious; tangible vs. intangible), rather than resulting loss.
- Overreaching exclusion of previously covered physical perils where technology is a cause.
 - Endorsements are inconsistent and overreach in excluding loss from previously covered physical perils simply because technology was in chain of causation.
- Markets tending toward overly broad exclusions vs. affirming cover.



BEWARE:

- Absolute cyber exclusions. No coverage for **any loss** if connected to a **cyber event**. (ex: CL380, LMA 5401, LMA5402, IUA -01-081, IUA -09-082)
- Exclusions that differentiate cover based on the type of **event** (malicious versus non-malicious), rather than the **resulting loss**. (non-physical or physical). (ex: LMA5400, LMA5403, AIMU2015)
- Exclusions that provide a carve back for only limited named perils such as fire or explosion, or that seek to impose a sublimit on cyber risk. (ex: NMA2914, LMA5400, CL437)
- Wordings that take away otherwise covered **ensuing loss** if **technology** or **data** is **implicated** in the chain of **causation**. (ex: LMA5400)

Policyholders' Challenges for 2020



No consistent approach amongst the markets across traditional lines regarding affirming / excluding / sub-limiting cover.



Lack of consistency and market capacity among cyber product solutions in accordance with exclusions introduced.



Addressing the gaps in cover that may be created by exclusionary language / sub-limits.



Limitations in cover introduced by non-cyber insurers.

How Can These Issues Be Addressed?

Interim Solutions & Longer-Term Goals



Interim Solutions

- Where exclusions create gaps in coverage, insureds should consider purchasing cyber cover and look at insurer-created coverage solutions where a cyber policy cannot cover what is excluded.
- However these “bridge” solutions are not a long term solution as:
 - They can be narrowly worded.
 - Capacity outside traditional lines is limited, with typical maximum limits of £50 -100 million.



Ultimate Goal in Addressing Silent Cyber Risk

- Clarify and be consistent about what is meant by cyber risk, avoiding categorization into good (operational error) and bad (malicious intent) cyber.
- Ensure any exclusions applied are not triggered simply because a client uses technology to operate their business.
- Aim to cover events (including cyber events) leading to physical damage in a physical damage / property policy so there is unity of coverage and sufficient capacity.
 - Cyber and property underwriters should collaborate and develop appropriate modelling to carefully and clearly underwrite and rate for this, rather than simply excluding.
- Coverage overlaps should be avoided, either by careful drafting to delineate coverage or making other insurance clauses operate as clearly as possible.

What Should Policyholders Do?

Are There “Solutions” to Silent Cyber?

Buyer Options to Consider When Facing Proposed Cover Changes

When Traditional Lines Insurers Attach “Silent Cyber” Exclusions

| Note: None of these options alleviate the need to purchase a standalone cyber policy for full scope of cyber coverage | | |
|---|---|--|
| Option | Advantages | Disadvantages |
| Reject the exclusion | <ul style="list-style-type: none"> • Not paying for “phantom” residual loss cover • Retain coverage for resultant physical cyber losses | <ul style="list-style-type: none"> • Lloyd’s of London insurers will not offer capacity without silent cyber wordings as that puts them out of compliance • Likely to reduce the overall capacity available to you for risk transfer |
| Request a less restrictive version | <ul style="list-style-type: none"> • Better coverage certainty • Retain coverage for some resultant physical perils, typically fire and explosion | <ul style="list-style-type: none"> • Some resultant physical perils will still not be covered • Typically won’t include coverage for malicious cyber events |
| Accept the exclusion as offered | <ul style="list-style-type: none"> • Easiest path to retention of overall coverage capacity | <ul style="list-style-type: none"> • Likely to exclude more resultant physical loss than expected • May need to sue insurer for coverage following a carrier declination |
| Accept the exclusion and purchase a “gap filler” policy | <ul style="list-style-type: none"> • May provide greatest overall coverage | <ul style="list-style-type: none"> • Gap filler policies tend to be expensive • Coverage offered may not fully replace coverage taken away by the cyber exclusion |

Marsh & DAC Beachcroft Recommendations

Goals and Guidance for Policy Reviews

Traditional Policies



- Cover resultant physical damage or bodily injury regardless of technology involvement
- Cover malicious & non-malicious acts
- Delineate between physical and non-physical impacts
- Cyber events involving IT/OT/Comms:
 - Loss affirmed for physical damage
 - Replacement or loss of computers can be excluded if covered by cyber policy
 - Non-physical loss OK to exclude and include under cyber policy

Cyber Exclusions



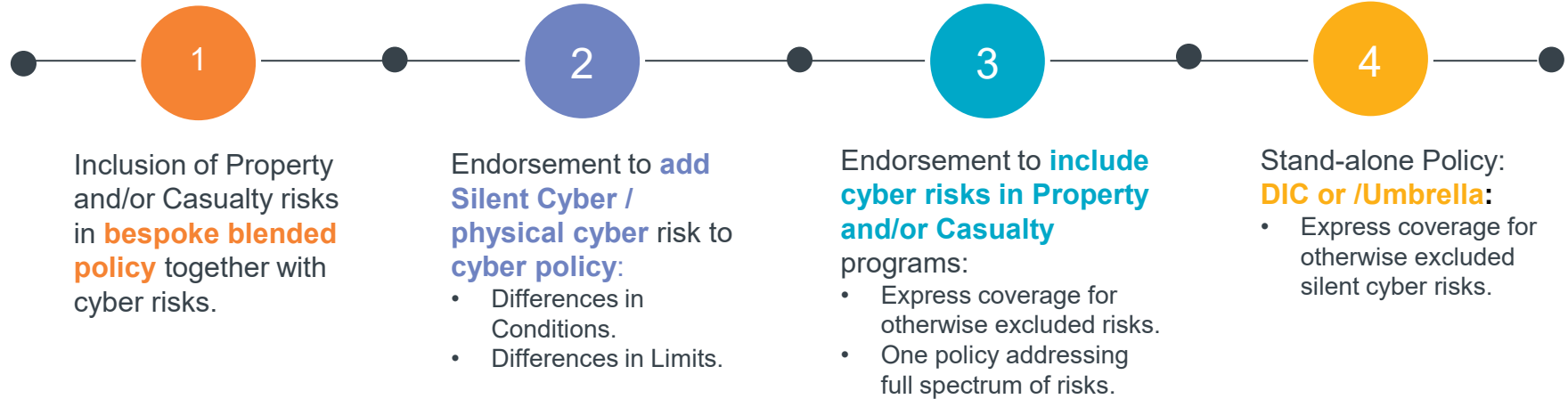
- Should not overreach to restrict or remove core policy cover simply because technology or data was impacted in the chain of causation
- Should not conflate underlying intent of the bad actor with impact to the insured
- Should be clear when delineating between physical and non-physical impact

Stand-Alone Cyber Insurance



- Superior (limits and breadth) to adding affirmative cyber sub-limits to non-cyber policies
- Covers losses arising from the confidentiality, integrity or availability of data or technology
- \$500M - \$750M limit capacity
- Broad coverage for 1st & 3rd party risks:
 - Incident response
 - Business interruption (non physical)
 - Data breach
 - Data restoration, hardware replacement
 - Cyber extortion
 - Physical damage: traditional markets need to fill this

Coverage Solutions in the Cyber Insurance Market



Pros:

- Express coverage for otherwise excluded risks.
- One policy addressing full spectrum of risks.

Cons:

- Market for Silent Cyber / physical cyber risk unable to provide limits equivalent to P&C insurers for traditional risk: **Tens of Millions vs. Billions.**

In Summary

Traditional P&C insurers Are Responding to Silent Cyber by Restricting Cover

- UK regulators identified “non-affirmative cyber” loss under traditional P&C insurance as a threat to insurer solvency.
- Lloyd’s mandated that traditional P&C policies either expressly cover or exclude “silent cyber” exposures.
- Insurers around the globe have begun to review their P&C policy wordings, whether subject to the Lloyd’s mandate or not.
- Insurers generally defaulting towards broad exclusionary language that can create significant coverage gaps in traditional P&C policies, **even for buyers that purchase stand-alone cyber insurance.**
- Organizations should be aware of potential gaps and how they impact all P&C insurance policies.
- Marsh has worked with insurers to create solutions and alternate versions of endorsements and strategies to limit potential coverage gaps and maximize recovery.

Contacts and Resources

Marsh UK Silent Cyber Contacts



Placement

Dan Hearsum
dan.hearsum@marsh.com



Cyber

Sarah Stephens
Sarah.Stephens@marsh.com



FINPRO (Product)

Nicola Barnett
nicola.barnett@marsh.com



Energy/ Power

John Cooper
john.cooper@marsh.com



Construction

Andrew Thornton
andrew.w.thornton@marsh.com
Stuart Freeman
stuart.freeman@marsh.com



Property

Ed Cotterell
Ed.Cotterell@marsh.com
James Moore
James.W.Moore@marsh.com
Felix Ukaegbu
Felix.Ukaegbu@marsh.com



Marine

Hull

James Reason
james.reason@marsh.com

Cargo

David Roe
david.p.roe@marsh.com
Andrew Watson
andrew.p.watson@marsh.com

Marsh US Silent Cyber Contacts



Cyber

Elisabeth Case
Elisabeth.Case@marsh.com

Bob Parisi
Robert.Parisi@marsh.com

Tim Marlin
Timothy.Marlin@marsh.com



Property

John Hughes
John.F.Hughes@marsh.com

Scott Patterson
Scott.M.Patterson@marsh.com



Marine

Guy Claveloux
Guy.P.Claveloux@marsh.com

Paul Friel
Paul.A.Friel@marsh.com

Tom Deist
Thomas.A.Deist@marsh.com

Herman Brito
Herman.Brito@marsh.com



Casualty

Burt Garson
Burt.M.Garson@marsh.com

Jesse Paulson
Jesse.Paulson@marsh.com



FINPRO

Robert Salinardo (Bermuda)
Robert.L.Salinardo@marsh.com

Sarah Downey
Sarah.D.Downey@marsh.com

Barry Mansour
Barry.Mansour@marsh.com

DAC BEACHCROFT Silent Cyber Contacts



Julian Miller

Jmiller@dacbeachcroft.com

Thank You!

Marsh JLT Specialty is a trade name of **Marsh LLC**. Marsh is one of the Marsh & McLennan Companies, together with Guy Carpenter, Mercer, and Oliver Wyman.

This document and any recommendations, analysis, or advice provided by Marsh (collectively, the "Marsh Analysis") are not intended to be taken as advice regarding any individual situation and should not be relied upon as such. The information contained herein is based on sources we believe reliable, but we make no representation or warranty as to its accuracy. Marsh shall have no obligation to update the Marsh Analysis and shall have no liability to you or any other party arising out of this publication or any matter contained herein. Any statements concerning actuarial, tax, accounting, or legal matters are based solely on our experience as insurance brokers and risk consultants and are not to be relied upon as actuarial, tax, accounting, or legal advice, for which you should consult your own professional advisors. Any modeling, analytics, or projections are subject to inherent uncertainty, and the Marsh Analysis could be materially affected if any underlying assumptions, conditions, information, or factors are inaccurate or incomplete or should change. Marsh makes no representation or warranty concerning the application of policy wording or the financial condition or solvency of insurers or reinsurers. Marsh makes no assurances regarding the availability, cost, or terms of insurance coverage. Although Marsh may provide advice and recommendations, all decisions regarding the amount, type or terms of coverage are the ultimate responsibility of the insurance purchaser, who must decide on the specific coverage that is appropriate to its particular circumstances and financial position. **Marsh.com**



@Marshglobal

@Marsh

DAC Beachcroft publications are created on a general basis for information only and do not constitute legal or other professional advice. No liability is accepted to users or third parties for the use of the contents or any errors or inaccuracies therein. Professional advice should always be obtained before applying the information to particular circumstances. For further details please go to www.dacbeachcroft.com/en/gb/about/legal-notice. Please also read our DAC Beachcroft Group privacy policy at www.dacbeachcroft.com/en/gb/about/privacy-policy. By reading this publication you accept that you have read, understood and agree to the terms of this disclaimer. **dacbeachcroft.com**



Follow us: @dacbeachcroft

Connect with us: DAC Beachcroft LLP

Copyright © 2020 Marsh Ltd and © DAC Beachcroft. All rights reserved

MARSH JLT SPECIALTY & DAC BEACHCROFT

Questions?

Thank you to Today's Panelists



Nicola Barnett

Head of Product Development,
UK FINPRO,
Marsh



Julian Miller

Partner
DAC Beachcroft



Robert Parisi

US Cyber Product Leader
Marsh



Silent Cyber:

Understanding Changing Insurance Markets and Recommendations to Protect Your Cyber Coverages

Visit www.advisenltd.com at the
end of this webinar to download:

- Copy of these slides
- Recording of today's webinar

For more on Advisen, visit at
www.advisenltd.com or email us at
webinars@advisen.com



Advisen Transforming Insurance
FREE WEBINAR

The NIST Cybersecurity Framework and its role in Cyber Risk Management and Cyber Insurance

Thursday, May 28, 2020 | 10AM EDT/4PM CET **REGISTER NOW** **ZURICH**



LIVE WEBINAR


Decreasing Cyber Risk through Compliance in the Enterprise

Wednesday, June 3
10 AM ET

REGISTER NOW

OneTrust GRC INTEGRATED RISK MANAGEMENT **Advisen** Transforming Insurance





Leading the way to **smarter**
and more **efficient**
risk and insurance **communities.**

Advisen delivers:
the **right information** into
the **right hands** at
the **right time**
to **power performance.**

About Advisen Ltd.

Advisen is the leading provider of data, media, and technology solutions for the commercial property and casualty insurance market. Advisen's proprietary data sets and applications focus on large, specialty risks. Through Web Connectivity Ltd., Advisen provides messaging services, business consulting, and technical solutions to streamline and automate insurance transactions. Advisen connects a community of more than 200,000 professionals through daily newsletters, conferences, and webinars. The company was founded in 2000 and is headquartered in New York City, with offices in the US and the UK.

+1 (212) 897-4800 | info@advisen.com | www.advisenltd.com