

25 April 2003

The Financial system and Major Operational Disruption  
FSM Team  
Room 4/16  
HM Treasury  
1 Horse Guards Road  
London SW1A 2HQ

*Dear Sir/Madam*

IMA represents the UK-based investment management industry. Our Members include independent fund managers, the investment arms of banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of about £2 trillion of funds (based in the UK, Europe and elsewhere), including authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. In particular, our Members represent 99% of funds under management in UK-authorized investment funds (i.e. unit trusts and open-ended investment companies).

Our Members act as agent on behalf of authorised investment funds, other pooled vehicles and segregated account customers. Therefore, they do not themselves enter into financial obligations as regards transactions in the underlying assets of the funds they manage. However, they are concerned about the orderliness of markets given their fiduciary obligations to their underlying customers, and they are, of course, recipients of payments (e.g. management fees) via the financial system.

IMA therefore welcomes the fact that the Government is giving serious thought to whether there are any gaps in the current legislative framework or in the established arrangements between the various official bodies and the private sector, which would reduce the effectiveness of the authorities' ability to promote order in the financial system in extreme circumstances of operation disruption.

We also appreciate that a clear timetable will concentrate minds and ensure that this issue is given priority by both the public and private sectors. However, we are concerned that the proposals as presented reveal rather thin analysis in some areas. We would therefore urge that time be allocated for all parties involved to engage in further discussions before new powers are drafted. If this does not happen then there is a very significant risk of inadvertent consequences, which could have an adverse impact on market order in extreme circumstances, i.e. quite the opposite of the intention.

IMA believes strongly that the initial analysis of the "gaps" in current arrangements needs to be developed. We note that the Government recognises that the private sector's own arrangements, which might include e.g. the use of *force majeure* clauses in contractual agreements, are an important ingredient. We think it likely that further discussion will reveal that more could be done by way of market-based approaches.

We would also urge that there be greater analysis of the international nature of financial markets. It is important to distinguish between the impact on those firms and entities which are physically located in the affected area and financial obligations which are due to be settled by infrastructure located in that area and/or which fall under this legal jurisdiction. The legal and operational effects will be different, and need to be analysed separately.

It is also important to consider other legislative options, such as a more flexible facilitation of the Bank Holiday power. In its current rather rigid form, its use can have a number of unhelpful consequences. For example, the Financial Services Authority's Collective Investment Schemes Sourcebook contains rules, the effect of which is to prohibit a CIS manager from treating a bank holiday as a dealing day (ie a day on which the manager is available to receive requests for the sale and redemption of units in a scheme). In a situation where a major financial disruption is confined to parts of the UK (e.g. "The 1987 Hurricane"), this prohibition prevents a CIS manager (itself unaffected by the disruption) from dealing in schemes that invest exclusively outside the UK. This is contrary to the flexible approach outlined in this consultation, whereby legislation should, as far as possible, be permissive rather than prescriptive in its approach.

We would suggest that some sort of working group be established to take forward the more detailed analysis required. Clearly, private sector involvement is essential, but we would suggest that such a group should include HMT, the Bank, the FSA and the Financial Markets Law Committee, and should be facilitated/chaired by one of these. As noted above, while IMA Members act as agent and therefore do not have an interest as principal in the settlement of financial obligations, they are keenly interested in market orderliness given their fiduciary obligations. We therefore offer to assist with this work in some way. Indeed, we have already had initial discussions with other trade bodies and the FMLC.

Yours faithfully  
Julie Patterson

Julie Patterson  
Director, Regulation & Taxation