

Lambeth, Dan

From: Leticia Delalanza
Sent: 24 April 2003 15:06
To: fsmod@hm-treasury.gov.uk
Cc: Fabrice Demarigny (CESR) (E-mail)
Subject: The Financial System and Major Operational Disruption, HM Treasury Consultation paper (CM5751 of February 2003)

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Brussels, 24th April 2003

Financial System and Major Operational Disruption FSM Team
Her Majesty's Treasury

Subject: The Financial System and Major Operational Disruption, HM Treasury Consultation paper (CM5751 of February 2003)

Dear Sir,

1) The Federation of European Securities Exchanges is the Brussels based representative organization of European stock exchanges, futures and options markets, commodities exchanges, clearing houses, and related organizations. A number of qualified exchanges in accession countries to the European Union have also joined the Federation's membership. The Federation tries to combine the views and concerns of its members in a wide array of financial services issues with the ultimate goal to help European Union Institutions establish the European integrated financial market in which they expect to thrive in a fair and competitive environment.

2) Although not specifically invited to comment, the Federation takes it that the HMT consultation paper on the Financial System and Major Operational Disruption is open to comment by anyone with an interest in European financial systems. As we believe that the importance of the financial system in the United Kingdom far transcends the borders of the UK jurisdiction and that problems in the UK will reverberate automatically throughout the European Union, we feel that a comment from FESE in Brussels would be appropriate and might further help thinking and policy making. We add to the above that a similar line of thinking would be true for major disruptions in other financial centres. Moreover, as most European Exchanges have enthusiastically embraced and put into practice the concept of remote membership in a totally electronic environment, it is clear that hardly any disruptive issue in the financial system and especially the securities business can be considered only of a national character.

It is for those reasons that we take the liberty of commenting on just a few of the major issues in the HMT paper. We may refer explicitly to comments sent in directly by a number of FESE Members in the United Kingdom jurisdiction. Comments here and below should be seen as complementary to such direct submissions.

3) Whether demutualised or not, Exchanges and Clearing Houses have a long tradition in disaster recovery and contingency planning practices and procedures. It is for that reason and for the experience on market technology and market practices embedded in the exchanges and clearing houses, that we would argue that the Treasury paper ought to have made even more clear that it is aiming at extraordinary situations only and that any impact of the paper's proposals on "normal emergency situations" is unintended and would be avoided. Certainly, this principle ought to be firmly embedded in any considered legislation. All European exchanges are under strict supervision by their national regulators. The standards for regulated markets as embedded in FESCO-CESR rules ensure a Europe-wide minimum level of competence and experience. The contingency planning by the exchanges and associated organizations is subject to regular review and discussion with regulators. Therefore, it is thought that wider and more penetrating government powers on the basis of special legislation ought to be considered, if at all, then only for absolutely disastrous

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situations. The wider issues and the overall functioning of the economy are, with justification, seen as more important than the interests of a specific market system. However, in the formulation of any underlying legislation, it has to be made clear that decisions in such a situation have to be consulted with the industry to the maximum extent possible. It is recognized that this point is taken up in the Treasury paper but some points gain in repeating.

We would also feel that the elaboration of further primary and secondary legislation ought to be subject of an extensive consultation process with financial industry at a UK and as well at a EU level.

4) Our main issue with the HMT paper is the relative underestimation of international aspects. In the first place as said, the importance of the London market system is such that any steps by UK legislative and policy making bodies in this area would have a de-facto impact in and could be seen as a clear precedent for a number of other jurisdictions. Her Majesty's Treasury ought to take that point into account very seriously.

Secondly, as argued also above, there is hardly an issue in securities business without cross-border aspects and it is for that reason that we would strongly suggest that the issues involved be discussed at the EU level as well, so as to ensure that a number of cross-border issues may be touched upon in the appropriate forum before legislation be started (in one or another jurisdiction).

In that process, it would be extremely important to try to come to a broad consensus of what precisely the role of government, of regulators including central banks, and of market organizers and market participants ought to and shall be.

5) This also means that mechanisms need to be set up and if existing, need to be reviewed with the purpose of ensuring appropriate modes of international communication and exchange of information.

By way of illustration, we may point out that the Federation has a simple but very well functioning coordination mechanism among its broadened membership that allowed us among others to appropriately harmonise thought and actions immediately after the 11/9 disaster. Also, FESE members have started a process of consultation on business continuity planning and will regularly call meetings on that subject. While recognizing that many FESE members are in a competitive situation, it is important to keep in mind that parts of the system may very well be endangered if other parts of the system were not to function adequately.

We would be more than happy to provide more information if desired. We would certainly wish to remain involved in further discussion on these issues.

Yours sincerely,

Paul Arlman
Secretary General

CC: Fabrice Demarigny,
Secretary General CESR

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