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Subject: N2+2 Review: NETA Advice Exemption - from ANTHONY BELCHAMBERS

From Anthony Belchambers

My apologies for the delay in responding to HM Treasury consultation on this issue, but it has been the subject of some discussion with the FOA's Power Trading Committee, whose view is, as you might expect, supportive of continuance of the exemption largely for the following reasons:

- * the provision of advice by BSC Parties already falls within the scope of the regulatory remit of Ofgem;

- * as far as the FOA is aware, there have been no adverse consequences flowing from the current exemption in terms of disadvantage to investors or abuse by the Parties;

- * it would be disproportionate to compel BSC Parties to become FSA authorised and on the basis only that they are giving investment advice - an activity which is the subject of other exclusions and exemptions;

- * since the exemption is already in place and, as indicated above, there is no evidence suggesting abuse or investor disadvantage flowing from its use, the FOA believes that the exemption should not be discontinued unless an appropriate case is made justifying the change;

- * even if it were appropriate to introduce a change, the FOA believes that it is desirable to await the outcome of various discussions

regarding Level Two EU legislation and determination on the overall impact of the Markets in Financial Instruments Directive that will flow for commodity market participants as a result of the inclusion of commodity derivatives (including power derivatives);

* there has been no change in the government's original policy that the Balancing and Settlement Arrangements should not be drawn into the scope of financial services regulation.

In the circumstances, the FOA believes there should be no change in the status quo at least for the moment and that, if it does become apparent that a change is necessary, no doubt that could be achieved within the context of other amendments that will have to be introduced to the FSMA in order to implement the Markets in Financial Instruments Directive.

Regards
Anthony Belchambers
Chief Executive
Futures and Options Association