



FINANCIAL SYSTEM AND MAJOR OPERATIONAL DISRUPTION

An Response by the FOA

May 2003

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1. Introduction

- 1.1 The Futures and Options Association (FOA) is the industry association for some 160 firms and institutions which engage in the carrying on of derivatives business, particularly in relation to exchange-traded transactions, and whose membership includes banks, brokerage houses and other financial institutions, commodity trade houses, power and energy companies, exchanges and clearing houses, fund managers and firms involved in supplying services into the futures and options sector (see Appendix 1).
- 1.2 The FOA welcomes the opportunity of commenting on the Green Paper about promoting order in the financial system during major operational disruption.

2. Specific comments

- 2.1 The FOA believes it is entirely right that, particularly in view of the key role played by financial services in the UK, that the UK authorities give full consideration to the operability of the financial service markets and their users in the event of major operational disruption.
- 2.2 As the paper rightly recognises, the primary responsibility for maintaining operational effectiveness and meeting contractual obligations rests with market operators and participants and the role of authorities therefore should be to underpin and facilitate the efficient exercise of that responsibility using powers of intervention only where necessary and in the public interest. This means that, while the power to declare an extraordinary bank holiday could play a vital role in such circumstances, it is anticipated that it would only be exercised *in extremis*.
- 2.3 With regard to the suspension of obligations, the FOA would emphasise the vital importance of market and legal certainty and predictability which means that:
 - (a) any power to suspend obligations must be clearly defined as to how, and in what circumstances they would be exercised and the extent to which obligations would be suspended; and
 - (b) any new legislation designed to facilitate such a power must be preceded by a full and wide-ranging analysis of the commercial and legal implications which may flow from, firstly, establishing such a power and, secondly, from its exercise, taking into account the need to maintain UK competitiveness and the international nature of its markets.

The risk is that, while a power of suspension may be intended to reflect governmental support for and recognition of the importance of the international market based in London and the need for market certainty and stability at a time of crisis, it could also be construed as a vehicle for introducing greater uncertainty and/or insensitive intervention at a time of considerable market uncertainty.

2.4 In the circumstances, the FOA:

- (a) supports and welcomes the overall intention to consult on and review the role of the government at a time of major operational disruption;
- (b) believes that the key role of the authorities is to establish the operational capacity of the market (using the word “market” in its widest sense) at a time of crisis (and would emphasise that in the event of September 11th 2001 demonstrated the readiness of all market participants and operators to act collectively in the interests of the market generally and the wider public interest);
- (c) believes that facilitating effective lines of communication is of vital importance;
- (d) believes that the government should undertake an early analysis of the structural, legal and commercial weaknesses in the markets and the framework of services upon which they place great reliance and how they should be addressed;
- (e) believes that the government should consider the implications for the international competitiveness of UK-based international financial services of the introduction of powers of suspension/intervention and of their subsequent exercise.

2.5 By way of additional information, the FOA has:

- has already established and live tested a centralised conference call facility for its exchange and clearing member firms which would be implemented in the event of a major catastrophe. It is operated on a “best efforts” basis and is intended to provide central information point/emergency forum which FOA members can access should a catastrophe occur;
- has a standardised documentation library which is subscribed to by over 40 major houses which is multi-product, multi-customer and eligible for use in all the major jurisdictions. The documentation incorporates the various provisions covering the impact of major operational disruption largely centred around its “*force majeure*” clauses.