

**COMMITTEE LETTER • ISSUED JOINTLY WITH THE  
FINANCIAL MARKETS LAWYERS GROUP**  
**Commenting on HM Treasury's Consultation Paper**  
***The Financial System and Major Operational Disruption***

FSM Team  
Room 4/16  
HM Treasury  
1 Horse Guards Road  
London SW1A 2HQ  
England

May 9, 2003

Dear Sirs:

The Foreign Exchange Committee (FXC) and the Financial Markets Lawyers Group (FMLG) welcome the opportunity to comment on HM Treasury's consultation paper *The Financial System and Major Operational Disruption*.

The FXC, which is sponsored by the Federal Reserve Bank of New York (FRBNY), includes representatives of leading international commercial banks, investment banks, and other financial institutions who participate actively in the foreign exchange markets. The FXC's objectives include 1) providing a forum for discussing technical and market issues in the foreign exchange and related international markets, 2) serving as a channel of communication between those markets and the official sector in the United States, 3) enhancing knowledge and understanding of the foreign exchange and related international markets, and 4) fostering improvements in the quality of risk management in these markets. The FXC was very active on and after September 11 and has revised its best practices for contingency operations given the disruptions that occurred during that period.

The FMLG is a committee of lawyers working in-house at major international financial institutions; a list of our members is also attached. The FMLG meets in New York, also under the auspices of the Federal Reserve Bank of New York, and has members outside the United States—including in the United Kingdom. Moreover, attorneys on the FMLG support over-the-counter (OTC) financial product businesses with offices in London that participate quite actively in the London markets. Among other things, the FMLG supports and provides legal guidance to the FXC.



FMLG and FXC member institutions are also members of trades groups like the Bond Market Association (BMA) and the International Swaps and Derivatives Association, which we understand have commented or will comment at length on the consultation paper. Through this letter, the FMLG and FXC briefly wish to echo several particular points made in the BMA's letter, namely:

- ✦ It would be helpful for U.K. officials to engage in a full analysis of their existing powers to deal with contingencies as a prelude to considering any further legislation, particularly legislation that would increase governmental suspension powers. We know, for example, that U.S. authorities have engaged in such a self-examination in the wake of September 11. As a result, U.S. authorities have asked for relatively modest new powers when it comes to market closures, and we would hope that would be the case in the United Kingdom.
- ✦ As a general matter, measures increasing the power of governmental entities to close financial markets or otherwise making it more likely that governmental entities could close financial markets may undermine legal certainty in financial transactions. The ability of a regulatory body to close an over-the-counter market should be extremely well tailored, and the law should emphasize that such power is to be exercised only when needed and with the consultation of participants in those markets.
- ✦ English law is a common choice of law for contracts governing OTC products, even in cases when they and the counterparties have no nexus to the United Kingdom. We would hope that any contingency or suspension powers vested in U.K. authorities would not attempt to affect such contracts.
- ✦ The London markets are inextricably bound to other over-the-counter markets. We urge regulators in the United Kingdom to consult with regulators in the United States and in other over-the-counter dealing centers to ensure that the full extent of an action to close or disrupt markets in London is understood.

The FMLG appreciates this opportunity to comment on the consultation paper, and our members look forward to a future dialogue with the Treasury on these important issues.

Very truly yours,

*Joyce M. Hansen*  
Chair  
Financial Markets Lawyers Group

*David Puth*  
Chair  
Foreign Exchange Committee

