

CHAIRMAN – LORD BROWNE-WILKINSON

To: Interested Parties

From: Lord Browne-Wilkinson

FINANCIAL MARKETS LAW COMMITTEE

ISSUE 90 – DRAFTING CONTRACTS TO CATER FOR MAJOR OPERATIONAL DISRUPTION

In February 2003, HM Treasury published a Green Paper asking if new statutory powers were required to deal with Major Operational Disruption in the Financial Sector. Subsequently, a Task Force of public and private sector participants, chaired by Sir Andrew Large, was set up to address the issues. In December 2003, the Task Force reported, concluding that there should not be any new legislation specific to the financial sector. One of the recommendations made by the Task Force was that Market Participants and their Trade Associations should work to ensure that private contracts are reviewed to take account of major operational disruption.

Following the publication of the report, the FMLC established a Working Group to look into the desirability of preparing cross-market wording for contracts in order to deal with potential major operational disruption. On 7 September 2004, a meeting of the FMLC working group was convened to discuss this issue.

At that meeting Members of the working group concluded that there was little to be gained in practice by attempts to prepare cross-market contractual wording. The view was expressed that, as between the major market participants, the issues would be best addressed by industry co-operation at the time of any disruption. Co-operation in resolving settlement and other issues following the events of 9/11 was cited in support of this view.

The FMLC is aware that some industry associations have already taken steps towards inclusion of wording specifically addressing the possibility of major operational disruption in their standard form documentation. The Committee considers that it is appropriate for other associations to continue to consider this matter in relation to their own standard form documentation, taking into account the particular requirements and sensitivities of their markets. The Committee does not consider that it is necessary or desirable for the FMLC to undertake further work to develop cross-market contractual wording at this time.