

**FINANCIAL MARKETS LAW COMMITTEE**  
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**To: Recipients of a letter from the FSA dated 17 May 2004**

**From: Lord Browne-Wilkinson, Chairman**

**FINANCIAL MARKETS LAW COMMITTEE**  
**ISSUE 90: DRAFTING CONTRACTS TO CATER FOR MOD**

1 On 17 May the FSA wrote to a wide range of major financial firms and trade associations to enquire what steps have been taken to review contracts in order to take account of the risk of a major operational disruption in the UK financial system, and what each recipient's responses are to the nine questions set out in the checklist published by the FMLC in November last year.

2 The FSA's letter is from Oliver Page and is headed, "Do we need new statutory powers? Report of the Task Force on Major Operational Disruption in the Financial System". I have been sent a copy of that letter, and a list of its recipients, and a request that I should tell the FSA about the initiative of the Financial Markets Law Committee to establish market-wide drafting addressing MOD events.

3 At its meeting in March this year the FMLC resolved to initiate a project aimed at establishing whether and, if so, how drafting could be developed for the use of all participants in wholesale financial markets, across the entire range of market activities, that would address events of major operational disruption in such a way as to strengthen the overall resilience of contracts and to provide greater legal certainty, especially as regards connections between different types of market activity.

4 There are many issues to be considered before it may be safely concluded that a pan-market wording of this kind can easily be inserted into the contractual framework of the wholesale financial markets, and more still when it comes to settling the wording of it.

5 For those reasons, and to ensure that as many points of view as possible are taken into account, Bill Tudor John, who is Deputy Chair of the FMLC, is in the process of establishing a Working Group that he will chair, to develop this initiative. Whilst practicalities dictate that the membership of that Working Group must be far smaller than the number of recipients of this note (and of the FSA's enquiry), we are keen to ensure that the entire market is kept in touch with the work as it develops. We propose two measures to ensure this.

- (a) First, the Working Group will keep in close contact with the main trade associations relevant to the wholesale financial markets;
- (b) Secondly, a Contact Group is to be formed, and I would be grateful if any financial firm which wishes to do so would nominate someone to serve as a member of this Contact Group, with which the Working Group will communicate regularly, on issues of perhaps a greater level of detail than trade associations will wish to communicate to their members.

6 The Working Group's initial task will be to flesh out the likely scope of the initiative, and to assess against the nine tests set out in the FMLC's contracts checklist how contracts used in wholesale financial market transactions will operate in the event of a major operational disruption.

7 I look forward to hearing from you, if you wish to nominate someone to serve as a member of the Contact Group. And, if your response to the FSA includes any assessment of contracts against the nine tests set out in the FMLC's contracts checklist, we would be keen to see that also. We do suspect, however, that many firms may find it easier to use the checklist after the FMLC Working Group has circulated its preliminary assessment.

A handwritten signature in black ink, reading "Nicholas John. Allen". The signature is written in a cursive style with a horizontal line underneath the name.

cc: Chris Bates , Clifford Chance  
Bill Tudor John, FMLC  
Oliver Page, FSA