A new approach to financial regulation: building a stronger system (Cm8012)

A response paper by the Futures and Options Association

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A NEW APPROACH TO FINANCIAL REGULATION: BUILDING A STRONGER SYSTEM (Cm8012)

1. Introduction

1.1 The FOA is the industry association for more than 160 firms and institutions which engage in 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, as well as a number of firms and organisations supplying services into the futures and options sector (see Appendix 1).

1.2 The FOA, while still questioning the need to fragment the regulatory knowledge base and "externalise" the Government's twin peaks approach in such a way as to lose the benefits of unified regulation, recognises the need for change and a more efficient and comprehensive approach to regulation. More particularly, the FOA welcomes this Consultation Document ("CD") as a coherent and proportionate programme for implementing the proposed new regulatory infrastructure and the inclusion of many of the observations made in response to the Government's first consultation on the proposed new structure.

1.3 The FOA notes and supports a number of key statements in the Introduction to the CD, which it believes should underpin the new approach to financial services regulation, namely the Government's recognition:

(a) that *"the financial services sector has a vital role to play in the UK economy"* and that it is *"one of the UK's leading employers, exporters and contributors to GDP… transforming savings into productive investment in the economy, and then allowing the efficient management of risk"* (para 1.1 in the CD);

(b) of the importance of *"competition in delivering good outcomes for consumers of financial services"* and *"efficiency and choice – two core characteristics for competitive markets"* (para 1.27 of the CD), but would observe that the ability to innovate and to sustain competitiveness are equally important core characteristics which, in the view of the FOA, should be incorporated as additional operational objectives;

(c) of the *"accountability and transparency of the new regulatory institutions"*, including the importance of *"certainty, long-term focus and a degree of insulation from political influence"* (para 1.29);

(d) that *"there are wholesale and market activities which do not directly form part of the transaction chain of products and services sold to retail customers. The scale and importance of these activities makes it imperative that they are effectively and proportionately regulated in a way which recognises the particular characteristics of participants in these markets"* (para 1.39) and that this will require a *"strong specialist markets regulation function"* (para 1.40);

(e) that engagement in the programme of international European regulatory reform *"will be a vital point of the UK's response to the financial crisis"* (para 1.42) and that *"ensuring the right UK representation in Europe and international forums will be a key part of this"* (para 1.43);

(f) of the *"potentially negative effects of excessive regulation on market efficiency and consumer choice"* (para 4.9) to the point where it will be part of the FCA's role to remove regulatory barriers, where possible, to facilitate greater efficiency and choice, i.e. this is *"clearly an issue of primary importance along the whole financial value chain and for all consumers of financial services"* (para 4.15 in the CD).

The FOA believes that these expressions and aspects of regulatory policy should lie at the heart of the new regulatory approach to financial services and, if given proper effect, should help to ensure that the drive for safer markets will not impair the Government's express objective to maintain *"a competitive, world-leading financial services industry in the UK"* (para 3.16). Getting this balance right is critically important.

1.4 The FOA notes the strong emphasis given by the Government to information-sharing and close co-operation between the FPC, the PRA and the FCA across a whole range of areas identified in the CD. This is a key concern for our members. We encourage the development of appropriately detailed MoUs to facilitate efficient supervision, particularly for firms which are going to be dual-regulated. We are concerned, for example, that the rule-making process outlined has the potential to cause confusion and uncertainty for dual-regulated firms and would urge the Government to develop a single process for Authorisations, Variation of Permissions and Approved Persons. In particular we believe it is important, in the interests of efficient, co-ordinated supervision that all investment firms within the same group should be subject to one prudential rulebook and prudential regulator only.

1.5 We are also concerned that nowhere in the CD does it appear to mention the importance of timeliness in sharing information and agreeing and implementing co-operative actions. Timeliness is a key element to any MoU between any of these organisations. Past experience in this area indicates that there is a propensity for a party to a MoU to resolve its own difficulties and any domestic "fallout" before imparting that information to other regulators, notwithstanding the responsibilities placed upon it in a MoU.

1.6 The FOA notes and strongly supports the Government's assertion in paras 3.66 and 3.67 that one of its key priorities will be *"reducing the burden of regulation, and improving the quality of regulation"* and that policy makers must *"think carefully about the case for regulation; and where intervention is required, to explore in full the opportunity for non-regulatory and self-regulatory approaches before considering regulatory measures"* and that, as it is put in para 3.67, *"The Government's view is that new regulators must be rigorous in their analysis of the impact of regulation on industry"*.

1.7 The FOA supports the Government's general legislative approach of adapting the Financial Services Markets Act 2000 (FSMA), rather than reinventing the legislation (para 5.3 of the CD).

1.8 The FOA welcomes the Government's expectation that the Treasury Select Committee will *"play a key role in scrutinising and holding each institution to account"*.

1.9 The FOA is concerned that the Government has rejected the view of the majority of respondents, including the FOA, that each regulator should be required to pay due regard to the objectives of the other on the basis that this objective would be *"better served by a statutory duty to co-ordinate"* (para 1.47). The FOA does not accept that this is correct. Put simply, the objective of co-ordinating outcomes and responses is not the same as an obligation to pay due regard to the objectives of other (UK) regulatory authorities. More positively, such a "due regard" objective will facilitate co-ordination on a basis that is more likely to be acceptable to each of the authorities if they each know that their statutory objectives are being factored into the process.

1.10 The FOA notes that this consultation period is *"shorter than normal"* (para 1.54) in order to expedite the change process and that this is to be compensated by an exacting process of pre-legislative scrutiny. However, if this is to provide the promised *"significant additional opportunity"* to provide input (para 1.54), it should not be the subject of another unduly abbreviated timescale.

In addition, the FOA notes and welcomes the assurance:

(a) that the FSA and the Bank of England will be publishing "later in the Spring" a further paper setting out, in much more detail, the regulatory philosophy, approach and processes, particularly in operational areas, of each authority (para 5.2 of the CD); and

(b) that there will be further papers prior to the formal start-up of the PRA and FCA, describing how the responsibilities will be divided up between them and how they will work in practice (para 5.28 in the CD).

1.11 While the FOA notes the intention of the Government to put the new regulatory architecture in place by the end of 2012, the FOA shares the view of the Treasury Select Committee that getting the construct right is more important than fulfilling a set timetable. This has become a notable problem with regard to the programmes for regulatory change in both the US and the EU. The FOA would urge the Government to put qualitative and achievable deliverables ahead of complying with physically-set timetables.

2. The Bank of England and Financial Policy Committee

2.1 The FOA anticipates that this section of the CD will be the subject of detailed comment by those trade associations that focus on macro-risk and banking issues and, therefore, has restricted itself to making a number of general observations.

2.2 The FOA notes and supports the Government's objective to place the Bank of England at "the heart of the financial system" (para 2.1 of the CD) and to be responsible for *"all aspects of financial stability"*.

The proposed FPC macro-prudential toolkit is wide-ranging and potentially significant in impact. The tools currently lack detail and some appear to provide for UK gold-plating of EU and international standards which could result in an unlevel playing field. Although we understand why the Government is of the view that a broad toolkit may be necessary, the tools should be explained in detail and framed within a system of checks and balances that provide the market with clarity regarding their use. Equally, as a practical matter, given the international nature of markets, it is not clear to us that deployment of the tools in the UK necessarily will be sufficient to address the identified potential risk.

2.3 Further, the FOA questions the statement in the third indent of para 2.6 in the CD that the *"lack of standardisation in some markets – such as the over-the-counter (OTC) derivatives – can discourage investment in these products"*. In the view of the FOA, lack of standardisation is not the issue, but rather whether or not OTC derivatives are sufficiently transparent to facilitate accurate risk assessment and on-going valuation. Indeed, an unduly zealous approach to standardisation will actively impair the ability of the end-users to manage their non-standardised risks.

2.4 The FOA is in broad agreement with the summary in Box 2.B, but believes that the fourth objective could be more positively phrased, i.e. the words *"this does not require or authorise the Committee to exercise its functions in a way that would, in its opinion, be likely to have a significant adverse effect…"* should be changed to *"the Committee shall not exercise its functions in a way that would, in its opinion, be likely to have a significant adverse effect…"*.

2.5 The FOA supports the observations in the CD:

(a) that *"the FPC will not be responsible for delivering any particular kind of leverage, debt or credit growth"* and that its role will be to try to ensure that *"whatever the level of each indicator might be… it is not a threat to the resilience of the financial system"*;

(b) that the FPC, when exercising its functions, will, where possible, look to avoid impeding the PRA's or FCA's pursuit of their own objectives; and

(c) that it is important to get the balance right between enhancing financial stability and facilitating sustainable economic growth, and that these should be complementary objectives (para 2.16 of the CD).

2.6 However, the oversight responsibilities of the FPC should include an on-going assessment of the economic and social impact of capital ratios through different growth and credit cycles.

2.7 With regard to para 2.20 of the CD, the FOA agrees that some factors are more relevant to the work of a line regulator than for a high-level policy committees such as the FPC, but believes that the FPC should still be required to take into account certain

relevant factors such as economic growth and the social impact of its deliberations, bearing in mind the devastating economic and social consequences that could flow from using *"the levers and tools at its disposable"*.

2.8 The FOA notes the intention in para 2.28 of the CD to legislate *"to exclude individual regulated firms from the FPC's powers, including the issuance of any… recommendations to specific individual firms"*. Presumably, this does not apply to recommendations about specific firms to the PRA/FCA. Otherwise, it would:

(a) exclude any private recommendations which, surely, should not be the case;

(b) contradict:

(i) the wide-ranging statement that *"the FPC will have the flexibility to make recommendations about anything it believes relevant for financial stability"*, including, presumably, "anything" carried on by a specific named firm (2.36);

(ii) the observation that the FPC will be able to target *"a very small number of firms that manifest a particular risk"* (para 2.29);

(iii) the statement that *"the FPC's power to recommend needs to be broadly defined to allow it to recommend any action it believes is necessary to protect or enhance financial stability"* (para 2.42); and

(iv) the role of the FPC to provide advice and expertise to the regulators *"on all matters relating to systemic financial stability and risks to overall stability"*, which could flow from one major institution (para 2.14-19)

The issuance of recommendations would still be compatible with the observation that the FPC should not be empowered to make *"a firm-specific intervention or override the PRA or FCA on the supervision of specific individual firms"* (para 2.73). That being said, in instances where a recommendation is made which relates only to a very small number of firms, adequate safeguards should be provided in relation to the exercise of these powers.

2.9 The FOA welcomes the Government's observation that *"macro-prudential measures are likely to prove more effective if the broad framework for their use is designed and adopted at the international level"* (para 2.46 of the CP).

2.10 With regard to para 2.68 of the CD, the FOA recognises that increasing margins / restricting what is eligible collateral can sometimes be used with varying degrees of success to control order flow, but the FOA questions whether this is an appropriate use of collateral / margin insofar as they are mechanisms designed to mitigate risk rather than achieve regulatory policy objectives. The FOA would refer to FSA's own observations in response to the European Commission's initial consultation on the regulation of derivatives, that capital requirements should not be used punitively.

Q1. What are your views on the likely effectiveness and impact of these instruments as macro-prudential tools?

2.11 We note that the tools currently lack detail and some appear to provide for UK gold-plating of EU and international standards which would place the UK at a disadvantage competitively. The macro-prudential tools proposed for the FPC raise a number of concerns, in particular, the 'ad hoc tools created for specific circumstances' where the Treasury can create a specific tool for the FPC immediately where it sees fit, with little due process or checks. We are also concerned the proposed tools could lead to increased gold plating of EU and internationally driven rules.

Q2. Are there any other potential macro-prudential tools which you believe the interim FPC and the Government should consider?

2.12 In developing further macro-prudential tools, we suggest that there is engagement with the European Systemic Risk Board and the Financial Stability Board to ensure European and international consistency.

2.13 The FOA supports and welcomes the recognition by the Government that a power of direction is a *"significant intervention"* and that it is important to *"minimise the risk of unintended consequences"*. However, the FOA agrees that the FPC should be prohibited from issuing directions that constitute firm-specific interventions or overriding the PRA's or FCA's supervisory responsibilities, but this is presumed not to apply to recommendations (see further para 2.8 in this response).

Q3. Do you have any general comments on the proposed role, governance and accountability mechanisms of the FPC?

2.14 The FOA believes that the proposed ratio of five external members to six bank members is approximately right, but nevertheless welcomes the Government's assurance that it will look at the observations of the Treasury Select Committee in this regard more closely.

However, overall, the FOA still questions whether that the potential socio-economic effect of the application of macro prudential tools has been fully appreciated and we ask that the objective, governance and accountability mechanisms should be given further consideration. The proposed tools include allowing the Treasury to create an "*ad hoc* tool", with Parliamentary approval only required 28 days later. By its very nature, the concept of ad-hoc tools is vague and we would like to see adequate safeguards provided in relation to the exercise of these powers.

In particular, as we note above, we believe that the duty to have regard to economic growth should be positive rather than negative i.e. in exercising its regulatory functions, the FPC should be required to have regard to the impact on economic growth and that the international nature of financial markets should be reflected in the FPC's objectives and terms of reference. We would refer the Government to article 3.1 of the ESRB Regulation which sets out its Mission, Objectives and Tasks. The

recognition of the importance of the contribution of the financial sector to economic growth is expressed in more positive terms and we would suggest the Government adopts a similar approach.

2.15 As a separate point, we believe further consideration should be given to how disagreements between the FPC and the PRA and/or FCA will be resolved finally, notwithstanding the "comply or explain" process.

Q4. Do you have any comments on the proposals for the regulation of systemically-important infrastructures?

2.16 The FOA acknowledges that recognised clearing houses will become systemically significantly more important as they assume the role of clearing standardised / sufficiently liquid OTC transactions – and that the Bank of England should be well-placed to regulate them. However, bearing in mind their integrated role with the function of execution and the fact that a significant number of clearing houses are structurally integrated within exchanges, close co-operation between the Bank of England and the Markets Division of the FCA will be essential, particularly if the Government is to deliver on its strategic and operational objectives of *"protecting and enhancing the integrity of the UK financial system"* and enabling the FCA to *"contain a strong markets regulation function"* (para 4.10 in the CD).

In this context, the FOA notes in para 2.135 of the CD, that the various bullet-points do not mention "linkages" with other CCPs, which is likely to become an increasing feature of the marketplace in cash equities and, at some point in the future, other asset classes, including derivatives.

Crisis Management

The question of which regulatory authority is responsible for resolving CCPs that fail and the powers that will reside with that authority is not referred to in the CD (nor is it addressed in EMIR). We also note that the CD does not discuss the powers available to the European Supervisory Authorities or how they fit with the UK's regulatory framework for crisis management. We believe it is critically important that UK regulators are obliged to consider the European Supervisory Authorities powers and resolve any potential conflicts before they crystallise.

Should the Bank of England be appointed the UK's Special Resolution Authority for infrastructures, we are concerned that the Bank of England could face conflicts in performing such a role versus its role as direct supervisor of infrastructures. Consequently, we consider that appropriate internal divisions to perform each of these roles would need to be created within the Bank.

Furthermore, as the PRA is to be both: (i) the prudential regulator; and (ii) responsible for triggering the use of special resolution regime powers for banks, we are concerned that the PRA's role in performing these two functions could create additional potential conflict within the Bank of England. We note this consultation expresses the view that the potential for such conflicts to arise is limited, as roles and legal responsibilities are

clear and the PRA will be operationally independent from the rest of the Bank of England. However, we remain unconvinced that the risk of conflicts is sufficiently mitigated.

3. Prudential Regulation Authority

Q5. What are your views on (i) the strategic and operational objectives; and (ii) the regulatory principles proposed for the PRA?

3.1 With regard to para 3.9, the FOA agrees that the *"efficiency"* and *"proportionality"* principles and the independent auditing responsibilities of the National Audit Office will help to ensure that the regulators pay sufficient regard to the cost-effectiveness and value-for-money of regulation, i.e. that they are observed "on the ground" and in the rules.

3.2 In general terms, the FOA supports the regulatory principles to be applied to both the PRA and FCA as set out in Box 3.B. The FOA would encourage recognition of the impact of economic growth in this regard (similar to the objectives set for the European Banking Authority) and market confidence.

3.3 The FOA continues to be concerned, however, that the key elements in sustaining the global positioning of UK-based financial services, namely, diversity, innovation and competitiveness, do not feature in the regulatory principles of the PRA even as factors just to be taken into account. The FOA believes it is unacceptable that the regulatory authorities should be able to exercise a broad range of interventionist powers, including the banning of products and monitoring firms' business strategies (including imposing limitations and requirements on those models) without having to pay any regard to those factors. It seems entirely logical that the more interventionist the regulator, the more it has to be seen to be balancing its public policy objectives in terms of safety and soundness with the other policy objectives of ensuring that firms and businesses are able to pursue a competitive agenda, which will include offering diversity and innovation. It is difficult to see how this omission can be reconciled with the Government's asserted policy, as it is put in para 3.16, *"to see a competitive, world-leading financial services industry in the UK"*.

3.4 With regard to para 3.19, the FOA would repeat its observation that imposing a general duty on both authorities to co-ordinate and consult each other on their views is not the same as requiring those authorities to pay due regard to each of the objectives that are placed upon them (see para 1.9 in this response).

Q6. What are your views on the scope proposed for the PRA, including Lloyds, and the allocation mechanism and procedural safeguards for firms conducting the "dealing in investments as principle" regulated activity?

3.5 The FOA notes that the PRA will have the discretion to be able to designate any investment firm to be prudentially regulated by it if, in its view, it could pose a

significant risk to the stability of the financial system or to a PRA-regulated entity within the group if it has permission to *"deal in investments as principle"*.

The FOA would make the following observations on this power:

(a) The degree of systemic risk posed by an investment firm to the system is likely to be greater where it poses a direct risk to the system, and that should be the core test rather than where the risk is indirect, e.g. by posing a risk to a PRA-regulated entity within the same group.

(b) As the CD rightly observes in para 3.24, there are a very large number of firms that have permission to *"deal in investments as principle"*. Bearing in mind the significant increase in cost that will accrue to being regulated by the PRA (e.g. dual regulation, additional minimum capital requirements, etc.), it is important that the latitude given to the PRA in making this assessment is not unduly wide (and the FOA notes that this will be limited to "BIPRU Euro 730k firms").

(c) The FOA welcomes the fact that the PRA will be required to consult with the FCA in making this determination and that firms will be given an opportunity to make representations and have a right of appeal.

(d) The FOA urges the Government, in the interests of efficient, co-ordinated supervision, that where the PRA designates an investment firm as subject to PRA regulation, all investment firms within the same group should be also subject to PRA regulation and one prudential rulebook.

3.6 The FOA notes that, while the original consultation paper envisaged that some 1800 firms could be PRA-regulated, para 4.45 draws the conclusion that, of the 27,000 firms that will be regulated as to business conduct by the FCA, it will only be the prudential regulator for 18,500 firms (para 4.47), suggesting that some 9000 firms could be the subject of PRA regulation. This is a material increase on the original assessment, even allowing for differences arising as a result of inwardly-passporting firms which will be regulated as to business conduct by the FCA. This is further confused by the assessment made by Hector Sants in his speech on 2nd March that the FCA will have prudential responsibility for approximately *"25,000 of its 27,000 firms; only 2000 will be shared with the PRA"*. The FOA believes that with the passage of so much time since the first consultation paper, this figure should be better clarified at this stage.

Q7. What are your views on the mechanisms proposed to make the regulator judgement-led, particularly regarding: rulemaking; authorisation, approved persons; and enforcement (including hearing appeals against some decisions on a more limited grounds for appeal)?

3.7 The FOA supports the view that the PRA should take a *"judgement-led supervisory approach to the firms it regulates"*, but would emphasise that the criteria by which it reaches judgements about those firms should be transparent, predictable and applied consistently to ensure that same-shape firms are treated in the same way.

3.8 The FOA continues to be a supporter of a principles-based approach, but would again emphasise the importance of transparency, predictability and consistency and that principles should not be used merely as a means of underpinning the enforcement capability of a regulatory authority. They should become, progressively, a mark of a responsible industry sector where reliance can be placed on senior managers. To this end, the FOA welcomes the assurance that key rules will be accompanied by *"short statements of purpose"* to lend clarity around how the principles will be applied and implemented.

3.9 The PRA will establish a Proactive Intervention Framework (PIF) with the aim of increasing the probability of recovery of firms. While the Government intends to provide more details in due course on the PIF, this nevertheless represents a significant new process, particularly when combined with a judgement-led approach. We would highlight at this stage that any approach with 'demarcated stages' regarding pre-resolution could reinforce a downward trajectory for a firm as soon as it becomes clear to the market it has entered a particular stage. Equally, we do not believe that a framework around ex-ante determinations of risk would be sufficiently responsive to the individual circumstances of any given firm. We believe the focus should be on the response to the actual risks as they occur rather than adherence to a prescriptive rulebook.

Q8. What are your views on the proposed governance framework for the PRA and its relationship with the Bank of England?

3.10 With regard to para 3.39, the FOA notes that key PRA decisions involving major firms or other high-risk issues will be taken by an executive committee of the board. The FOA would refer to para 3.46, in which the Government will require the PRA to be bound by principles of good corporate governance and would urge that any such decision-making process should include the input from those non-executive directors on the board who will not be subject to any material conflicts of interest in participating in that decision-making process. The seriousness of decisions of this nature call for some degree of independent expert input, particularly since, as it is envisaged in para 3.49 in the CD, *"PRA board members will take significant roles in critical firm-specific decisions"*.

Q9. What are your views on the accountability mechanisms proposed for the PRA?

3.11 The FOA generally agrees with the provisions regarding accountability set out in paras 3.53-3.63 in the CD.

3.12 Para 3.62 of the CD does not make it clear that the continuing role of the Complaints Commissioner will apply to complaints against the PRA, insofar as the paragraph refers only to the fact that it will have a system for the investigation of complaints and it will be distinct from the procedures applicable to the FCA. The observation that *"external scrutiny"* of complaints will be carried out by a Bank nominee could

undermine its perceived independence if the process of appointment is not seen as sufficiently independent.

Q10. What are your views on the Government's proposed mechanisms for the PRA's engagement of industry and the wider public?

3.13 With reference to the assurances given in paras 3.66 and 3.67 in the CD over the rigour with which the regulatory authorities must analyse the impact of regulation on industry, the FOA would emphasise the proven importance and role of the existing Practitioner Panel in relation to FSA policy, rules and processes. The FOA believes that such a statutory panel should be established – although it would have to reflect a very different level of relevant expertise – with regard to the PRA. It is not clear from paras 3.69 and 3.70 of the CD whether or not it is the Government's intention to establish such a Panel. The FOA believes that it should be.

3.14 On the other hand, the FOA shares the view of the Government that there is no need to establish a consumer panel, taking into account the obligation on the PRA to consult with the FCA where any of its decisions will have a material impact on consumers – a process of consultation, which should include, wherever appropriate, consultation with the FCA's own Consumer Panel.

4. Financial Conduct Authority

4.1 The FOA agrees with the opening statement to this section that *"good conduct of business is an essential element of a strong and efficient financial system able to play its vital role in supporting the real economy"*.

4.2 The FOA welcomes the decision to rename the new authority the Financial Conduct Authority (FCA) and its assurances that, in para 4.9, *"the FCA will be an entirely impartial regulator from whom firms and consumers can expect fair treatment"*, *"the potentially negative effects of excessive regulation on market efficiency and consumer choice"* should be avoided and *"the responsibility of consumers for their own choice"* should not be undermined.

4.3 With regard to the regulation of wholesale and markets activities undertaken between professional counterparties, the FOA welcomes the Government's acknowledgement that, although there are links between retail and wholesale market activities, a *"more nuanced regulatory approach will be appropriate"* and, as it is put in para 4.10 in the CD, that wholesale and markets regulation will be sufficiently flexible *"to ensure that the specialist requirements of these markets are appropriately reflected and recognised"*.

4.4 The FOA particularly welcomes the Government's recognition that it will be part of the FCA's role to remove regulatory barriers, where possible, to facilitate greater efficiency and choice and that this is *"clearly an issue of primary importance along the whole financial value chain and for all consumers of financial services"*, particularly in relation to wholesale markets.

4.5 The new intervention powers and enforcement powers envisaged are wide and potentially intrusive and in particular, we have concerns around the proposals to publish warning notices. We are concerned that publication of warning notices threatens causing immediate damage to the reputations of firms and/or individuals before the enforcement decision process has completed. As a consequence, publication of a warning notice could cause irreparable, material damage to a person, even though the proceedings eventually find in their favour. Consequently, we are concerned that the damage that could occur from publishing warning notices outweighs the merits of the proposal. If such powers are to be used we would urge the importance of developing detailed and appropriate safeguards and clarity over the use of the powers.

4.6 With regard to the CD's observations on financial crime in paras 4.32-4.34, the FOA supports the Government's decision that the FCA will have a free-standing duty to take the necessary action to minimise the extent to which regulated business can be used for criminal purposes and to counter financial crime in its role as a conduct regulator. However, the FOA is concerned that the FCA should act fairly and proportionately, i.e.:

(a) while it has a clear responsibility to take forward its policy of *"credible deterrence"*, including exemplary sanctions, those sanctions must, at the same time, be proportionate to the nature and gravity of the offence;

(b) the FCA, in deciding whether or not to bring criminal proceedings, should take into full account such issues as wrongful intent, the gravity of the act or omission, the need to be fair to a defendant and whether the offence involved dishonesty or recklessness, i.e. it should be careful to use its powers of bringing criminal prosecutions in a proportionate manner when considering their use for the promotion of regulatory objectives.

Q11. What are your views on (i) the strategic and operational objectives; and (ii) the regulatory principles proposed for the FCA?

4.7 The FOA supports Box 4.A, which summaries proposals for the FCA objectives, noting in particular that 4.3b refers to securing an *"appropriate"* degree of protection for consumers, which recognises that the same level of protection is not necessary for all consumers.

The FOA would reiterate the observations made in paragraph 3.2 in relation to economic growth (an objective of each of the European Supervisory Authorities) as a desirable objective/factor that should be taken into account by the FCA.

4.8 FOA notes and welcomes the inclusion of the promotion of competition as an objective (to the extent compatible with the FCA's strategic and operational objectives) and, in particular, recognition of its *"positive outcomes"* (para 4.22 in the CD). However, effective competition is dependent upon, as has previously been stated, the facilitation of diversity, innovation, choice and competitiveness. The FOA believes that it is important for these factors to be taken into account – if not directly as *"objectives"* in

their own right – at least by way of recognising their importance within the competition objective. They are, after all, critical to the *"positive outcomes"* of competition.

4.9 The FOA strongly supports the regulatory principles set out in para 4.23 to 4.29 and the observation in para 4.30, which the FOA believes is particularly important, that *"the regulators will be subject to the usual requirements as public bodies to act in accordance with duties arising under UK and international law"*. However, it should be clarified that these requirements will include observing the principles for good regulation that apply to UK public bodies.

4.10 The FOA does not accept that observance of the short list of regulatory principles would ensure that other desirable features of the market for financial services, such as competitiveness and innovation, will not be inappropriately compromised.

We would highlight that principle 5 in Box 3.B – "*the desirability in appropriate cases of each regulator making information relating to authorised persons or recognised investment exchanges available to the public, or requiring authorised persons to publish information, as a means of contributing to the advancement by each regulator of its strategic and operational objectives"* – should acknowledge explicitly the balance between public policy and private rights, given that publication without due consideration of the implications could have a detrimental impact on the firm(s), industry and consumer(s).

Q12. What are your views on the Government's proposed arrangements for governance and accountability of the FCA?

4.11 The FOA:

(a) welcomes the Government's intention to retain the Practitioner and Consumer Panels and to place the Smaller Businesses Practitioner Panel on a statutory footing and that to these Panels will be added a Markets Panel;

(b) welcomes the new powers to be given to HM Treasury; and

(c) assumes, from the observation that the existing provisions of FSMA will be replicated, that there will be a right of redress to the Complaints Commissioner where a complainant is not satisfied with the outcome of an internal investigation by the FCA (as indicated in para 3.12 of this response, the FOA believes that a similar process – independent of nomination by the Bank of England – should apply to complaints lodged against the PRA).

4.12 With regard to Box 4.E, which addresses the question of prudential regulation for those firms which do not fall within the scope of PRA regulation, the FOA assumes that it will be possible for the FCA to adopt a differentiated approach to prudential regulation, insofar as the firms regulated by it will not pose a threat to financial stability. Such a differentiated approach will be critically important, particularly for small- and medium-sized firms. The FOA notes that this will be addressed in further detail when FSA consults on the future operating model of the FCA.

4.13 Paras 4.43 and 4.44 of the CD set out the proposal to require the FCA to make a report to the Treasury where there is a regulatory failure. We agree that this will improve accountability. However, we are concerned that these reports – which will be laid before Parliament – may contain confidential information. It is important that proper safeguards are built in around this (including whether prior notice should be given to firms mentioned in a report), given the potential impact on individual firms and the market as a whole.

Q13. What are your views on the proposed new FCA product intervention power?

4.14 In brief, the FOA supports the proposals:

(a) that all firms will be subject to a periodic review of their governance, culture and controls and that this will be more extensive in the case of firms that pose a significant risk to the FCA's objective;

(b) for earlier regulatory oversight in the product life-cycle, but would emphasise its support for FSA's intention to reflect a proportionate approach as stated in its Discussion Paper "Product Intervention" (DP11/1), namely:

(i) its intention to *"strike the right balance between consumer protection… and the risks of restricting consumer choice and product innovation"* (para 1.24);

(ii) its recognition that *"competition and consumer choice are key aspects of an effective financial services sector"* (para 1.11);

(iii) its recognition (in its response to the European Commissions' consultation on MiFID that *"banning products of any kind should be undertaken with great caution, and only in response to specific market failures, as otherwise innovation, effective risk management and economic growth could be detrimentally impacted"*, and

(c) to ensure that disclosure as a regulatory tool will be subject to a number of safeguards *"to ensure that an appropriate balance is struck between the interest of consumers and regulated firms"* (para 4.76 in the CD).

NB. The FOA notes the Government's expectation that such a power is *"unlikely to be appropriate in relation to professional wholesale customers"*.

4.15 In terms of the target of prevention of consumer detriment, the FOA notes that this has been variously described in the CD as *"consumer detriment"*, *"significant detriment for retail customers"* and *"widespread consumer detriment"*. In view of the sensitive nature of product intervention, the FOA believes that the terminology used in the FSA's Discussion Paper should be the core justification for specific product intervention, namely, *"large-scale significant consumer detriment"*.

Q14. The Government would welcome specific comments on:

- *the proposed approach to the FCA using transparency and disclosure as a regulatory tool;*
- *the proposed new power in relation to financial promotions; and*
- *the proposed new power in relation to warning notices.*

4.16 The FOA would note, in para 4.83, that the FCA will have a duty to publish details of a written notice to a firm to withdraw a financial promotion, where appropriate. In this context, in common with other published firm-specific notices, the FOA thinks it is critically important that any such publication is not couched in pejorative language, but carefully phrased to ensure that it is fair and accurate.

4.17 With regard to early publication of enforcement action, as set out in paras 4.85-4.89, the Government will be familiar with the deep concerns over this power that has been expressed by the regulated community.

The FOA understands the need for adequate transparency with regard to enforcement actions, although it does not accept the justification that early announcements of this nature will, as it is put in para 4.86, signal to firms *"what behaviours the regulator considers to be unacceptable"*. This should be signalled more properly through releases to firms, summaries of disciplinary actions and advance warning of increased sanctions or penalties.

4.18 As the CD recognises, there need to be a number of safeguards *"to ensure that an appropriate balance is struck between the interests of consumers and regulated firms"* (para 4.76 in the CD). This should mean that any firm which is to be the subject of any such notice should have the right to comment on its wording and the FCA should be under an obligation to set out, however briefly, the firm's response in relation to the breach in question – recognising that there has been no finding of guilt at this stage.

While the FOA supports the obligation to publish, where relevant, a *"notice of discontinuance"*, we would emphasise the fact that it will almost certainly be too late to mitigate damage caused by the original publication at this stage. Further, the FOA does not accept that the only reason why a regulator would not publish a warning notice of this nature is where it would not be compatible with its operational or strategic objectives. This comment makes no allowance for the fact that it might not be compatible in terms of fairness to the firm in question, i.e. it is not just a matter of appropriate *"safeguards"*, but the taking of a balanced decision in the first place (which is mirrored in the Government's approach to disclosure in para 4.76 of the CD).

Q15. Which, if any, of the additional new powers in relation to general competition law outlined above would be appropriate for the FCA? Are there any other powers the Government should consider?

4.19 With regard to the FCA's new role and powers as regards the promotion of competition, the FOA has already commented in relation to the fact that too little

regard has been paid to the importance of such factors as competitiveness and innovation. However, the FOA does welcome the Government's expectation that the FCA will use its existing regulatory tools *"more clearly in pursuit of promoting competition"* and that this will include *"the ability to make rules that will have beneficial competition outcomes"*.

4.20 The FOA also notes that the FCA will be empowered to *"agree"* legally binding commitments with the industry, rather than making any referrals to the Competition Commission and, in this context, the word *"agree"* is particularly important. However, it is important that the FCA does not, of itself, have the power to usurp the authority of the competition authorities and, in the view of the FOA, it would be certainly inappropriate to grant functional powers to any of the panels, including the Consumer Panel.

The Department for Business, Innovation and Skills has launched a far reaching consultation on competition in the UK: A *Competition Regime for Growth: A Consultation on Options for Reform.* We note that this consultation document refers to the fact that the Government "*is considering whether concurrent competition powers should be extended to the future Financial Conduct Authority (FCA)."*

Given the fundamental changes that are likely to result from this consultation, in particular, the merger of the Office of Fair Trading (OFT) and the Competition Commission to form the Competition and Markets Authority (CMA), we consider it premature to discuss the FCA's role in respect of competition in any degree of detail. If there is to be a significant overhaul of the competition framework, adding powers at the FCA level will need to be achieved harmoniously with the CMA.

Q16. The Government would welcome specific comments on:

- *the proposals for RIEs and Part XVIII of FSMA; and*
- *the proposals in relation to listing and primary market regulation*

4.21 With regard to wholesale markets regulation, the FOA has already expressed its strong support for the Government's recognition of the need for a differentiated approach and that exercise of interventionist powers are likely to be less appropriate in the context of wholesale conduct regulation.

More particularly, the FOA notes the observation in para 4.104, that *"Given the contribution made by wholesale markets, not only to the position of London as a global financial centre, but also their importance to the economy as the mechanism by which capital is raised and risk managed, it will be vital to ensure that their regulation continues to be effective and proportionate".*

The FOA would urge that this recognition is properly reflected in the regulation of wholesale market business.

4.22 The FOA supports the Government's approach towards the conduct and prudential regulation of recognised investment exchanges and the operators of multilateral

trading facilities and welcomes the retention of the Part XVIII regime for recognised bodies, subject to the proposed technical improvements.

5. Regulatory Processes and Co-ordination

Q17. What are your views on the mechanisms and processes proposed to support effective co-ordination between the PRA and the FCA?

5.1 The FOA welcomes the assurances in the CD that further detail on operational co-ordination and the scope of operations of each of the PRA and the FCA will be announced later in the Spring.

5.2 The FOA supports the governing principle for co-ordination set out in para 5.6 of the CD. As noted in para 1.4 of this response, a key issue for our members is to encourage the development of appropriately detailed MoUs to facilitate efficient supervision, particularly of firms which are going to be dual regulated. We would also urge the inclusion of timeliness as a criterion for effective information-sharing, co-ordination, decision-making and action.

5.3 While, as is suggested in the third indent of para 5.6 in the CD, regulatory overlap or duplication must be "managed in a proportionate way", it should, like regulatory "underlap", also be avoided, but only where it is possible. This is in the interests of avoidance of unnecessary regulatory cost.

5.4 The FOA agrees with the observations in para 5.8 of the CD and, in particular, that effective co-ordination is heavily dependent upon flexibility, but there will still need to be clear parameters and criteria – which need not constitute onerous or bureaucratic processes – to ensure that effective co-ordination actually takes place and setting it in the context of specific obligations.

5.5 With regard to the comments in paras 5.9-5.12 on the statutory duty to co-ordinate, the FOA would, again, repeat its observations that there should be an express obligation for each regulator to pay due regard to the statutory objectives of the other regulator. The risk of conflict in this area is self-evident, particularly where one regulator is reluctant to pursue the recommendations and urgings of another regulator. The FOA does not believe that the obligation to consult to manage their process efficiently – as set out in para 5.11 – addresses this issue adequately.

By way of comparison, para 5.18 in the CD, when addressing the management of firm failure or threats to financial stability, specifically states that, in this area, regulators *"must take account of these views"*, i.e. the achievement of the others' objectives. If this is deemed appropriate in terms of firm failure, we would argue that it should also be included in terms of other areas of coordination

5.6 The FOA supports the proposals with regard to Memoranda of Understanding and cross-membership of boards.

5.7 Significant reliance is placed on MoUs to facilitate efficient and robust coordination and we would note that these alone will not be sufficient but must be backed up with rigorous implementation mechanisms. There needs to be complete clarity with respect

to all the authorities' regulatory powers and processes and we would urge the Government to give the industry an opportunity to comment on the MoUs. Service level standards for the PRA and FCA should be determined and published in order to provide a measurable indicator of efficacy.

Q18. What are your views on the Government's proposal that the PRA should be able to veto an FCA taking actions that would be likely to lead to the disorderly failure of a firm or wider financial instability?

5.8 The FOA agrees with the proposals for managing the risk of disorderly firm failure as set out in paras 5.18-5.26 and welcomes the fact that the power of the PRA to prevent the FCA from taking actions that could lead to the *"disorderly failure of a firm"* will be *"limited", subject to transparency and accountability obligations.* We would, however, highlight, as the Government will no doubt be well aware, that the act of laying the veto before Parliament would be a very strong market signal that something very serious was happening to a regulated firm, and the regulators could not agree what to do about it. This would not assist confidence in the market and would damage the credibility of the authorities. It is therefore critical this power is used only *in extremis*.

Q19. What are your views on the proposed models for the authorisation process – which do you prefer and why?

5.9 We support the **alternative approach**.

Under the alternative approach, the Government proposes that either the FCA could take the lead for processing all applications or the prudential authority for a firm would lead on the processing. Our concern with the second proposal (that the prudential authority would lead) is in relation to investment firms where the criteria regarding whether they fall in or out of the PRA's scope is more fluid and could conceivably change if an investment firm expanded or decreased. To mitigate against confusion and uncertainty, we would advocate that the FCA leads on processing applications for all investment firms and coordinates with the PRA.

Q20. What are your views on the proposals on variation and removal of permissions?

5.10 The FOA believes, in regard to the Voluntary Variation of Permission, that it will be inefficient and costly for dual-regulated firms to apply to both the PRA and the FCA separately. We believe a streamlined approach should be followed where only one authority deals with the two regulatory processes. Our preference is for the *alternative approach* set out under para 5.38 of the CD where one authority is charged with processing each authority's application.

5.11 For dual regulated firms, we believe the PRA and the FCA should have a statutory duty to consult with each other and reach agreement before exercising their Own Initiative Variation of Permission powers.

Q21. What are your views on the Government's proposals for the Approved Persons regime under the new regulatory architecture?

5.12 We consider that the proposals for the approved persons regime - although they recognise and attempt to resolve the overlap between the scope of the PRA and the FCA - lack clarity and require further thought. We would see the benefit of a shared back office function which could process the applications and reach out to both the PRA and FCA for their approval where the controlled function spans both authorities' remit. Notwithstanding this suggestion, we would propose that processing approved persons applications is subject to the alternative approach (see our response to Question 19 above) so that there is one entry point for firms, for consistency and efficiency.

Q22. What are your views on the Government's proposals on passporting?

5.13 The FOA supports the approach to "passporting" and, while it is content for the PRA to assess the impact of cross-border firms activities on UK financial stability, the basis on which it may take action to address those activities should be the subject of transparent criteria so that those firms are able to properly assess the consequences of their cross-border dealings. Again this is where we would see the benefit of a shared back office function, as noted in para 5.12 of this response.

Q23. What are your views on the Government's proposals on the treatment of mutual organisations in the new regulatory architecture?

5.14 The FOA very much supports the view that regulatory authorities should not seek to *"promote or favour one type of ownership model over another"* and the obligation to undertake an analysis of the costs that will arise from any proposed rules in terms of the extent to which they will impact on mutually-owned institutions (although this requirement is self-evidently relevant to all rule-making in terms of its application to any particular type of institution, irrespective of its ownership model).

Q24. What are your views on the process and powers proposed form making and waiving rules?

5.15 On rule-making:

We agree that: "*Both the PRA and the FCA [should] have the statutory power to make rules that apply to regulated firms within their jurisdiction*" subject to the over-ride that "*the authorities will only be able to make rules in pursuance of their objective*." However:

(a) We are concerned that the rule-making process outlined has the potential to cause confusion and uncertainty for dual-regulated firms, as it states both the PRA and FCA may make rules applying to the same function e.g. systems and controls. In addition, as both the PRA and FCA will regulate firms from a prudential standpoint, it remains unclear whether a single set of prudential regulations will be developed,

which would be our preference. At the least, we would urge the Government to mandate that all investment firms within a group should be prudentially supervised by the same regulatory authority and subject to one prudential rulebook only.

(b) We believe an efficient coordination mechanism around rule-making is required to avoid under and overlap and conflicting rules. We would suggest a joint rule-making committee (as proposed by AFME in its response), with joint (PRA and FCA) rules and guidance in relation to the overarching high-level regulatory standards such as SYSC and common regulatory processes (c.f. the FSA's Supervision manual). These joint rules should overarch and form part of, both the PRA and the FCA's handbooks.

5.16 On rule-waivers:

We agree it is appropriate for both the PRA and the FCA to have such powers in relation to their own rules. In relation to dual regulated firms, it should be mandated that the authorities must first consult with each other before approving such rule waivers.

Q25. The Government would welcome specific comments on:

- *proposals to support effective group supervision by the new authorities – including the new power of direction; and*

- *proposals to introduce a new power of direction over unregulated parent entities in certain circumstances*

5.17 With regard to the paragraphs addressing on-going supervisory processes, namely paras 5.59-5.85, the FOA supports the focus on the need for a consistent and co-ordinated approach between the PRA and the FCA, and that their rule-making scope should focus on the pursuance of their objectives, but would make the additional observations:

(a) With regard to the proposals for supervision of financial groups (paras 5.65-5.72), the FOA very much supports the conditions and limitations on the power of direction that the authority for consolidated supervision will have over the other authority, namely, that it is necessary to ensure effective consolidated supervision and that it will apply only in relation to the authorised entity within the group.

(b) In the matter of the exercise of powers of direction over unregulated holding companies, the FOA agrees the limits and safeguards set on the exercise of any power of direction and that, in the case of a mutual PRA/FCA interest in the firm in question, there will be consultation between the authorities prior to the issuance of any direction.

(c) As the Government recognises, it is still somewhat unclear which investment firms will be subject to PRA supervision. In the interests of efficient, co-ordinated supervision, all the investment firms within a group should be prudentially

supervised by the same regulatory authority. It is not clear from the consultation that this will necessarily be the case.

Q26. What are your views on proposals for the new authorities' powers and co-ordination requirements attached to change of control applications and Part VIII transfers?

5.18 We have no comments to make.

Q27. What are your views on the Government's proposals for the new regulatory authorities' powers and roles in insolvency proceedings?

5.19 We understand the rationale for each authority having the power to bring insolvency proceedings. We support the provision that the prior consent of the Bank be required and that the PRA be given the opportunity to exercise its veto in the case of proposed action by the FCA.

Q28. What are your views on the Government's proposals for the new authorities' powers in respect of fees and levies?

5.20 The FOA would reiterate that, in order for the CD's objectives to ensure that *"it will be essential for the PRA and the FCA to use their resources efficiently in order to keep their costs down"* – and that means avoidance of unnecessary duplicative costs – it remains important that the fee-setting process is subject to independent oversight. In this context, the FOA particularly notes the concerns expressed in the CD that this will be a significant issue for those *"smaller firms which will be subject to regulation by both authorities, and so will have to pay two sets of fees"*.

While the question of size is important here, the principle is no different for larger firms that will have to also pay two sets of fees.

5.21 The requirement for co-ordination and proportionality is very much supported, but the risk of overlap and duplication is very real, and that could spill over into the fees set by each authority.

5.22 The FOA supports the idea that fees should be collected by one organisation.

6. Compensation, Dispute Resolution and Financial Education

Q29. What are your views on the proposed operating model, co-ordination arrangements and governance for the FSCS?

6.1 The FOA agrees that the Financial Services Compensation Scheme (FSCS) has an important role to play in sustaining consumer confidence, but would question that its role extends through to *"promoting financial stability through effective resolution"*.

6.2 The FOA supports the Government's intention to place the need for an MOU with both regulators on a statutory footing – but, given that the MOU will be wide-ranging and effective, it would seem appropriate for the FCA to adopt a lead-regulator role on the basis that it would consult regularly with the PRA.

Q30. What are your views on the proposals relating to the FOS, particularly in relation to transparency?

6.3 The FOA supports the proposals, but would suggest that there may be merit – in view of the substantial increase in the number of complaints – in undertaking a review of those that failed in order to determine what percentage of those failed complainants were vexatious without merit (and may have been simply instigated at no cost to a retail consumer in order to persuade a defendant to settle an unmeritorious claim to avoid the costs of the hearing).

6.4 The FOA would urge HM Treasury to consider the appropriateness of establishing a "facts and merit" appeals mechanism, rather than expecting mitigants to rely only on the right of judicial review, which is focussed on process.

7. European and International Issues

Q32. What are your views on the proposed arrangements for international co-ordination outlined above?

7.1 The FOA welcomes the clear recognition that significant UK input is essential in terms of the setting of European and international standards, and that the Government will constantly be looking to take a leadership role in this area. This will require significant input, however, from ministers and senior Government officials.

7.2 As it is put in para 7.9 in the CD, *"The Government expects the UK's regulatory agencies to put significant time and effort into ensuring that the UK's voice is heard at the European level and that the decisions taken by the new authorities are appropriate"*. Building up voting "coalitions" within key EU institutions will be critical if that voice is to be properly heard.

7.3 In view of the fact that there is no precise match between the new UK regulatory infrastructure and the European Supervisory Authorities, it is essential – and this is recognised in the CD – that there is full prior consultation between the UK regulatory authorities and that, wherever appropriate, each authority takes advantage of the right for the UK member authority to be accompanied by a non-voting observer.

7.4 The FOA supports the Government's proposal to legislate to ensure that a comprehensive MOU is drawn up between the Treasury, the Bank of England, the PRA and the FCA to address the need for effective international co-ordination.

8. Next Steps

8.1 The FOA notes the Government's target of putting the new regulatory architecture in place by the end of 2012 and the importance of having a clear timeline, but as the Treasury Select Committee has pointed out, getting the construct right is more important than fulfilling a set timetable. This tension between qualitative deliverables and fixed timetables has been a particular problem at the European level, and the need for flexibility and pragmatism is important, particularly in rebuilding the UK's financial services infrastructure. "Getting it right" is, surely, the first priority.

8.2 The FOA supports the Government's assurances:

- to publish a White Paper in the Spring (subject to the points made above);
- to engage in further consultation and issue more detailed releases as referred to in the CD;
- to convene a joint committee of MPs and peers to scrutinise the draft legislation (comparable to the approach adopted in relation to the Financial Services Markets Act);
- to "road-test" key elements of the new supervisory structure and, particularly, that the outcomes of that process will be fully taken into account and reviewed against the proposed timeline on an on-going basis.

APPENDIX 1

LIST OF FOA MEMBERS

FINANCIAL INSTITUTIONS

ABN AMRO Clearing Bank N.V.
ADM Investor Services International Ltd
AMT Futures Limited
Bache Commodities Limited
Bank of America Merrill Lynch
Banca IMI S.p.A.
Barclays Capital
Berkeley Futures Ltd
BGC International
BHF Aktiengesellschaft
BNP Paribas Commodity Futures Limited
Capital Spreads
Citadel Derivatives Group (Europe) Limited
Citigroup
City Index Limited
CMC Group Plc
Commerzbank AG
Crédit Agricole CIB
Credit Suisse Securities (Europe) Limited
Deutsche Bank AG
ETX Capital
Fortis Bank Global Clearing NV - London
GFI Securities Limited
GFT Global Markets UK Ltd
Goldman Sachs International
HSBC Bank Plc
ICAP Securities Limited
IG Group Holdings Plc
Investec Bank (UK) Limited
JB Drax Honoré
JP Morgan Securities Ltd
Liquid Capital Markets Ltd
Macquarie Bank Limited
Mako Global Derivatives Limited
MF Global
Marex Financial Limited
Mitsubishi UFJ Securities International Plc
Mizuho Securities USA, Inc London
Monument Securities Limited
Morgan Stanley & Co International Limited
Newedge Group (UK Branch)
Nomura International Plc
ODL Securities Limited
Rabobank International
RBS Greenwich Futures
Royal Bank of Canada
Saxo Bank A/S
S E B Futures
Schneider Trading Associates Limited
S G London
Standard Bank Plc
Standard Chartered Bank (SCB)
Starmark Trading Limited
State Street GMBH London Branch
The Bank of Nova Scotia
The Kyte Group Limited
Tullett Prebon (Securities) Ltd
UBS Limited
Vantage Capital Markets LLP
Wells Fargo Securities International Limited
WorldSpreads Limited

EXCHANGE/CLEARING HOUSES

APX Group
Bahrain Financial Exchange
CME Group, Inc.
Dalian Commodity Exchange
EDX London
European Energy Exchange AG
Global Board of Trade Ltd
ICE Futures Europe
LCH.Clearnet Group
MEFF RV
NYSE Liffe
Powernext SA
RTS Stock Exchange
Shanghai Futures Exchange
Singapore Exchange Limited
Singapore Mercantile Exchange
The London Metal Exchange
The South African Futures Exchange

SPECIALIST COMMODITY HOUSES

Amalgamated Metal Trading Ltd
Cargill Plc
ED & F Man Commodity Advisers Limited
Engelhard International Limited
Glencore Commodities Ltd
Koch Metals Trading Ltd
Metdist Trading Limited
Mitsui Bussan Commodities Limited
Natixis Commodity Markets Limited
Noble Clean Fuels Limited
Phibro GMBH
RBS Sempra Metals
Sucden Financial Limited
Toyota Tsusho Metals Ltd
Triland Metals Ltd
Vitol SA

ENERGY COMPANIES

ALPIQ Holding AG
BP Oil International Limited
Centrica Energy Limited
ChevronTexaco
ConocoPhillips Limited
E.ON EnergyTrading SE
EDF Energy
EDF Trading Ltd
International Power plc
National Grid Electricity Transmission Plc
RWE Trading GMBH
Scottish Power Energy Trading Ltd
Shell International Trading & Shipping Co Ltd
SmartestEnergy Limited

PROFESSIONAL SERVICE COMPANIES

Actimize UK Ltd
Ashurst LLP
Baker & McKenzie
Barlow Lyde & Gilbert
Berwin Leighton Paisner LLP
BDO Stoy Hayward
Clifford Chance
Clyde & Co
CMS Cameron McKenna
Complinet
Deloitte
Dewey & LeBoeuf LLP
Exchange Consulting Group Ltd
FfastFill
Fidessa Plc
Financial Technologies India
FOW Ltd
Freshfields Bruckhaus Deringer
Herbert Smith LLP
Hunton & Williams LLP
International Capital Market Association
ION Trading Group
JLT Risk Solutions Ltd
Katten Muchin Rosenman Cornish LLP
KPMG
Mpac Consultancy LLP
Norton Rose LLP
Options Industry Council
PA Consulting Group
R3D Systems Ltd
Reed Smith LLP
Rostron Parry Ltd
RTS Realtime Systems Ltd
Sidley Austin LLP
Simmons & Simmons
SJ Berwin & Company
SNR Denton UK LLP
Speechly Bircham LLP
SunGard Futures Systems
Swiss Futures and Options Association
Total Global Steel Ltd
Traiana Inc
Travers Smith LLP
Trayport Limited