

FUTURES AND OPTIONS ASSOCIATION

"PRACTITIONER INVOLVEMENT"

FOA Response to FSA Consultation Paper 2

JANUARY 1998

SUMMARY OF POINTS

1. Proportionality in rights of “involvement” and access between consumer and practitioner groups (Para. 1.4).
2. The importance of standards and statutory objectives in underpinning regulatory accountability and transparency (para 1.5).
3. The need for greater priority to be given to appropriateness, efficiency and cost-effectiveness in regulation (Para. 1.6).
4. Early establishment of the proposed practitioner groups (Para 2.2 (d) and the FOA response to Q.26).
5. The need to avoid “change for changes sake” (para 2.5) and to strike a balance between:
 - delivery of fair and adequate practitioner input/representation and avoidance of establishing excessively bureaucratic procedures (Para. 2.2).
 - securing the benefits of a uniform regulatory approach and preserving individual regulatory treatment for specialist products, services and firms (Para 2.2 (b)).
6. The role of industry associations in developing standards, documentation and training (Para 2.4).
7. The importance of the FSA accommodating significant practitioner input at the moment of commencement of the process of analysing, amending, improving and harmonising rulebooks (Para. 2.6).
8. In its response to the specific questions set out in CP2, the FOA supports:
 - the establishment of a high level practitioner group to address general policy and strategic issues including the balance between cost and benefit of regulation, the overall fairness of the system, the balance between principle and rules and the maintenance of international competitiveness;
 - the establishment of a wholesale practitioner group to address (principally) conduct of business issues;
 - the establishment of a single financial resources group (but this would only be appropriate if there is broad parity in the capital treatment of wholesale and retail financial services business);
 - clear and fair arrangements for facilitating significant wholesale consumer input from institutional market users such as insurance companies and fund managers (in their capacity as consumers) and corporate treasurers;
 - continuance of existing FSA fora such as the Collective Investment Scheme Forum and the International Communications Forum;
 - the establishment of a training and education panel, as foreshadowed in CP1, which should be drawn from relevant regulators, trade associations and consumer representatives;
 - the establishment of a small business panel to address the particular regulatory problems and resource problems of small firms;

- the establishment of an Authorisation Registration and Enforcement Panel for the purposes of providing practitioner input into each of those regulatory areas;
 - the establishment of a Cost of Compliance Panel (on a trial basis) similar to the panel established by the SFA.
9. The need to accommodate practitioner input from large-size institutions and corporate users of wholesale market products and services (see Q.7 (a), (b) and (c) and see also the FOA's response to FSA CP1).

"PRACTITIONER INVOLVEMENT" - FSA CP2

1. INTRODUCTION

1.1 The Futures and Options Association (FOA) (see attached list of members at Appendix A) welcomes the opportunity of being able to comment on FSA's proposals regarding practitioner involvement in its activities and, in particular, answer the various questions raised in the paper.

1.2 In general, the FOA believes there is much to be commended in the paper in terms of its openness and willingness to consider a variety of different options as to how and where practitioners might be involved (a) in the transitional period when matters such as regulatory policy, structure and practice are determined; and (b) thereafter, when the FSA will have assumed its role as the UK's single financial service regulatory authority.

1.3 **The FOA welcomes FSA's unequivocal recognition in its paper of the importance and usefulness of practitioner involvement, particularly insofar as this will be of significant benefit to the regulated community in enabling them to understand better the objectives of the regulatory authorities and to the regulators in enabling them to better understand the difficulties in implementation and the scale of the cost and resource burden placed on firms.** It will also help to ensure that the regulators remain close to the regulated community which should assist them in dealing with problems somewhat earlier than might otherwise be the case and avoid the dangers of individuals within the regulatory authority becoming unnecessarily remote from those that they regulate. The FOA notes, for example, the following statements in CP2:

- the "key role for practitioners in helping us to understand and be close to the regulated markets and the firms which operate in them" and the rest of paragraph 12, particularly the importance of engendering "industry confidence in the fairness and quality of the FSA's exercise of our powers" (para.12);
- the need to access "highly-focused and specialised advice" (Para 13(b))
- "all the forerunners to the FSA currently involve practitioners extensively in policy development. It will be crucial for the FSA to continue to obtain a strong input of market expertise and experience in this area." (Para 18)

1.4 **The need for proportionality should apply not just between cost and benefit in regulation, but also, with equal force, as between consumer and practitioner "involvement" and access (e.g. to the FSA Board by the high level practitioner group and the Consumer Panel) and not just in terms of scope, but in terms of delivery (e.g. if there is to be a standing committee of consumers, there should be a standing committee of practitioners).**

The FOA is particularly concerned that the intention to develop a separate regulatory regime for the wholesale markets/wholesale business could be undermined by a "consumerist overlay" which may be generated by the FSA's government appointed board and which has been foreshadowed in recent papers issued by the FSA and, before it, by the SIB (by a seeming policy imbalance in the FSA's approach to consumers and practitioners).

In previous years, the FOA has pointed out - and before it, The Joint Exchanges Committee of the London markets - the lack of adequate input into regulatory policy by consumers and, bearing in mind that one of the principal objectives of the regulatory structure is investor protection, the need to correct that deficiency. The FOA recognises also that the demise of "self regulation" means inevitably a change in the role of practitioners within the regulatory framework (i.e. away from "accountability"). However, correction of that deficiency should not result in the replacement of one form of imbalance with another or by any diminution in practitioner "input".

- 1.5 **Para 6 of CP2 refers to the statutory objectives that will be set out in the new financial services legislation. Accountability and transparency are vital strands in not just democratic but corporate constitutional structures and procedures. This should be no less the case for regulatory authorities, including the FSA.**

The FOA has annexed at Appendix B a copy of its letter to HM Treasury commenting on the proposed statutory objectives and other criteria which it believes are of fundamental importance in (a) ensuring that FSA achieves the objectives set out in Para 12 of CP2; and (b) providing a basis for measuring its performance. In this context, the imposition of statutory standards on FSA would be entirely consistent with its own policy (when the Security and Investment Board) in imposing standards on the SROs.

- 1.6 **The FOA welcomes FSA's continued reassurances that it will "seek to be efficient and cost-effective" recognising "the benefits of competition and innovation to consumers, to the UK financial sector and to the economy as a whole".**

The FOA is concerned at the significant costs that could be incurred in relation to the operation, support and broad remit being given to the proposed Consumer Panel (see Paras 18, 29 and 32 of CP1). For this reason, the terms of reference and cost controls are of particular importance in determining the scope and budget of the Panel.

As FSA will know, the FOA and its constituent members are becoming increasingly concerned at the impact of regulation on their costs and resources through regulatory levies, financial resource rules, reporting requirements, maintenance of customer records, growth in customer documentation; and the significant ongoing cost of amendments (e.g. through the "repapering" of customers, IT changes and reallocation of staff duties). This problem is being compounded seriously by the current major resource implications of preparing for EMU and addressing the Year 2000 computer problem. While the Financial Services Act 1986 incorporates, as a recognition requirement, a cost appraisal duty on SROs, it has not always observed and there are no real procedures or transparency applying to how the regulators discharge this duty (but see Q.25 herein).

- 1.7 Para 9 of CP2 refers briefly to the structure of the board and, while the FOA welcomes the inclusion of some members with financial services experience and supports the concept that the board should be fully representative of the public interest, it is concerned - even though recognising its inevitability - that the government's exclusive right of appointment in relation to members of the FSA's Board may need to lead to undue "politicisation" of regulatory policy and procedure.

2. FOA'S RESPONSE TO FSA'S QUESTIONS: GENERAL COMMENTS

2.1 The FOA is strongly supportive of FSA's recognition that " individuals of high calibre and strong experience would only be willing to give the time and effort if they (and their firms) can be confident that their role is not a token one." Only in this way will practitioner involvement achieve the purpose set for it by FSA in its various supportive statements in CP2.

2.2 The FOA would make the following general points in relation to practitioner input:

- (a) It is inevitable, given the spread of FSA's regulatory responsibilities, that panels will be larger and the numbers of them will be greater than desirable. On the other hand, " fast track" changes may be undermined and fears of excessive bureaucracy may be realised through the establishment of too many panels and groups. There is also the question of the consequential administrative burden placed upon FSA.

The following factors may be helpful in achieving an appropriate balance:

- incorporating observers or seconding advisors or specialist sub-groups on an " as needed" basis;
- use of industry associations which are, in themselves, representative bodies (see Para 2.5 herein);
- broadening the remit of particular committees to take on ancillary advisory functions;
- the use of ad hoc panels to address specific or technical issues, particularly when developing or extending regulation to cover new instruments and services;
- merger of areas into one group upon which practitioner input is sought by FSA (e.g. the proposed Authorisation, Registration and Enforcement Panel (see Q11)).

- (b) **Despite the spread of its responsibilities, regulation must be sensitive and appropriate to the different styles, cultures, practices, products, services and sizes and the nature of the customers of the individual firms. This means that practitioner input, however it is achieved, must reflect fully the broad spectrum of practitioners regulated by SFA. This will also avoid particular sectors being "disenfranchised" because they are small/peripheral.**

- (c) When drafting the terms of reference for the various groups, the FOA hopes that FSA would feel it appropriate to consult, where relevant and desirable, interested industry associations to ensure that they are relevant, appropriate, adequate for the regulated community as well as for the FSA. (NB. The value of consultation on terms of reference has been expressly acknowledged in Para 26 CP1).

- (d) **If the proposed groups are to be in a position to make a realistic and effective contribution to the formation of policy and the development of principles/rules, it is essential that they are established and involved as soon as possible. (see Q26).**

NB: CP1 recognises that " once the proposals for consumer input mechanisms have been finalised in the light of this consultation, the FSA will seek to move towards them as soon as practical" (Para 41). The FOA would urge FSA to adopt the same approach in relation to practitioner input (see Q. 26).

- (e) It is anticipated that, once the reformed regulatory structure is in place, a number of the proposed practitioner groups may be capable of being reduced in terms of members and in the number of them with greater focus being given to issue-driven working parties, but the FOA believes it is of fundamental importance that in the formative stages, FSA must - and must be seen - not to be disenfranchising or disadvantaging any particular sector.

2.3 So far as methods of operation and the composition of the various groups and panels are concerned, it is suggested that:

- standing committees should meet at least once every two months with additional meetings added or existing meetings cancelled as necessary and that ad hoc groups should meet on an "as needed basis";
- as is currently the practice, groups concerned with the development of rules should meet as soon as possible prior to general consultation and should have the benefit of reviewing initial estimated cost implications of proposed rules (which may have been provided by the proposed Cost of Compliance Panel (see Para 2.5 herein)) so that they are in a position to provide input on all aspects of the proposed rules prior to general consultation;
- it is anticipated that all groups and panels will be chaired mostly by practitioners; will include FSA staff at a level which is appropriate to the standing and work of each group/panel; and that FSA will provide the secretariat;
- each member of each group and panel should be subject to a requirement of renomination within a specific period of time dependent upon the role and duties of the relevant panel;
- aside from the proposed high level practitioner group, panels and groups should comprise individuals with "hands on" experience and should be selected for their specialist knowledge and competence (e.g. back office managers, senior compliance officers, senior finance officers, etc.).

2.4 With regard to Para 13(d) of CP2, which refers to the mechanisms by which consultation can take place, and without undermining the importance of direct practitioner consultation/involvement, the FOA would make the following general comments in relation to the role of industry associations:

- Informal consultation with industry associations (prior to formal consultation) can be useful in ascertaining the potential impact and acceptability of proposed changes in regulatory rules and practice; and whether or not those proposed changes can be adapted or adjusted and still achieve their primary objective.
- Industry associations can perform a valuable role in supplementing regulation through the issue of guidelines, documentation and standards (e.g. in the case of the FOA, this has been proved in the context of the LME guidelines, the end user guidelines, the compliance officer's course, the ethics workshops and the back office benchmarking project). FSA should, in considering the need for regulatory change, assess whether or not the changes and/or standards that it wishes to achieve would be better secured through regulatory requirements or through industry-driven best practice.
- The inclusion of industry associations (whether through their staff or practitioner members), where appropriate, may help to restrict the number of individuals on a particular group or panel to manageable proportions, yet sustain the need for the panel to be broadly representative of the regulated community.

In this context FOA would refer FSA to CP1 which, in Para 12, states that the FSA will "seek to maintain good working relations with consumer bodies, trade associations, interest groups and other organisations with an interest in the FSA's work".

2.5 In relation to Para 13(e), the FOA believes strongly that FSA should preserve the best of the current system and this should be a key factor and, indeed, constraint in its expressed wish in Para 5 to develop its "own distinctive approach to regulation, as the new single financial services regulator, in a new statutory framework, with substantial responsibilities and powers." **Hence, the FOA, while recognising the policy and ethos behind regulation will have to undergo significant changes, would caution against change "for change's sake" or the imposition of harmonisation or uniformity "for harmonisation's sake".**

2.6 **FOA would emphasise the importance of the FSA accommodating significant practitioner input at all levels across its regulated communities as and when the process of analysing, amending and harmonising the rule books of the various SROs commences and, while this is not addressed in CP2, it is expected that this will happen as a matter of course and at the moment of commencement of that process.**

The process of reconciling rule books should also be used as an opportunity to undertake a "root and branch" review of individual rules to ensure that they are clear, necessary and appropriate.

3. FOA'S RESPONSE TO FSA QUESTIONS

Q1. See above.

Q2. The FOA believes strongly that it is important for the FSA to establish a high level practitioner group for the following reasons:

- The well publicised downgrading of "self-regulation" may not be properly understood internationally and may be construed (in some cases, for competitive reasons) as a change which will result in a hard line autocratic regulatory policy with little or no significant practitioner influence. The establishment of a high level practitioner group, particularly if it was made up of senior representatives of international firms, would rebut any such implication. This is particularly important in the FSA's early formative stages.
- The FSA board, while including some representatives with experience in financial services, will be government appointees likely to have a strong (and quite proper) sense of public interest. The creation of a high level practitioner group to advise the board of the practical implications of regulation in financial services (which is a significant contributor to invisible earnings) cannot be underestimated, bearing in mind, particularly, the propensity for the board to become "politicised" and retail driven.
- While practitioner groups operating lower down the scale will be expected to address specific "coal face" issues, it is important that there is a high level practitioner group to address overall regulatory policy (see Q3(b)).

Q3(a) Composition of the high level practitioner group should not exceed 10/15 participants for practical reasons; should be properly representative of FSA's regulated community; and, commensurate with the proposed consumer group, should be a standing committee. Consideration should be given to including the Chairman of the wholesale market group.

The basis of selection would almost certainly have to be co-option following a certain amount of industry appraisal if the FSA is to achieve its objective of involving practitioners (a) of high calibre (see Para 13(c)); and (b) which are properly representative of the sectors regulated by the FSA. This would also avoid the unnecessary cost and resource burden involved in any form of elective process.

- Q3(b) The FOA anticipates, that in determining the role and remit of the high level practitioner group, the FSA will take full account - for the purpose of proportionality - of its proposals for the Consumer Panel in Para 29 CP1 including the intention to enable the Consumer Panel "to provide authoritative and independent advice to the FSA board and comment effectively on the policies of the FSA". The FOA believes that such an approach is of fundamental importance if the purpose of the high level practitioner panel is to be achieved.

In line with Para 23 of CP1, it is anticipated that the FSA will wish the high level group to "initiate its own work and bring to the attention of the FSA matters which are identified as being of importance" to the regulated community.

The remit of the high level practitioner group should be to focus on general policy and to address strategic issues including (a) the overall balance as between cost and benefit of regulation; (b) the overall fairness of the system; (c) the balance between general principles and detailed rules; (d) overall international competitiveness, including rights of market access; and, possibly, (e) to provide advice to the board on specific rules changes which are the subject of dispute between industry, regulators and/or consumers (see later Q5(c)). There should be no duplication between the detailed work of the other committees/groups and the high level practitioner group's role of focusing on overall policy.

- Q3(c) No, otherwise the process will become necessarily public and possibly confrontational. This would damage the nature of the relationship between the high level practitioner group and the board. No doubt, the FSA in publishing its annual report could address separately the role of a high level practitioner group.

- Q3(d) It is important that both the FSA board and the high level practitioner group enjoy direct mutual access and that the FSA is represented upon the high level practitioner group at a commensurately senior level.

- Q4 Yes.

- Q5(a) The wholesale practitioner group should be properly representative of the wholesale regulatory community of the FSA (i.e. include representatives from financial derivatives market and the various commodity markets (e.g. energy, "softs", metals, bullion) as well as the foreign exchange, swaps, repo, bond and equity market); be drawn from across all categories of wholesale operations and types of financial service providers; and be limited in numbers to, say, 12/15 members in order to ensure that it is effective.

Consideration should be given to the inclusion of wholesale market users (see response to Q7 (a), (b) and (c))

It is recognised that a considerable number of rules and requirements in the area of financial resources may be held in common between the wholesale and retail markets. In such an event, this would argue strongly for the establishment of a financial resources panel (equivalent to the SFA's panel). However, differences in the areas of segregation, financial reporting and in some of the financial requirements themselves may argue against such a single wholesale and retail group. On the other hand, if the differences are not, in general, of a fundamental nature, then the wholesale regulatory group, although focusing on business conduct issues, could have residual power in its terms of reference to address financial resources or, indeed, any matter that impacts on the wholesale regulatory community.

Q5(b) In its Report to the Chancellor, SIB envisaged that the development of regulatory policy for specific sectors would operate at a level lower than the FSA board. If that is the case, then such a group should operate at that same level and interface with FSA staff responsible for developing policy for the wholesale financial service sectors.

Q5(c) The high level practitioner group could serve as means of communication for the wholesale practitioner group where, in cases of significant regulatory changes, there were serious differences between FSA staff responsible for developing regulation in wholesale sectors and the wholesale practitioner group so that the FSA board could hear the arguments of FSA executives and from the high level practitioner group directly when making a decision. To develop any closer interface could lead to unnecessary duplication.

Q6 Yes.

Q7(a), (b) and (c)

See above Q5 (when analogous).

In order to avoid unnecessary misunderstandings and conflicts it may be sensible for the wholesale market group to have a retail market group observer and vice versa so that points of difference can be addressed and raised prior to the finalisation of recommendations. The FOA does not accept for a moment that there should be a single wholesale and retail group for so long as it is FSA's intention to develop significantly different rules and regulations for wholesale and retail business because priority, policy and procedural considerations will be significantly different.

While there is a strong focus on the need for consumer representation in the retail end of the market, it is important that significant market users such as insurance companies, fund managers (in their capacity as consumers) and corporate treasurers have a voice in this context. This could be provided either in the Consumer Panel or through the establishment of a separate consumer panel or through inclusion in the wholesale markets group. This is recognised - but not as forcibly as should be the case - in Paras 14 and 17 in CP1. The FOA does not accept that wholesale market users should be disenfranchised from any specific arrangements for facilitating consumer input for the following reasons:

- they will be addressing, presumably, a different regulatory environment which will focus on wholesale business (and will not therefore be of particular interest to retail consumers);
- they are major consumers of financial services in their own right;
- as consumers of wholesale financial services, they will bear a proportion of the overall cost of regulation and are no different therefore to retail consumers for whom specific rights of involvement have been promised.

Q8. As a member of the Collective Investment Scheme Forum and the International Communications Forum, FOA shares FSA's view that standing groups on particular aspects of regulation should be useful to both the regulator in terms of understanding the difficulties and constraints that apply to practitioners and, equally importantly, to practitioners in understanding the regulatory objectives and investor protection concerns of the regulators. In this context, the FOA supports the need for standing panels in the following areas (but recognising that there is a limit to the extent to which they can be sector specific):

- continuance of the Collective Investment Scheme Forum;
- continuance of the International Communications Forum (but held on a more regular basis)

- commodities sub-groups (in the event that they are not given full representation on the wholesale markets group);
 - a training and education panel which, as foreshadowed in Para 37 CP1, should be drawn from relevant regulators, trade associations and consumer representatives.
- Q9 The FOA believes it is important that the FSA sets up a small business panel, particularly since such businesses often provide niches services and have unique regulatory problems particularly in the area of costs and resources. In the FOA's sector, this will include introducing brokers, a few retail brokerages, small specialist fund managers (e.g. Derivative Fund Managers) and financial bookmakers.
- Q10 Since it is the government's intention that FSA should be a regulatory authority for a very broad community of financial service suppliers then, no matter how cumbersome or inconvenient, it is important that small businesses operating in financial services (e.g. retail stockbrokers, IFAs) have a voice on a small business panel.
- Q11 The FOA supports the view that authorisation and registration policy and decisions are largely a matter for the FSA executive. However, FOA believes that the FSA should establish an Authorisation, Registration and Enforcement Panel which could provide practitioner input, particularly in addressing difficult authorisation and registration cases.
- *Q12 There is no doubt that secondment of staff from firms to the FSA and from the FSA to firms is important, but, as FSA will appreciate, there are significant conflicts of interest and confidentiality considerations that need to be addressed. This applies particularly to advice on case work and in the area of monitoring and surveillance. However, such conflicts are easier to address (and to be seen to be addressed) in the case of practitioner representation on decision-making committees and in the context of advisers/"expert witnesses" in committee work.
- *Q13 Inclusion on committees via secondment and advisory appointment.
- *Q14 In some cases, the regulators will be all too familiar with the level of expertise and competence of individual practitioners. In other cases, industry consultation with , for example, senior practitioners and industry associations can be of assistance.

- *Q15 Aside from signing the usual confidentiality agreements, it is important that practitioners are not put in a position of irreconcilable (or seen to be irreconcilable) conflicts of interest (e.g. in the investigative stage, where they may acquire sensitive information identifiable to the competitive firms; or, in the case of secondment by FSA to firms, not, on their return, becoming part of the surveillance team of the firm to which they were seconded). Practitioners must recognise that they do not represent their firm, but rather provide input on the basis of their own individual ability and experience and may not use therefore information acquired by them in order to advantage their firm.
- *Q16 While FSA would wish - for the sake of parity in treatment - a uniform approach to be adopted (and, where possible, this should be a primary objective), this should not be at the cost of recognising the very different needs and criteria as between different products, services and firms, particularly in relation to the different resource capabilities of large firms as against small firms and even between different financial service divisions of, for example, a universal bank. At all times, FSA should be sensitive to the different styles, cultures, practices, products and services of individual firms.
- Q17 Yes.
- The FOA continues to emphasise the importance of FSA developing real cost savings in the areas of supervision and monitoring for firms which are able to demonstrate high standards in their own internal monitoring procedures and/or the provision of low risk services. FOA continues to be concerned that, while promises and assurances of reduced burdens/" trade offs" have been given in this regard, they have never been articulated to any level of detail. This omission will undermine FSA's expressed policy to "incentivise" firms to become "good housekeepers" .
- Q18 Yes, providing any such panel is properly representative of the financial community that is covered by the FSA. FOA would emphasise the capacity of financial service institutes and industry associations to develop and promote high standards in training and competence and deliver courses, recognising that FSA would wish to maintain a monitoring and supervisory role to ensure that the standards promoted by it are being fulfilled and maintained through such external agencies. It is important that the FSA adopts SFA's own approach in this area which is to set the broad requirements and standards expected of firms, but without being prescriptive as to how firms actually attain those standards. This recognises fairly the need for flexibility and is very much in line with recent SFA/FSA papers on greater operational responsibility being placed on managers. It also gives due recognition to the very different skills and requirements of individual employees within firms; the different training structures internal to firms; and avoids establishing unnecessary academic "trip-wires" for firms' staff and imposing unnecessary training costs.
- Q19 FSA should have sufficient internal experience through its existing audit, supervisory and investigative staff to make the majority of its own decisions in the area of enforcement. However, there will be occasions when it may be necessary to access appropriate market expertise in particularly difficult decisions, subject to confidentiality/conflict of interest considerations. This could be provided by a practitioner panel and, in particular, through the suggested Authorisation, Registration, and Enforcement Panel (see Q11).

*Q12-16 are asked in the context of " Authorisation, vetting and registration" but are of general application - and have been answered on that basis.

- Q20 The primary focus of involvement of practitioners must be their inclusion in disciplinary tribunals and appeals hearings (as is presently the case). Panel of individuals eligible for inclusion should be representative of all the financial service sectors covered by the FSA.
- Q21 The answer to this question is probably known to FSA and the SROs and can best be addressed by those individuals who are already involved in providing input. Industry associations can be a source of information/input in this area.
- Q22 Consultation with individual practitioners, industry associations and financial service institutes will almost certainly help identify appropriate individuals and, in the view of the FOA, there should be a separate panel of individuals from whom those with relevant experience can be called upon to deal with a particular case.
- Q23 FSA will itself be aware of its own safeguards and those of the SROs which appear to be adequate (i.e. confidentiality undertakings, avoidance of conflicts of interest, declarations of self interest and, unless necessary, avoidance in disclosing the names of individuals/individual firms).
- Q24 It seems important that the practice and procedure in this area should be uniform for all firms to ensure that there is no inadvertent partial treatment or broader discretion given to individual sectors, but FSA's approach should be flexible as well as consistent across all sectors.
- Q25 In the view of the FOA, this is an area of fundamental importance and where there have been notable failures in the past. It is also one where there should be an element of accountability to the industry (both service suppliers and consumers) because they bear the cost of regulation directly. In saying this, the FOA recognises entirely that the FSA must, to a large extent, be free to determine its regulatory policy and priorities. FOA believes that the existing proposed high level practitioner group should be able to comment on the FSA's "budget" and "main priorities".

FSA will be familiar with SFA's Cost of Compliance Panel which has been established on a trial basis, the purpose of which is to provide SFA with insight as to the likely costs of significant rule changes prior to formal consultation so that any significant difficulties can be identified at the outset. The FOA believes that this is a practical approach and, while it may not be appropriate in all cases, it should prove to be an extremely useful mechanism for the purposes of making a preliminary assessment of significant rules changes. The FOA hopes that the FSA would feel that it is appropriate to continue with the Panel.

The FOA supports the three proposals set out in Para 36 of CP2 and welcomes the positive statements regarding the carrying out of cost/benefit analyses in Para 37.

- Q26 FOA believes strongly that, as appropriate, all the suggested panels should be established as soon as possible (but avoiding any unnecessary overlap with existing - and still effective - SRO groups and panels) so as to provide input into regulatory policy at an early formative stage, although the exact timing of their establishment is a matter for FSA insofar as it will be aware of what matters it is taking under consideration in forming its policy and the timing of them. This is, after all, specifically recognised in Para. 41 of CP1.

The FOA believes it is of significant importance that the high level practitioner group and the wholesale market group is established as soon as possible so as to provide a degree of international assurance that the new regulatory authority is "not" washing away practitioner involvement as might be implied from the oft repeated statements that "self regulation is dead". In the view of the FOA this is an important signal to send internationally, bearing in mind particularly that London is heavily dependent upon sustaining the presence of a large number of foreign owned banks and financial institutions.

APPENDIX A

List of members

APPENDIX B

Letter to HM Treasury addressing policy issues arising in connection with the proposed new financial services legislation.