

GETTING THE MESSAGE ACROSS



THE ASSOCIATION HAS BEEN AT THE FOREFRONT OF DEVELOPMENTS AS THE INTRODUCTION OF THE NEW FINANCIAL SERVICES AND MARKETS ACT DRAWS NEAR, SAYS **CAROLINE BRADLEY**.

Looking back over three years as Technical Officer of the Association it sometimes seems as if I and the technical committee have devoted almost all our time to regulatory matters. The new Financial Services and Markets Act came into being after many months of consultation and discussion. The Bill was introduced in June 1999 after 10 months of pre-consultation, and received Royal Assent in June 2000. However, the process continues.

Much of the relevant legislation is contained in Statutory Orders, some of which are still under discussion. N2, the date on which the new law comes into effect, has now been fixed as midnight on 30 November 2001, almost two years late. The delay has left the Financial Services Authority (FSA) in a quandary as its predecessors have effectively been subsumed into it, but the FSA does not take on its new powers until N2. In addition, the regulator has agreed that authorised firms may continue to operate under the old rules until June 2002.

The task of replacing the diverse rules and behaviours that have grown up in the financial markets over many years, into one set of regulations has been an enormous and highly complex task. But little progress would have been made without considerable input from users of the markets. The banks are well represented by a number of trade associations. Both London Investment Banking Association (LIBA) and British Bankers Association (BBA) have attempted to use their resources more effectively by working jointly on many issues. Even their generous resources (at least measured in comparison with ours) have been stretched to the limit to cope with the mountain of paperwork emanating from the FSA and HM Treasury. Pity, then, your long-suffering part-time technical officer having to cover the entire spectrum!

KEEPING UP TO DATE. Fortunately, it has been relatively straightforward to identify the aspects that have required most attention from us, in particular the issue of categorising investors in the markets under the new rules and the codes of conduct associated with each category of investor. Readers of the Hotline and the technical update on the Association's website (www.treasurer.org/know/services/tech.html) will have seen regular reports of our work on these topics. Admittedly, financial

market regulation does not come at the top of everyone's list as the most exciting aspect of treasury, but it will be hard to avoid in the coming months. Although the timing could be more helpful, as we may have to go to print before N2, the *Treasurer's Handbook* will provide up-to-date information and advice to members about the changes. The website will of course have an update.

It became very apparent during discussions on the codes of conduct that the Association was essentially the only body representing corporate users of the markets. While we did not always get our way, the resulting codes would undoubtedly have been more bank- and less corporate-friendly without our contribution. Much of the work involved members of the technical committee sitting on working groups set up by the FSA and the Bank of England to obtain market practitioners' views of the developing regulations. Many thanks to those who found the time in their busy schedules to support the Association in this way – in particular to Brian Welch who fought so effectively to stop the mandate clauses from being removed from the successor to the London Code. We were (and are) also extremely fortunate to have the support of Slaughter & May, not only in answering questions and giving specific advice, but also in tipping us off about pieces of relevant legislation we might not have seen.

LOBBYING ON BEHALF OF OUR MEMBERS. Had it been left to me and the committee, we would probably have restricted our activities to the issues already mentioned. As it evolved, we found ourselves on the end of numerous requests from the FSA, the government, the banking industry trade bodies and others to give a corporate view on a wide variety of topics. Many times we questioned whether we should be spending so much time on one aspect of the treasurer's working environment, but it was clear that if we didn't lobby on behalf of our members and their employers, who would?

Therefore, we have been involved in discussions on market abuse, stabilisation in the debt and equity markets, allotment of equities, the scope of regulated activities and financial promotions. The latter provides a good example of the co-operation between the trade bodies and ourselves in this long, drawn out process. LIBA called me to ask if I'd seen the financial promotion provisions. I hadn't thought that these could possibly have any impact on us, but was put right when I

was told that the draft rules would mean that any overseas roadshows by a UK corporate raising debt or equity would have to be 'approved' by a UK-authorized company. We quickly drafted a letter to HM Treasury pointing out that this would be an extremely costly and time-consuming business which would raise the cost of funds for UK companies and harm international competitiveness. In addition, it seemed to have no regulatory benefit. I was amused to see a copy of the response to HMT by one of the bank associations asked what these costs might come to. The answer was "well, it could be £50,000 for a small transaction, but for a larger one, upwards of £500,000 ... plus legal fees!" HMT backed off.

ACHIEVEMENTS AND PROGRESS. So what have we actually achieved on behalf on members? I'd like to think, quite a lot. We'll never know what would have happened without our lobbying effort, but it was heartening to hear recently that both the Bank of England and the FSA expressed their strong support for our activities. They mentioned, in particular, our vital contribution to providing a conduit through which public bodies can establish the views of our members and their employers.

What's next? Well, the work goes on. It looks as though market abuse is an area which will continue to absorb time and resource. The Code is completed but no one in the markets has much idea of how it will work in practice, and the FSA, understandably, doesn't want to limit its options by being specific at this stage. The Association has agreed to join a working group convened by the Financial Law Panel to monitor developments and to provide a focus for co-ordination

between City bodies and between the industry and the FSA. We feel that treasurers are unlikely to be affected by the Code as long as they act in a professional manner, but as it relates to all financial markets there may be unforeseen areas of vulnerability.

Another avalanche of paperwork is now arriving from the east, that is, Brussels, covering much of the same ground as the FSA but approaching the issues in a different way. We have already responded to Fesco proposals for the categorisation of investors (this is covered on the website for those who are interested) but the strategy for future consultations is to co-operate with other bodies wherever possible. We have representation, for example, on the CBI's Financial Services Panel set up to look at the EU proposals for harmonisation of the financial markets.

GETTING INVOLVED. Finally, a plea for help. Plans are afoot to increase the technical resources of the Association, which is good news, but we still need to know what members want and what they think. We are looking at ways of encouraging member involvement without requiring attendance at committee meetings or a big commitment of time, probably by setting up panels of members to look at particular aspects of the technical department's work. Ideas and expressions of interest would be most gratefully received.

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