Comments on behalf of

The Association of Corporate Treasurers

in response to Cm 5751,

The financial system and major operational disruption

(the Financial Secretary to the Treasury, February 2003)

I. Introduction

The Association

The Association of Corporate Treasurers was formed in 1979 to encourage and promote the study and practice of finance and treasury management and to educate those involved in the field.

Today, it is an organisation of professionals in corporate finance, risk and cash management operating internationally. It has over 3,000 fellows, members and associate members, mainly UK based. With more than 1,200 students in more than 40 countries, its education and examination syllabuses are recognised as the global standard setters for treasury education.

Members of the Association work in many fields and in companies of all sizes. A number of members are on the boards of major companies in both executive and non-executive capacities. Others are involved in entrepreneurial stage, business start-ups.

The majority of fellows, however, are professionals working as senior executives below the board level in large public companies, responsible for the treasury and corporate finance functions.

This Review

The ACT welcomes the opportunity to submit views on this important topic.

We would be pleased to further expand any point made herein or to assist the Treasury in any other way

April 2003

II Summary

Note

In commenting on consultations such as this, the ACT generally comments from the point of view of non-financial companies ("corporates"). While a proportion of our members work in financial services sector companies we believe that other bodies are best place to formulate views from their standpoint.

1. The ACT does not consider it necessary for new legislation to be introduced to confer new powers on government to intervene in the financial markets or in contracts arising from them. The case for such legislation would be strengthened if it were part of a concerted multinational (e.g. EU/G10) approach to the market disruption risk. However, even in such a case the potential negative consequences of such legislation may outweigh the advantages.
2. The authorities do have a role, however, in encouraging market participants to undertake reviews to ensure that standard contract terms, the rules of exchanges, clearing and settlement systems, etc., and the terms of other contracts provide for the consequences of severe market disruption. The ACT will encourage corporates in particular to review their relevant bi-lateral contracts.
3. The ACT has commented in detail on the Green paper in case legislation is considered. Regarding proposed powers of suspension of obligations, the ACT believes that suspensions:
   - Should apply only to obligations arising out of financial market dealings
   - Should only suspend the basic obligations (payment/delivery) of contracts arising from such dealings
   - Should not override any express terms of the contract dealing with this type of market disruption
   - Should not change the contractual consequences of non-delivery, other than making it no longer a breach.
4. The ACT has not commented on the proposed powers of direction which would apply directly to financial services organisations as they are best place to do this. Corporate clients would be indirectly affected and we hope the opportunity to comment on any contingency plans in this area would be provided at a later stage.

III Overview – The ACT's general attitude to the proposed legislation

Paragraph references in this section are to question numbers in the Green Paper

A. Necessary at all?

As is apparent from our response in 3a below, **the ACT does not consider it necessary** for new legislation to be introduced to confer the power on government to intervene in the financial markets or contracts arising from them. We are aware of strong opposition on the part of some market organisations and consider that a high degree of market acceptance of the desirability of such legislation should be a pre-condition to its introduction.

Given the likelihood that most financial markets contracts will, or could, provide by their own terms for the consequences of severe market disruption, the powers sought to be taken would be applicable only to other market contracts. The merit of providing this "safety net" should be weighed against the possible disadvantages to the UK markets and their participants (and the perception of London as a financial centre) of doing so.

One such disadvantage could well be the perception, unless the introduction of the legislation was part of a concerted multinational – e.g. EU and/or G10 – approach to the market disruption risk, that the UK was "different" and now involved an **extra political risk**, ie. the uncertainty (in the perception of market participants) of the risk that the UK authorities might use their new powers to intervene in the markets and contracts and thereby interfere with the economic risks taken by the market. The fact that the government would presumably have no intention of intervening except in the most serious and extreme of circumstances could well be forgotten or overlooked by the market, thus leading to an adverse risk premium in entering into deals involving payment or delivery in the UK or governed by English law, and generally undermining confidence in London as a financial centre.

In the absence of a concerted EU/G10 approach to intervention powers, it is likely that the use of the power in the UK , even if limited to the part of the contract that was to be performed in the UK, would **not necessarily be recognised by foreign courts**, particularly where the contract was governed by a foreign law.

For both of the reasons in the previous two paragraphs, it would seem that a **concerted EU/G10 approach** to intervention powers is highly desirable, so that the making of an order in one jurisdiction would be recognised and given effect in the others. This would suggest that there needs to be intensive discussions of the need for and scope and effect of intervention powers in, say, the Financial Stability Forum, the BIS and the EU, before any legislation is introduced.

Whether or not there is a concerted EU/G10 approach, another risk to the UK markets which is envisaged if intervention powers are taken is **increased systemic risk** arising from certain contracts or market rules (those covered by the relevant suspension or direction order) being subject to change or suspension (even if recognised elsewhere), while others (those not so covered) are not. If both types of contract (or deals governed by both types of market rules) were held in the same portfolio, which was managed and measured (for risk assessment purposes) as a single portfolio - as could well be the case with banks and dealing portfolios - this unbalanced intervention (ie. affecting some but not others) could increase rather than reduce instability and thus systemic risk. (It could also perhaps make regulators more concerned about regulated entities relying on the ability to net exposures in measuring their regulatory capital.)

All of these actual or perceived disadvantages of proceeding with the taking of intervention powers would seem to add up to a powerful message that **the proposed legislation should not be introduced**. In our view, as already stated, there is not the need for the safety net of such legislation, **provided that** market participants, and particularly the infrastructure organisations and the sponsors of standard market documentation, take steps to ensure that, as far as possible, standard contract terms, as well as rules of exchanges, clearing and settlement systems, etc, provide for the consequences of severe market disruption. We believe that the government should consider how best to encourage such a review.

B. Scope of this response

The detailed responses below should be read **subject to the ACT's overriding attitude** to the proposed legislation, as set out above.

Furthermore, we have not thought it appropriate to comment on chapter 7 of the consultation paper (**the power to give directions** to infrastructure organisations). Although corporates are of course consumers of the services provided by these organisations, and could therefore be affected by directions given to them, we believe that the organisations themselves are best placed to comment on whether the proposal to confer direction-giving powers on the government is wise and, if such powers are conferred, on how they should be framed. **Accordingly, all our comments below are with respect only to the proposed power of suspension.**

C. Scope of obligations suspended

A fundamental question is what is intended in the consultation document to be the scope of the obligations performance of which would be suspended. It is stated more than once that the purpose of a suspension order should be to grant a "breathing space" – but a breathing space in respect of what obligations? In the ACT's view, as little violence as possible should be done to the freedom of contract.

Thus, it is a basic principle of our submission that a suspension order (a) should only apply to contracts or other obligations **arising out of financial market dealings**; and (b) **should not override any express terms** of the contract which are intended to deal with the type of market disruption that has given rise to the order.

It is also important, in our view, that if the order does apply to a particular contract it should **only suspend the basic obligations** called for by that contract: ie. payment and delivery. It should not affect other obligations which can operate independently of the payment and delivery obligations, such as obligations of confidentiality.

Nor should it have the effect of changing the contractual consequences of non-payment or non-delivery (other than making the non-payment/non-delivery no longer a breach). For example, suppose that a bank has a swap transaction (or series of transactions) with a particular counterparty under a master agreement. It provides that, in the event of non-payment by party A on the date fixed for payment, for whatever reason, party B may close out all obligations under that contract. This done by valuing all outstanding payment obligations, both owing to and owing by party B, and then substituting for those obligations a single debt owing one way or the other equal to the net values of the above outstanding transaction values. That debt becomes immediately due. If the party to whom the net sum is due holds collateral for that debt, the contract permits that party to appropriate enough of the collateral to satisfy the debt. Suppose that a suspension order is made, which covers this master agreement and the transactions thereunder; thus, all payments thereunder are suspended.

Does the discussion paper envisage that, as a result of the primary (original) payments being suspended, the close-out provisions are also suspended, so that no single substituted debt for the net amount becomes due in place of the original transactions? We do not think this interference with the contract should be the result of the legislation. If it is not, so that the substitution of the single net debt takes place, the obligation to pay the single net sum would presumably be suspended by the suspension order (but it only for the duration of the order; thereafter, the single net sum would be due and payable – a very different result from that which would apply if the legislation prevented the original obligations from being replaced at all). However, if there was no need for an actual payment to be made, because of the agreed right to appropriate collateral to satisfy the debt, would it be the intention that this right of appropriation should be suspended? Again, we do not think that that should be the result. However, such a degree of interference in the contract terms seems to be envisaged by the consultation paper - see Box 6.1. This is a fundamental question that arises from the consultation paper itself.

IV DETAILED RESPONSES:

Paragraph references in this section are to question numbers in the Green Paper

Reference	Question	Response
3a	Do you have any general comments about types of market-based approaches to promoting order in the financial system during major operational disruption?	We believe that it is unnecessary (for most treasury transactions using organised markets or standard documents) for the law to be changed to give government power to impose deemed terms, since the rules of those markets or those standard documents are capable of providing for the most suitable suspension regime. The markets in which corporate treasurers operate are sophisticated and we agree with the view that it is primarily for the market participants themselves to sort out the probable consequences of a terrorist act or other severe disruption. Even if the rules or contracts do not by their terms cover the situation the parties are likely to sort matters out by negotiation. The increased likelihood of terrorist activity, however, does suggest that treasurers should focus on disruptive events, more than they would previously have thought it necessary to do so, in negotiating the terms of treasury contracts and making themselves aware of exchange rules. We encourage the government to promote the review of standard terms (see 3b below) and regulators to ensure that exchanges, clearing and settlement systems, etc have reviewed their rules/terms of dealing, with serious disruption in mind.If the government is nevertheless determined to promote legislation granting government suspension powers, we would wish to see certain principles observed – see the Overview above. In addition, we would agree with the concept promoted in the consultation paper that the parties to the contract should be free to agree at the time on a course of action different to that which would follow from the suspension order – ie. suspension should not be mandatory if the parties agree otherwise.
3b	Is there more that could usefully be done by the private sector to strengthen the contingency provisions in contracts and other legal instruments? Is there a role for the authorities in assisting with this?	Corporate treasurers, banks, etc should be encouraged to review bilateral agreements. In addition, to the extent that they have not already done so, the sponsors of standard master agreements, such as ISDA, LMA, PSA/ISMA, should be asked to review them with market disruption in mind and bring their thinking to the attention of market participants.

3c	Is there more that could usefully be done by the private sector to strengthen market cooperation? Is there a role for the authorities in assisting with this?	The initiatives taken by the Bank of England and the FSA to ensure that there are informal networks between the leading participants in the market are useful. Further formal regulatory assistance is probably unnecessary
4a	In principle, would it be useful to have new legislation to help promote order in the financial system in the face of major operational disruption?	We do not consider, this is necessary and, as discussed in the Overview above, it could be counterproductive to the markets and London's standing generally. If there is any legislation, it would be helpful if it was similar in its scope to any measures already introduced in other major financial centres, in particular the US, the rest of the EU, and the Pacific basin. We are not aware that any such measures have yet been taken. Without such measures, and their consistency with UK measures, there could be difficulties of recognition in the context of cross-border or cross-currency transactionsThe UK should also take note of future proposed measures in those jurisdictions, with a view to encouraging the achievement of consistency with the UK position. As already suggested, there should be EU/G10-wide discussions before the UK introduces legislation.
4b	Have you any comments on: how new legislation might address risks; the possible disadvantages and limitations of new legislation; and the general constraints on the use of new legislation?	Any legislation should support and encourage market co-operation, and decisions and agreements reached by recognized bodies such as the Bank of England, the London Stock Exchange and other existing markets. In general, we would support the concept in the consultation document – that the suspension power should be limited to suspending obligations, rather than prohibiting them. See paragraph C of the Overview above for the limited scope of obligations that should, in the ACT's view, be covered.
4c	If new legislation were to be sought, are the suspension and direction powers the right choices? Are there any other types of legislation that might be useful to help promote order in the financial system?	So far as the conferring of the powers is concerned, we agree with the suggested suspension power (and do not comment on the proposed direction power) and that further powers are undesirable. As far as their use in practice is concerned, the suspension power should only be used in extreme circumstances, as suggested in the consultation document. On the assumption that the suspension power is framed as permissive rather than prohibitive, as suggested, it would not override – or at least should be expressed not to override – provisions of market agreements that are intended to cover disruption in the markets. One of the basic suggestions in the consultation paper is that the powers should never be used where there is purely a financial crisis, rather than a financial crisis caused by some external

		event, such as a terrorist act or severe weather conditions leading to major operational disruption (see para 5.12 and question 5b). We agree with this view.
5a	Have you any comments on the possible approaches to making secondary legislation/administrative directions, including who should exercise this function, the attractiveness of potential fallback routes for making the secondary legislation/administrative directions, accountability to Parliament and modification of secondary legislation/administrative directions?	We believe the power to make the relevant secondary legislation or administrative order should be exerciseable by a Treasury minister; but that it should only be exercised after as full consultation with relevant regulators and the Bank of England as the Treasury minister considers has been practicable in the circumstances has taken place. There should not be any authority for anyone other than a treasury minister to make secondary legislation or an administrative order, such as the FSA or the Bank of England, partly in view of the need for full accountability to Parliament.We agree that the secondary legislation or administrative order should be able to take effect before being laid before Parliament (but see 5c below). . Clearly, however, there should be a debate in Parliament as soon as possible after the secondary legislation/order has been made. We also agree that it should be capable of amendment by further secondary legislation or administrative order (subject to any contrary resolution in the meantime by Parliament).
5b	Should primary legislation include further conditions for use of its powers (beyond the basis for use being major operational disruption and not a purely financial crisis)? If so, what?	We believe that the use of the powers should be specifically conditioned on major operational disruption. We do not see the need for other conditions precedent to the use of the powers, other than the consultation referred to in 5a above. It is arguable that it should also be conditional on full consultation with the authorities in other jurisdictions, but this would be impossible to define adequately. An alternative would be a condition that the Treasury has considered the need for, and practicability of, consultation with overseas authorities. In practice, we would expect the use of the powers always to be preceded by such consultation, particularly in view of the potential disadvantages referred to above. This would ensure that the powers were only used in a really extreme situation.
5c	Would you support specification in the primary legislation of a maximum time period for the duration of powers? If so, how, and for what period?	Any disruption which is likely to be resolved within 7 days, and possibly as long as 14 days, should be capable of being managed by market co-operation where the regulators or authorised bodies are still operational. Any secondary legislation or administrative order should be limited to 28 days, capable of extension for periods of no more than 7 days at a time. If possible, the initial use of the powers should be debated in Parliament before their renewal.
5d	If the powers were adopted, do you agree they should affect actions in the UK (rather than	We agree that the powers should affect actions (such as payment or delivery obligations) to be

	actions governed by UK law)?	carried out in the UK and/or in sterling, regardless of which law governs the relevant contract. However, the powers should potentially extend to other actions. The questions that arise, we believe, are whether the powers should also affect (a) actions (eg. payments and deliveries) to be carried out outside the UK, where the other side of the bargain has to be performed in the UK and/or in sterling; (b) actions performable outside the UK and/or in non-sterling currencies which arise out of a bargain struck in a UK-based market, especially a formal market; and/or (c) actions performable under a contract governed by English (or other UK) law, even if entirely performable overseas and in non-sterling currencies. Given that the effect of a suspension order should not override contractual provisions designed to cover the contingency or prevent the performance of obligations that the parties wish to perform (or discharge in some other way) notwithstanding the suspension order (see 3a above), the effect of the suspension power **should** extend beyond merely actions to be carried out in the UK and/or in sterling. The order should thus affect (subject to the two qualifications in the preceding sentence) the actions described in (a) above – ie. those to be carried out outside the UK where the contract includes obligations, whether on the same or the other party, of a similar nature (eg. payment and/or delivery) which **are** to be carried out in the UK and/or in sterling. (See also 6g and 6h below, to which we attach great importance.) We appreciate that this view could be said to be contrary to the concerns expressed in paragraph A of the Overview above. Those concerns (i) argue that there should be no legislation at all – at least without widespread agreement among the EU/G10 countries – and (if there is legislation) (ii) should be taken into account if there is a proposal to issue a suspension order. However, if an order is issued, then we think the scope of its effect should be as we have described in this answer 5d. We do not think that the mere fact that a contract is governed by English law is sufficient, on its own, to cause the suspension order to affect the obligations under that contract. Therefore, the answer to (c) above is, we believe, no. Question (b) above is a variation on (c) but may require special consideration because of the inability, perhaps, for an exchange or clearing or settlement system to be required to operate for some contracts only. We believe that the views of relevant exchanges and clearing/settlement systems need to be sought on this question.

5e	If the Government seeks new legislation, should it allow the use of powers following major operational disruption affecting a non-UK major financial centre?	As already mentioned in the Overview, we think the danger of non-recognition of a UK suspension order overseas is sufficiently serious to throw doubt on the effectiveness of such an order, particularly given the very international nature of treasury transactions. Secondly, it is difficult to envisage a situation where operational disruption in a non-UK major financial centre might justify the use of the power by the authorities in the UK, with the possible exception of the case where that centre's authorities have also issued a similar order. (We are not aware, however, of any such jurisdiction having introduced legislation enabling such an order.) In the remote possibility that the UK authorities think it appropriate to make a suspension order in the UK in respect of an event causing operational disruption overseas, we believe the power to make such an order could be useful. Many treasury transactions require performance in more than one financial centre. Take, for example, a currency swap between dollars and sterling. If the terrorist act was in New York and this prevented dollar payments from being made, should the sterling payer be obliged to pay sterling even though the dollar payment due on the same day could not be paid, particularly if it had been excused/suspended under NY/US law? This might give the sterling payer a wholly unexpected exposure, let alone a potential funding problem. This point is closely related to that discussed in 6g and 6h below. It is also the mirror image of the case for not restricting the effect of a suspension order to UK activities, discussed in 5d above.
6a	Which wholesale market obligations should be included in a suspension power's maximum scope? Please draw attention to any particular issues that might arise (e.g. regarding proprietary rights).	We believe the basic payment and delivery obligations arising from transactions in all wholesale markets should be included in the scope of an order. We do not understand the concern with "proprietary rights", if all that is being done is to suspend payment or delivery obligations. There is no reason why a late payment (because of the suspension granted by the order) should not be compensated for by a contractual right to recover interest when the suspension is over – though we appreciate that the bond markets do not provide for interest on interest or, except where payment is "improperly withheld or refused", on overdue principal.
6b	Should retail obligations be included in a suspension power's maximum scope?	Retail and wholesale markets should be treated in the same way, unless there is a satisfactory way of defining a very clear dividing line between them.
6c	If a distinction should be made between retail and wholesale obligations, how	We suggest that there should be no distinction between retail and wholesale obligations. Apart from the difficulty of definition, there would be the anomaly of both wholesale and retail

	should the line be drawn?	customers potentially holding securities or even some kinds of derivative. It would seem odd for the same obligations to be treated differently.
6d	Which insurance contracts, if any, should be included in a suspension power's maximum scope?	We do not support the suspension of insurance contracts in general. That would have major implications for commercial activity throughout the UK, and should be addressed in the same way as other systemic breakdown risks. However, there is justification for making an exception for credit insurance, since this is viewed in the market as similar to certain types of credit derivative, which would be the type of financial contract that would be covered by a suspension order.
6e	Are there any other types of obligations suitable for inclusion in a suspension power's maximum scope?	We do not believe so. The legislation should be concerned only with obligations arising out of the financial markets.
6f	Should obligations governed by foreign law, but falling to be performed in the UK, be subject to the suspension power? How important is this? How might such an effect be achieved?	Yes. In addition, obligations to be performed **outside** the UK under a contract governed by a foreign law should also be subject to the suspension power if other obligations of a similar nature (payment and/or delivery), whether owing by the same party or the other party, arise under that contract and are to be performed within the UK. This is because we believe that both sides of the contract, not just that side that is impossible of performance, should be within the scope of the suspension order – see 6g and 6h below. As mentioned in the Overview, without international concerted action with respect to suspension orders and their recognition, there would be likely to be argument about the effectiveness of a UK order that purported to override a contract governed by a foreign law, especially insofar as the order purported to suspend the obligation to pay or deliver outside the UK
6g	Should a suspension order only be able to apply to all the obligations arising from a contract? Or are there cases for which it could be preferable to suspend some obligations arising from a contract, but not others?	So long as the types of contract that are to be covered by a suspension order, and the types of obligation under such contracts, are clearly defined, we consider that both sides of those contracts, not just one side (if only that side is impossible of performance), should be suspended. As a matter of risk exposure, treasury contracts are looked at as a whole – and often on a net basis – and it could therefore lead to unexpected and undesirable distortions, and perhaps also funding problems, for one side of the contract to be suspended and not the other. However, this should not (a) prevent parties who wish to perform (or agree on some other form of discharge of) their obligations – or even only one side of the contract – from doing so if they agree at the time;

		or (b) override contractual provisions that are designed to cover the contingency.
6h	Should a suspension power only be able to affect obligations which could not be fulfilled as a result of the disruption?	Consistently with 6g above, all of the basic obligations (payment and delivery) should be suspended (subject to the two qualifications above) rather than just those that are incapable of performance. This is matter to which we attach importance.
6i	Are there any other restrictions that should apply to how a suspension power could be used?	There should be clear rules concerning suspension powers. No specific further restriction occurs to us as desirable.
6j	Have you any comments about consequential effects of a suspension power?	There could be serious consequences arising out of the operation of a suspension power, for a corporate, especially in the disruption of normal cash flows. In such an event, a corporate may need borrowing facilities, or additional borrowing facilities, which might be needed at short notice. The banks should therefore be permitted / encouraged to provide or extend credit facilities at short notice, possibly by the relaxation of prudential guidelines, to prevent a systemic breakdown. This refers mainly to the practical situation following a severe disruption, whether or not the Treasury is intending to use its suspension or other powers. So far as the legislation is concerned, we suggest that the consequences of a suspension of obligations be left to be dealt with contractually and, in the case of a suspension of obligations on an exchange or clearing or settlement system, by its rules or terms of use. For example, it is open to the parties to agree that if a payment is late, for whatever reason (including by operation of a suspension order), interest will accrue on the late payment. Other contractual rights might flow from a late payment, such as acceleration or close-out rights on cross-default or the commencement of a grace period clock leading eventually to cross-default. This type of consequence is a matter for prior (or subsequent) negotiation between the parties and should not be interfered with by legislation. For this reason, we disagree with the premise in the second bullet point in Box 6.1of the consultation paper – that "use of the suspension power effectively freezes positions…and heads off litigation". To have this effect in all circumstances (as opposed just to the payment and delivery obligations under the contract) would entail considerable interference with contractual provisions (with potential Human Rights Act implications) and is not something that we think would be desirable. (See also paragraph C of the Overview.) A related, but different, point is whether the legislation should provide relief, not just against the impossibility of performing an obligation because of the external event, but also against consequential financial difficulties (see para 6.23, fourth bullet, of the consultation paper). We do not think the legislation should go that far, particularly as it might stray into types of

		obligation which would not themselves be within the scope of the suspension order. In other words, the order should suspend only those obligations (or contracts) falling within its specific scope and then only for so long as the order continues to apply. If the suspension leaves a creditor in difficulties, he should not be given relief under the order (otherwise, what about the creditor's creditor?)
6k	After a suspension period should obligations return immediately, as soon as practically possible, or is some other approach preferable?	A staged resumption may be necessary, but this should be dealt with in the order (or an extension order). None of this rules out resumption of performance under a contract by mutual agreement between its parties.
6l	Do you support the idea of a suspension power, subject to the constraints of paragraph 6.28?	Only with international approval, as discussed in paragraph A of the Overview. If created, it should only be used in extreme circumstances.
7a	Should recognised bodies be within the maximum scope of a direction power?	See paragraph B of the Overview.
7b	Should payment systems be within the maximum scope of the direction power? If so, which?	Ditto
7c	Should functions of institutions that are similar to the functions of recognised bodies and payment systems be within the maximum scope of a direction power?	Ditto
7d	What actions should directions to infrastructure be able to order? Should directions themselves effect changes, where appropriate, or only be able to require infrastructure to take actions?	Ditto

7e	Have you any comments about consequential effects of a direction power?	Ditto
7f	Do you support the idea of a direction power, subject to the constraints of paragraph 7.29?	Ditto. Also, see 6l.
Aa	Have you any comments about the usefulness of the Banking and Financial Dealings Act 1971 powers in responding to major operational disruption?	It seems to us that the 1971 Act is not a suitable vehicle for providing relief following a major disaster leading to market disruption. As stated in the consultation paper, the effect of declaring a bank holiday affects not just the banking community and could operate unduly widely, at a time when businesses might be struggling to motivate employees to turn up to work. Furthermore, a bank holiday cannot be declared retroactively; and in any event, given the very narrow effect of the word “compellable” in Section 1(4), creating bank holidays would not have the effect of legitimising the deferral of payments, etc. Even if the scope of Section 1(4) was widened, this would seem to be an unnecessary duplication of the powers sought under the suspension order regime. In short, we would envisage that use would simply be made of the power to issue a suspension order, thus making the modernization of the 1971 Act unnecessary for the purposes of alleviating financial markets disruption. Even if, as we suggest, no legislation for the creation of the power to make a suspension order is introduced – at least without wide international approval – we do not think the markets or their participants would derive any real comfort from the 1971 Act, even if amended, so do not recommend its amendment.
Ba	Have you any comments on this draft Regulatory Impact Assessment?	The Draft RIA only addresses the immediate contingency requirements in recognition of the need to address situations which were previously beyond reasonable expectations. It is important to take such immediate actions, but then to ensure that the recognized bodies and infrastructure providers take appropriate action to build more robust structures and systems so as to make the use of statutory powers less likely. At present it is difficult to see how the various aspects will interact with each other in the UK, but it is preferable that wherever possible, this is handled by the various market providers rather

		than by legislation. The market providers are able to be more responsive to possible market risks than legislation, and the international nature of the financial markets means that contingency arrangements might be provided cross border, in the way that London supported New York after 11 September. There is a need to ensure that the major financial centres have legislation to address the current perceived risks that is complementary.

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