

THE FINANCIAL SERVICES
PRACTITIONER FORUM
ANNUAL REPORT

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This document contains the second
Annual Report of the Practitioner Forum.

It describes another full and productive
year of work.

I would like to take this opportunity to
thank all my colleagues for the significant
contribution they have willingly made.

David Challen
CHAIRMAN

JANUARY 2001

THE FORUM'S SECOND YEAR

INTRODUCTION

This is the second Annual Report of the Practitioner Forum.

The Practitioner Forum was set up by the Financial Services Authority in 1998 to create a high-level body to which it could turn for opinions on key issues having an impact on regulated firms. The Financial Services and Markets Act ('the Act'), which received Royal Assent on 14 June 2000, took up the idea that such a body (together with a parallel grouping of consumer interests – the Consumer Panel) had an important place in the regulatory framework and could play a part in ensuring the accountability of the FSA. The Forum will adopt the name Practitioner Panel used in the Act when it comes fully into effect.

Sections 8, 9 and 11 of the Act set out the requirements for the FSA to consult practitioners, to establish the Practitioner Panel and to consider its representations.

The wording of these three sections is shown in Appendix 1.

MEMBERSHIP

The membership of the Forum (shown in Appendix 2) is drawn from nominations made by various trade associations representing financial services businesses. We expect to appoint some new members shortly to establish a pattern of rotating membership, to broaden further the collective experience available to us and to reflect the membership criteria set out in the Act.

THE ROLE OF THE PRACTITIONER FORUM

The terms of reference of the Forum have not changed as a result of the new statutory status. They remain to help the FSA carry out its objectives and to ensure that it takes proper account of considerations set out in the legislation. These are broadly designed to ensure that regulation is efficient, is not needlessly burdensome, allows the financial services industry to be innovative and competitive and allows it to maintain the position of the United Kingdom in the international market for financial services.

The Forum has four principal functions:

- to monitor the FSA's effectiveness as seen by the industry;
- to communicate to the FSA issues of general concern to regulated businesses about regulation in practice;
- to respond when requested to by the FSA with a practitioner view of key regulatory issues; and
- to contribute a broad financial industry view on the formulation of FSA policy and on the response the FSA proposes to make to representations it has received during any formal consultation process.

The activities of the Forum are no substitute for the extremely important role played by the various trade associations in representing the interests of their members. These interests need to be advanced and vigorously promoted by such associations, which are generally staffed to do so. To play a constructive role on behalf of the regulated industries, the Forum must act as an interpreter between the industries and the FSA, able to offer a dispassionate but forceful industry view on issues of particular importance to regulated firms, while recognising that the FSA's duties also require it to take account of other points of view. We believe we achieve most through a low profile exercise of influence at a senior level, designed to steer the FSA towards regulation which is effective but not intrusive and which gains the willing assent of those regulated. Nevertheless if a higher profile were ever necessary, in our judgement, to advance industry interests, we should not hesitate to adopt it given the status which the Act confers on the Practitioner Panel.

The Forum has no staff and has requested no specific budget from the FSA. Ad hoc expenditure (such as the cost of this annual report) is agreed with and paid for by the FSA. Since the costs of the FSA are ultimately paid by the regulated businesses we believe this continues to be the right approach for the time being. We keep under review whether we can continue to operate in this way and be fully effective. If we ever felt it necessary we would request a formal budget. To operate as we do requires the generous support of the employers of the members of the Forum, which we should like to take this opportunity to acknowledge. In addition we should like to acknowledge the administrative assistance we have had throughout the year from the FSA Secretariat.

ACCESS TO THE FSA

We have continued to have access to the Chairman of the FSA and, through him, to the Board. The Chairmen of the FSA and the Forum met regularly during the year and these meetings provide the opportunity to raise matters which the Forum members consider to be significant. In addition, of course, there is frequent ad hoc contact between Forum members and Directors and senior executives of the FSA. We also met the FSA Board formally twice during the year.

We again received regular presentations from senior FSA executives about their areas of responsibility, particularly in relation to policy developments on which they sought our initial views before going to wider consultation. We have found these meetings frank and open and we believe we have made a valuable contribution to influencing the content and tone of FSA policy.

When the Forum was established it was envisaged by the FSA that independent surveys of industry opinion would be an important source of information to the Forum and thus to the FSA.

Last year we began the process of benchmarking industry opinion and published the results with our annual report.

It is not our intention to repeat this exercise until the new regulatory regime has been fully implemented and the industry can assess how it is operating in practice. We expect therefore that the next full survey will not be conducted until 2002.

ACTIVITIES OF THE FORUM DURING THE YEAR

We have met monthly and been engaged, in addition, in regular consultation together on issues arising which require prompt attention. Some of our work has been led by sub-groups working up our ideas for subsequent consideration by the full Forum.

Our activities can best be described under the following headings:

(a) Financial Services and Markets Act

A significant proportion of our work in the first half of the year was devoted to seeking improvements in the legislation. Last year we reported that we had been thus far unsuccessful in persuading the Treasury to move on two issues which we considered to be important. As a result of our forceful arguments (and, no doubt, of similar arguments made by others) we were finally successful in obtaining a considerable measure of improvement in the Bill.

The first issue related to the statutory immunity to be granted to the FSA. We argued strongly that, if the FSA were to be granted this immunity, it should be liable to have compensation awarded against it if, through the negligent use of its powers, it caused damage to a regulated individual or firm. The Act in its final form now gives the Complaints Commissioner the power to recommend that the FSA make a compensatory payment to the complainant. It also gives him the power to insist that the FSA's response to such a recommendation be published. While this leaves discretion with the FSA we believe it would be hard for it to resist a well-argued case for compensation. The FSA has recently proposed that the Complaints Commissioner should be appointed on the recommendation of a small committee including the Chairman of the Forum.

The second issue related to the formal accountability of the FSA to the Practitioner Panel. We argued that if a situation should arise in which the FSA rejected formal advice offered by the Panel it should be bound to explain its reasons in writing, which the Panel would be free to expose in taking the debate into the public domain. We persisted with this issue not because of any fear that under the present management of the FSA this is likely to be a difficulty but because the arrangements made in the Act must work in different times and with different people. Our insistence on this point ultimately prevailed, which means it would be much more difficult for a future administration of the FSA to sideline the Practitioner Panel if it found its views inconvenient.

A third issue on which we spent a good deal of time was the interaction of the market abuse provisions of the Act and the functions of the Takeover Panel. We supported the arguments of the Takeover Panel that the Bill should be amended to preserve its position as the sole arbiter in takeover disputes. Although the Treasury resisted these arguments, the airing given to the issue has led to extensive and, we understand, constructive discussions between the FSA and the Takeover Panel to try to arrive at a modus operandi which minimises the risks which concerned the Takeover Panel.

(b) Consultation

The enormous programme of consultation by the FSA on policy has continued unabated. Although there are understandable concerns about ‘consultation fatigue’ amongst those in the industry and trade associations who bear the brunt, no-one would advocate a different approach. In principle, the industry must welcome the openness implicit in such wide-scale consultation.

Our role in this process has continued as outlined in last year’s Annual Report. We are informed and consulted as the FSA develops its broad policy approach towards matters which will become subject to detailed public consultation, and we aim to review the key features of draft consultation papers before their publication to help the FSA avoid suggestions which would be unworkable and which would be dismissed by the industry. We do not then provide formal detailed comments during the consultation period, believing this is best left to the trade associations and individual firms. Finally, however, we rely on being given by the FSA at the end of the consultation period a synthesis of the key issues which have arisen and being told how they propose to address these issues. This gives us an opportunity to comment if we feel the FSA is giving insufficient weight to points raised by the industry during consultation.

Issues on which we feel our input has had a material influence on the direction of the FSA’s policy include:

- The response to recommendations in the Cruickshank Report
- Ombudsman Scheme arrangements
- Allocation and collection of fees post N2
- Comparative information
- Training and Competence standards
- Enforcement
- Controlled functions
- Senior management responsibilities.

(c) Timing of N2

We have kept ourselves closely informed on the pace with which the Act is being made ready for full implementation through the introduction of secondary legislation.

Now that the Act is on the statute book there is a natural wish that it should be brought into effect as soon as possible. This is a wish which the industry shares

provided a practical timetable is established which allows adequate time for preparation, including training and the introduction and testing of new systems. So our view is that N2 should be fixed by the Treasury to allow implementation to proceed with deliberate speed but not undue haste. We hope that this balance, which is in the interests of the FSA and the industry and, we believe, the industry's customers, will be appropriately struck. We do not wish to see early experience of regulation under the new Act marred by imperfections resulting from a rushed process which could be avoided with a common-sense approach to implementation.

(d) A new regulator for the new millennium

This document, published in January 2000, and developed in a further document in December, represents the key statement of overall policy towards regulation made to date by the FSA. We believe that our contribution since the founding of the Forum to the FSA's thinking on its approach to its task has been reflected in this document. We warmly welcome the principles it contains.

(e) Other

A number of other matters received our attention during the year.

We were consulted on the various elements of the FSA's budget and are satisfied that costs are being carefully controlled. We were also consulted on the budget for the Financial Ombudsman Service.

The Chairman of the Forum took a formal part in the first Annual Meeting run by the FSA in July 2000.

We maintained contact with the Consumer Panel to ensure that a channel of communication exists between us for the discussion of issues where it is important for each to understand the other's views.

We also agreed with the FSA a secondments policy which would encourage and facilitate a greater exchange of expertise between the industry and the FSA and, through trade associations, we urged the industry to respond positively to secondment requests from the FSA.

CONCLUSIONS

As we said last year, to be fully effective on behalf of the industry we need to be made aware of key issues of concern to regulated businesses. Some of these will be best pursued through other channels, but wherever we feel there is a significant matter on which our involvement could be productive, we shall be happy to take it up with the FSA. The addresses and contact numbers of the members of the Forum appear in Appendix 2.

This account of our activities shows that we have had a busy year. The challenges which face the industry and the FSA in their relationship with each other remain complex; but in the last year we have increasingly felt that there is a shared objective to make the relationship a constructive one, conducted with goodwill.

APPENDIX 1

Arrangements for consulting practitioners and consumers

Taken from Part 1 of the Financial Services and Markets Act 2000

<p>The Authority's general duty to consult</p>	<p>8. The Authority must make and maintain effective arrangements for consulting practitioners and consumers on the extent to which its general policies and practices are consistent with its general duties under section 2.</p>
<p>The Practitioner Panel</p>	<p>9.(1) Arrangements under section 8 must include the establishment and maintenance of a panel of persons (to be known as 'the Practitioner Panel') to represent the interests of practitioners.</p> <p>(2) The Authority must appoint one of the members of the Practitioner Panel to be its chairman.</p> <p>(3) The Treasury's approval is required for the appointment or dismissal of the chairman.</p> <p>(4) The Authority must have regard to any representations made to it by the Practitioner Panel.</p> <p>(5) The Authority must appoint to the Practitioner Panel such –</p> <ul style="list-style-type: none"> (a) individuals who are authorised persons, (b) persons representing authorised persons, (c) persons representing recognised investment exchanges, and (d) persons representing recognised clearing houses, as it considers appropriate.
<p>Duty to consider representations by the Panels</p>	<p>11.(1) This section applies to a representation made, in accordance with arrangements made under section 8, by the Practitioner Panel or by the Consumer Panel.</p> <p>(2) The Authority must consider the representation.</p> <p>(3) If the Authority disagrees with a view expressed, or proposal made, in the representation, it must give the Panel a statement in writing of its reasons for disagreeing.</p>

APPENDIX 2

Members of the Practitioner Forum in 2000

Name, Title, Organisation	Contact numbers
David Challen (Chairman) <i>Co-Chairman</i> Schroder Salomon Smith Barney	Tel: 020 7986 7010 Fax: 020 7986 8132 E-mail: david.challen@ssmb.com
Barry Bateman <i>President</i> Fidelity Investment Management Ltd.	Tel: 01732 777105 Fax: 01732 777441 E-Mail: barry.bateman@uk.fid-intl.com
Donald Brydon <i>Chairman/Chief Executive Officer</i> AXA Investment Managers SA	Tel: 020 7003 1501 Fax: 020 7003 1507 E-Mail: donald.brydon@axa-im.com
Amelia Fawcett <i>Managing Director</i> & <i>Chief Administrative Officer</i> Morgan Stanley Dean Witter	Tel: 020 7425 4940 Fax: 020 7425 3032 E-Mail: Amelia.Fawcett@msdw.com
Ian Harley <i>Chief Executive</i> Abbey National plc	Tel: 020 7612 4000 Fax: 020 7612 3091 E-Mail: ian.harley@abbeynational.co.uk
Richard Harvey <i>Deputy Group Chief Executive</i> CGNU plc	Tel: 020 7662 7532 Fax: 020 7662 2754 E-Mail: richard_harvey@cgnu.net
Brendan Nelson <i>Chairman Financial Sector</i> KPMG	Tel: 020 7311 6157 Fax: 020 7311 5891 E-mail: brendan.nelson@kpmg.co.uk
Michael Quicke <i>Group Chief Executive</i> Leopold Joseph & Sons Ltd	Tel: 020 7776 6801 Fax: 020 7776 6805 E-Mail: mquicke@leopoldjoseph.com
Martin Ritchley <i>Chief Executive & Director</i> Coventry Building Society	Tel: 01203 653513 Fax: 01203 653576 E-Mail: mritchley@coventrybuildingsociety.co.uk
Roger Sanders <i>Principal</i> Roger Sanders Associates	Tel: 020 7924 3598 Fax: 020 7924 5217 E-Mail: rogers@rogsan.co.uk
Paul Spencer <i>Chief Executive (UK)</i> Royal & Sun Alliance Insurance Group	Tel: 020 7588 2345 Fax: 020 7337 5445 E-Mail: Paul.Spencer@UK.royalsun.com

APPENDIX 3

Matters considered by the Practitioner Forum in 2000

January	FSA budget 2000/01 Market infrastructure – summary discussion paper Role of the Takeover Panel
February	Interprofessionals code – issues paper FSAVCs – issues paper ahead of CP27 response paper Endowment mortgages – update paper Freedom of information issues Financial Ombudsman Service
March	Approved persons – CP26 response paper Independent investigation of complaints against FSA Market infrastructure – discussion paper
April	Senior management responsibilities – CP35 response paper Approved persons principles and code – CP26 response paper Financial Ombudsman Service – CP33 response paper Stakeholder pensions; differentiated conduct of business regime – issues paper Supervision manual – summary draft CP64 Prudential sourcebook – CP31 response paper
May	Fees post-N2 – summary CP56 Comparative information – CP28 response paper Enforcement manual – summary CP65
June	Code of market conduct – issues paper Presentation of enforcement case studies FSA's draft response to Cruickshank report

July	Best execution – issues paper Disclosure – issues paper Training and competence sourcebook – CP34 response paper Polarisation – London Economics report Mortgage endowments – update paper FSA secondments policy
September	Money laundering – CP46 summary response paper Mortgage regulation – issues paper Financial Ombudsman Service funding Grandfathering
October	Training and competence sourcebook: final rules – CP60 feedback statement Update on Project ARROW e-commerce theme
November	Controlled functions – CP53 response paper Post-N2 fees – feedback statement and CP79 Update on strategic change programme Update on Project ARROW and New Regulator document Update on Project ARROW fairness theme Pensions review – update paper Response to Cruickshank report on disclosure FSA’s whistleblowing procedures
December	Comparative Information – update paper Update on Project ARROW low inflation & money laundering theme Electronic money – policy statement FSA inward & outward secondments – update paper

