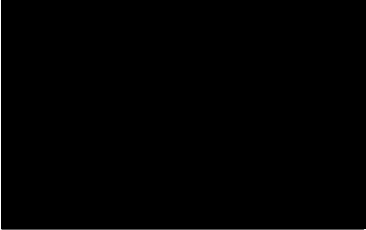


The Rt. Hon. Nicky Morgan MP
Treasury Select Committee
House of Commons
London
SW1A 0AA

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www.fca.org.uk

28 March 2018

Dear Nicky

Aviva plc (the Company) – preference shares

Thank you for your letter of 20 March 2018 in relation to the proposals for the treatment of preference shares that were announced by Aviva plc on 8 March 2018. Clearly, given Aviva's announcement on 23 March 2018, the circumstances have changed since then. However, this case has raised serious issues which the FCA has been making active enquiries about since the initial announcement on the 8th March. I have set out the views of the FCA below.

You have rightly highlighted the timing and content of the communication of these proposals (along with the original securities offering) and it is here that the FCA's regulatory responsibilities are focused. While the ultimate decision on the pursuit of this course of action lay with the Company, were it to have chosen to take the action in the form that it suggested, this would have involved a special resolution of the applicable constituency of shareholders followed by an application to the High Court seeking confirmation of the reduction. As such the proposal would have been achieved (or prevented) according to the applicable company law framework, subject to the Company satisfying a court that the cancellation of the shares is appropriate.

Your letter requests the FCA's reflections on its approach to this case and poses a number of more specific questions relating the FCA's actions in response to the proposals. As the FCA is conducting enquiries into Aviva's compliance with the FCA's applicable requirements, it would be inappropriate for me to comment on whether Aviva did or did not comply. Given that Aviva is a listed company I trust that you will understand the reasons for this.

Please note that the FCA is not conducting a formal investigation under either s167 or s168 of the Financial Services and Markets Act 2000 at this stage but rather we are undertaking a review to establish whether there are circumstances that might require an investigation to be conducted. It is the firm's compliance with the Market Abuse Regulation¹ that is forming the primary basis for the FCA's enquiries.

¹ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation)

Our immediate concern had been to understand the basis upon which Aviva was acting, including the clarity of the information available to securities holders (and as such we asked the Company to provide the further information on its website in the week commencing 12 March) along with the market integrity concerns that the proposals raised. The FCA welcomes the fact that the Company has since clarified the position in its announcement on the 23 March 2018 and Mark Wilson's statement that "preference shareholders can rest secure in their holdings". However, the FCA's enquiries continue and, in particular, we are focusing on the treatment of those holders (and potentially now former holders) of the Company's irredeemable preference shares that may have lost out financially as a result of these events. I will update the Committee, and other MPs who have written to me on this point, in due course.

With regard to your specific questions, please find the FCA's responses below:

1. *Is the FCA satisfied that Aviva management's assertion that these shares could be cancelled at par value with the approval of ordinary and preference shareholders voting as a class was communicated in a manner that was consistent with the Listing Rules, and the Disclosure and Transparency Rules?*

As noted above, the FCA is currently conducting an enquiry into these matters and as such the FCA believes it would be inappropriate to comment on this matter at this stage.

2. *Is the FCA satisfied that Aviva management's intention to cancel these shares at par value was communicated in a manner that was consistent with the Listing Rules, and the Disclosure and Transparency Rules?*

Our enquiries into these matters will also consider this question and so we are not able to make a public statement on this at this point. I will, of course, update the Committee on both points in due course.

3. *How far does the fact that Aviva preference shares were originally marketed to retail investors alter the FCA's approach to this issue? If the FCA considers that the information provided regarding the redeemability of these shares was misleading, what options are available to it?*

We intend to consider these matters as part of our enquiries.

I would, nevertheless, highlight that our assessment will have to be made in the context of the issue date of the preference shares concerned, the extent to which any marketing materials that may have been used in addition to the prospectus still exist following the original primary securities offering and the prevailing regulatory regime and market standards.

The preference shares in question were issued by the Company over two decades ago and, regardless of the intended consumer of the original marketing, have traded on public securities markets ever since then. It is possible that much of the investment advice into these products, since they have been traded, would not have originated from the original marketing in 1992 or the prospectuses, but rather it may be that investors have been influenced by or relied on more recent advice or statements or a more general view of the rights of these types of instruments. We are aware that a number of holders of the securities have indicated that they were unclear about the circumstances in which a reduction in capital could occur.

4. *What is the FCA's role in resolving any dispute regarding whether preference shares are in fact redeemable?*

The FCA's role and responsibility lies primarily in the applicable legal framework and its implementation via the applicable regulations, rules and principles that underpin it. That said we are clearly conscious of our overarching statutory objectives and as a result we were exploring the extent to which we could and should be involved in the resolution of the legal questions in the event that the Company chose to pursue the proposal.

Furthermore, while the Company's proposals are not now going ahead, given the impact on the broader market for listed preference shares, and the important role we play in ensuring market integrity, we see value in a broader review of the legal issues that this case has raised along with consideration of how best to ensure a market wide understanding of the rights and terms of preference shares. However, we would note that consideration of legal changes which would prevent the approach proposed by Aviva would not necessarily be within the powers of the FCA.

5. *How far does the fact that Aviva plc has subsidiaries that are authorised by the FCA, and carry out regulated activity, alter its approach to this issue?*

There is a difference between our roles as a markets regulator and as a regulator of financial services firms. Broadly, as a financial services regulator our role is to oversee all of an authorised firm's activities relating to regulated business. However, as a markets regulator we oversee firms' activities relating primarily to their listed securities and compliance with primary and secondary markets legislation. Because they relate to Aviva's shares and not its regulated financial services activities, in this instance our enquiries will be made in our capacity as markets regulator. The fact that Aviva plc has subsidiaries that are authorised by the FCA, and carry out regulated activities, will not alter our approach to our markets-focused enquiries. Furthermore, the FCA (coordinating with the PRA) approves and supervises some senior managers in Aviva plc, under the Senior Insurance Managers Regime (SIMR). This is because they have a significant influence over the activities that are carried out in their subsidiaries, and as a result we have a direct relationship with them. These individuals are subject to the conduct rules, which include a requirement to observe proper standards of market conduct (COCON2 - 2.1.5).

6. *What options are available to the FCA to address concerns about the functioning of the wider market for preference shares, including concerns about their redeemability?*

As noted above, the FCA regards market wide understanding of the legal issues that these proposals raised as being key to ensuring that investors are able to make properly informed investment decisions and we are considering how best to achieve this. In the event that the applicable legal framework does not provide adequate protection for investors then the FCA will offer its assistance in resolving this issue.

These instruments were issued more than two decades ago and I would highlight that since its inception and in the face of some opposition, the FCA has taken action in order to restrict the retail distribution of regulatory capital instruments and also to ensure that prospectuses are comprehensible to their target investors. We keep these issues under constant review.

In summary the FCA will continue with its enquiries into the disclosures made by the Company prior to its announcements regarding the Company's proposed return of capital. We will also monitor events carefully, paying particular attention to the treatment of the holders of the Company's affected preference shares during the relevant period and to wider market for similar instruments.

I hope this letter is helpful in clarifying some of the questions you have asked and I trust that you will understand why it is not appropriate for me to expand further on the results of our enquiries to date. The FCA will be issuing this letter on its website and, given the nature of its contents, through a regulatory news service.

Yours Sincerely

A handwritten signature in black ink that reads "Andrew".

Andrew Bailey
Chief Executive