

Rt Hon Nicky Morgan MP
Chair of the Treasury Committee
House of Commons
Committee Office
London
SW1A 0AA

29 November 2018

Dear Nicky

The Treasury Select Committee has requested that the FCA provide its assessment of the impact of the UK's exit from the European Union in three areas: where the UK leaves the EU without an agreement, either on 29 March 2019 or after the transitional or implementation period on 31 December 2020; the draft Withdrawal Agreement; and the outline of the political declaration on the framework for the future relationship between the EU and the UK. I have enclosed our assessment.

As a public body, the FCA takes no position on the UK's withdrawal from the European Union as such. Nor do we advocate a particular approach to withdrawal. Instead, we assess Brexit and what might happen over the coming months strictly through the lens of achieving our strategic objective to ensure that relevant markets function well, and our specific operational objectives - to protect consumers, enhance market integrity and promote competition.

On this basis, we are working to be prepared for all possible outcomes, including a 'no deal' Brexit in March 2019. Together with the Government and the Bank of England, we have taken significant steps to mitigate cliff edge risks associated with the 'no deal' transition, including by maintaining important consumer protections. However, and notwithstanding these actions, our view is that this scenario would create significant challenges and risks in terms of firms' readiness, potential market disruption and insufficient public-policy solutions put in place on the side of the EU. Therefore, from the perspective of our objectives we strongly support an implementation period and we have consistently called for one to be put in place.¹

The draft Withdrawal Agreement creates such a period until December 2020. During this time, while the UK would not be a member of the EU, UK firms would continue to be able to undertake cross border business using the financial services passports provided as part of the single market.

During the implementation period, the UK would continue to be subject to EU laws - both those in existence now and future laws that come into effect before December 2020. However, the UK would no longer be part of EU decision making structures and the FCA would no longer be a voting Board Member of the European Securities and Markets Authority (ESMA) and thus no longer formally involved in decision-making. While some participation may continue, the EU and UK have not yet set out how this would work in practice.

¹ [Letter from Andrew Bailey to the Treasury Select Committee, 13 January 2017](#)

Supervisory cooperation between EU and UK authorities is important to enable us to meet our objectives through the continuous oversight of firms. The draft Withdrawal Agreement provides for this co-operation to continue, and while the precise organisational arrangements remain to be settled, during the implementation period we hope that they will take the form of continuing current practices.

The draft Withdrawal Agreement therefore provides benefits by removing cliff-edge risks and creating a basis to preserve cooperation between the FCA and EU27 regulatory authorities. It does however present some challenges in terms of the risk that the UK will be subject to new rules where it has not participated in decisions around their creation. We would seek to reduce these risks by continuing to engage closely with EU authorities during the implementation period, but the influence we will have is uncertain. But, to be clear, in terms of the FCA's objectives, our assessment is that the risks presented by an implementation period are less than the risks of a no-deal scenario.

In our view, an important purpose of such an implementation period is to provide an effective bridge between the UK's withdrawal from the EU and the coming into effect of the future relationship. While the draft Withdrawal Agreement provides that the implementation period can be extended by agreement between the UK and the EU for up to one or two years, and this could be helpful in reducing further cliff edge risks at the end of the period in the event of no agreement, our preference would be to conclude the negotiations with agreement on the future relationship as soon as possible.

Beyond the implementation period, we expect that both the UK and the EU would have autonomy to set their own rules. As part of the political declaration on the framework for the future relationship, there is a commitment to work towards reciprocal equivalence agreements to support open financial markets. We welcome the commitment in the declaration that both sides should respect their regulatory and decision-making autonomy and ability to take equivalence decisions in their own interest while equally respecting their ability to adopt measures necessary for prudential reasons. We believe that the proposed commitment for both sides to conclude equivalence assessments of each other in good time before the end of the implementation period provides effective assurance of an end point to transition, while providing time to deal with any consequences of the equivalence assessments. We believe this is a matter of mutual interest between the UK and EU. Finally, we welcome the commitment in the proposed agreement to transparency and appropriate consultation in the process of adoption, suspension and withdrawal of equivalence decisions and information exchange. We believe that, with further work on the detail, this could provide appropriate assurance and continuity for the operation of financial markets consistent with our objectives.

The FCA is strongly committed to open financial markets because of the benefits they provide to all parties and their importance to our objectives. We believe that users of financial markets should be able to choose where they do business. The best way to maintain open markets is through a shared commitment to the objectives of financial stability, financial conduct, market integrity and fair competition. This requires a common commitment to international standards and recognition of each other's supervisory and regulatory regimes. Also, we strongly support continuing close supervisory cooperation. The UK and the EU will remain highly interconnected and we believe it is in both parties' interests to cooperate on regulatory and supervisory matters with each other and in international bodies.

We continue to be closely involved with supervisory and regulatory bodies internationally. Regardless of the future relationship between the UK and the EU, our financial markets will remain open for business and we are committed to working with international partners. We work closely with IOSCO, the Financial Stability Board and other standard setting bodies and intend to maintain and develop this engagement in the future. International engagement has always been a core part of our work, and it will remain so.

After the implementation period, and subject to the need to ensure consistency with international standards and agreements with other jurisdictions, the UK would have more discretion over its regulatory regime. Consistent with this discretion, it is important that we have appropriate levels of accountability and scrutiny by Parliament. We welcome this and are ready to work with Parliament and the Government to ensure the UK continues to have a world class regulatory regime that promotes high standards of financial conduct, market integrity and fair competition.

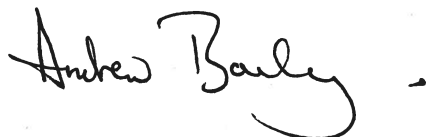
In conclusion, I would draw out three points from our assessment. First, from the perspective of our statutory objectives, an implementation period is preferable to exit without agreement next March. The FCA has undertaken a large amount of work with other authorities and with firms and markets in order to mitigate the risks of an abrupt exit. But our advice is that there remain significant risks to our objectives which we cannot at this time commit to mitigate, in large part because of our dependence on authorities in the EU to take actions which so far has not happened.

Second, and again from the perspective of our statutory objectives, it is better to have an implementation period in place which provides a bridge to the new relationship between the UK and the EU so that there is greater clarity over future regulatory arrangements.

That said, the third point is that there is good reason to keep the duration of the implementation period to a minimum. This is in large part because while the arrangements for such a period provide assurance on market access and the inherited regulatory regime, there is remaining uncertainty around the role of the UK in the governance of the pipeline of EU legislation and rule-making during this period. We therefore welcome the commitment in the political declaration for both sides to undertake during the implementation period equivalence assessments in financial services regulation where those are provided for.

I hope the Committee finds this assessment helpful, and I look forward to the hearing next week.

Yours Sincerely,

A handwritten signature in black ink that reads "Andrew Bailey". The signature is written in a cursive style with a long, sweeping tail on the letter "y".

Andrew Bailey
Chief Executive