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*Balance of Competences Review  
Single Market: Financial Services and  
the Free Movement of Capital  
HM Treasury  
1 Horse Guards Road  
Westminster  
London, SW1A 2HQ*

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*Submitted by email to [balanceofcompetences@hmtreasury.gsi.gov.uk](mailto:balanceofcompetences@hmtreasury.gsi.gov.uk)*

Dear Chancellor

**J.P. Morgan's response to the UK Government Review of the Balance of Competences: "Single Market: Financial Services and the Free Movement of Capital"**

The United Kingdom is the home to J.P. Morgan's headquarters for Europe, the Middle East and Africa and from where we conduct business all across the EU. J.P. Morgan today employs nearly 17,000 people in nine different UK locations, the vast majority of our employees in Europe. Our presence as the largest private sector employer in Bournemouth is linked to the success of London as a financial centre. Given the size of our presence the UK, the review of competences between the European Union and the UK with respect to the regulation of financial services is a matter of great interest to our firm. We welcome HM Treasury's work in this regard and are grateful for the invitation to address some of the issues raised by the consultation.

We have witnessed over the past two decades the creation and implementation of common rules governing the EU's Single Market for financial services, and would note that the UK has played a leading role in ensuring the cohesion and robustness of the region's legislative framework. Its development is important for the future prosperity of the region. For a firm like J.P. Morgan, our ability to play a proper role in facilitating economic activity at a local, regional and global level is related to our access to markets that are governed by clear, consistent rules and offer a competitive level-playing field. J.P. Morgan has always been supportive of efforts to enhance the stability and efficiency of those markets.

We provided input to and endorse the responses to the above-mentioned consultation prepared by the British Bankers' Association (BBA), the Confederation of British Industry (CBI) and the International Regulatory Strategy Group (IRSG), which address the questions of the consultation in more detail.

In this letter, we would like to highlight that:

- 1. The UK's role in the creation of a more harmonized EU legislative framework and rulebook and its continued expert input into European rulemaking, competition policy and trade negotiations is significant. The benefits to the UK financial sector and economy as a result of its membership of the Single Market are considerable and its important role as an entry point from third countries to that market should not be overlooked.*
- 2. The intensity of EU financial services regulation over the past five years has been as part of an internationally agreed response to a serious financial crisis. Reform efforts, supported by the UK, will help enhance financial stability. Going forward, the UK can play a key role in a) helping shift the focus from regulation to growth and employment, b) considering what changes may be necessary to improve the EU legislative process and c) ensuring the legislative process benefits from the UK's experience and expertise in financial markets.*

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The UK, and London in particular, has been a hub for global trade and commerce for centuries. Its development into its current role as the leading international centre for professional and financial services is related to its commitment to high standards of regulation as well as its support for a legislative framework that grants companies cross-border access rights. The freedom of establishment and service provision throughout the EU by use of the "single passport", and without further authorization requirements, is a driver for growth and competition. This contributed to the attractiveness of the UK as home base for global business: several so-called 'third country' institutions, like J.P. Morgan, have established subsidiaries in the UK and branch into other EU Member States. As a result, the UK accounts for 37% to the EU Single Market's wholesale financial services business and an even higher percentage in the foreign exchange and interest rate OTC derivatives markets.

The UK is not only an important player in Europe, but, as an EU Member State, is an attractive place in which to do business. It acts as a gateway to Europe for many financial institutions and corporates from around the world. Their establishment and subsequent growth in the UK is no coincidence, but is linked to the country's membership of the world's largest Single Market, the European Union.

The UK has been at the forefront of promoting the growth and efficient functioning of the Single Market, in particular in the area of professional services and through its expert involvement in the application of harmonized rules on financial markets via the development of a Single Rule Book. The establishment of the European Supervisory Authorities (ESA) and the strengthening of their role should help to ensure convergent supervisory practices. The resulting limitation of national discretion can be justified if EU-initiated legislation a) helps avoid harmful divergences carrying the potential to cause instability in financial markets; b) helps to foster improved market access and more robust competition across the EU; and c) respects the principles of proportionality and subsidiarity.

In addition, the enforcement of competition policy by the European Commission has further strengthened the EU Single Market and benefited market participants, including from the UK, by promoting choice for consumers and helping to ensure that European businesses are able to compete across Europe on equal terms.

As the executive of the world's largest Single Market, the European Commission has been in a strong position to negotiate with third country jurisdictions, notably the US, on issues of importance for globally operating firms such as J.P. Morgan. Through the EU-US Financial Markets Regulatory Dialogue (FMRD), the European Commission has negotiated a path forward with the US Commodities Futures Trading Commission in an attempt to smooth the application of new rules to the cross-border derivatives markets. The complexities of implementing globally coherent rules and the resulting implications for the wider economy increasingly require strong co-operation and co-ordination across jurisdictions. We welcome the efforts undertaken by the EU, with the strong support of the UK, to add a financial services regulatory dimension to current Transatlantic Trade and Investment Partnership talks. It is likely that the UK's objectives for sensible outcomes to cross-jurisdictional disputes are more likely to be achieved as part of the EU, rather than via bilateral discussions.

2. *The intensity of EU financial services regulation over the past five years has been as part of an internationally agreed response to a serious financial crisis. Reform efforts, supported by the UK, will help enhance financial stability. Going forward, the UK can play a key role in a) helping shift the focus from regulation to growth and employment, b) considering what changes may be necessary to improve the EU legislative process and c) ensuring the legislative process benefits from the UK's experience and expertise in financial markets.*

In Europe alone, around 40 pieces of legislation were tabled within a very short period of time as a response to the financial crisis. The regulatory reform process has been a particular priority for politicians around the world, given the impact of the crisis on economies and citizens. The EU financial reform agenda was largely driven by delivering on commitments made through international fora, at which the UK maintains a leading voice in its own right (such as the G20, the Financial Stability Board, the Basel Committee on Banking Supervision or the International Organization of Securities Commissions). This process aims to improve the safety and soundness of the financial system we operate in – including through new capital requirements, a bank recovery and resolution regime and the mandate to centrally clear certain classes of derivatives.

At the same time, the volume of legislative measures has inevitably placed a strain on market practitioners and regulators alike. It has also raised questions about the tipping point in the balance of improved regulation vs. the need to ensure that new rules do not hinder economic growth.

Proposals such as the Alternative Investment Fund Managers Directive (AIFMD); the Short Selling Regulation (SSR); remuneration rules for banks and asset managers; or the Money Market Fund Regulation include elements that can serve as possible examples for when the technical robustness of the provisions may have been compromised by the prioritization of political objectives. As a consequence, we see it as imperative that UK and EU policymakers work to identify and remedy cases where new rules have given rise to “unintended negative consequences” for sustained, real economic growth. We also welcome the fact that EU leaders, including from the UK, are conscious of the need to increasingly follow an ambitious, forward-looking growth agenda. First steps have already been taken by the European Commission's launch of a Green Paper on Finance for Growth. These proposals present further opportunities to promote a more efficient and effective use of EU capital markets.

Risks must be also contained within Europe that would hamper the free movement of capital – such as a possible division between those countries that are in and outside of the Banking Union. We are encouraged by the way in which the UK has addressed these concerns so far, by e.g. having received important assurances in the negotiations on the Single Supervisory Mechanism with regards to the supremacy of the EU Single Rule Book. A focus on a robust Single Market that does not discriminate against Member States that are not in the Eurozone should remain a priority going forward.

We have noted that coordinated regulation through EU-led initiatives can provide for greater consistency of rules and a basis for a level playing field. It is important, however, that EU action always follows the principles of proportionality and subsidiarity and is triggered only when its benefits can be demonstrated. As part of the review of the balance of competencies, the UK could help define in greater detail criteria for determining how best to assess conformity with these principles especially in the context of financial regulation.

In addition to the thoughts shared above, there are other areas where improvements could be considered to ensure “better regulation”. Many of these improvements apply to the processes and procedures of drafting, negotiating and refining financial regulation. With revised powers of the EU institutions under the Lisbon Treaty and the creation of the new European Supervisory Authorities, policymaking is still evolving. Some areas where we feel the process could be improved include:

- Greater focus on high-quality impact assessments, possibly de-coupling these from the institutions proposing legislation in order to foster independent thinking
- Ensure, as far as possible, that timetables are appropriately set and adhered to for negotiations in the Level 1 process
- Ensure co-legislators have sufficient access to technical advice before and during the negotiation process. It should be considered whether the European Parliament should be able to commission advice from ESAs on technical matters
- Create a legal mechanism for ensuring an opportunity for industry input and a reasonable timeframe to provide this input when significant changes to legislative proposals are introduced through the co-decision process that were not subject to consultation in earlier phases
- Increase the transparency of the Trialogue process
- Consider greater consultation of third country jurisdictions, especially the US, to bolster international coordination and convergence. This would include, where appropriate, a coordination of timeframes with regulatory authorities around the world for internationally driven initiatives
- Clarify respective remits and roles of the ESAs, the European Commission and co-legislators at Level 2
- Ensure that the drafting of delegated acts and regulatory technical standards reflect the political Level 1 agreement
- Should the European Commission amend or discard ESA advice during Level 2, create an obligation to provide detailed reasoning for this decision and the opportunity for the ESA in question to make their case in support of their advice
- Consider making it mandatory that where the European Commission or other institution takes a decision against ESA advice based on its legal services, the legal opinion in question is made publically available
- Set deadlines for Level 2 standards not in absolute (short-timed) dates but allow for period of consultation (with industry and taking into consideration industry views) of no less than 12 months
- Provide ESAs with resources necessary to fulfill their roles (including funding and staffing arrangements) and consider seniority of staff the ESAs recruit
- Ensure Level 2 standards do not disproportionately impact any one Member State
- Limit unintended consequences that can affect some European legislation (e.g. knock-on effects of new legislation when appropriate measures to safeguard already exist or when legislation is 'horizontal', i.e. not targeted specifically at a given market sector)
- Enhanced cooperation procedure should not undermine the Single Markets and the rights of Member States (e.g. FTT)

The UK has contributed to an improved EU legislative process by ensuring that the Single Rule Book includes rules that have the appropriate legal base and are legally sound. When rules have not respected principles of proportionality and subsidiarity, the UK has launched the appropriate challenges. Practitioners believe that use of these judicial avenues is appropriate, when other options have been exhausted. We hope that these endeavours will help encourage greater responsibility in the drafting and negotiation phases of EU financial regulation. We also believe that EU institutions and Member States should carefully consider how rule-making in one specific area of economic activity could potentially result in a disproportionate negative impact on the economy of one single Member State.

### *Concluding remarks*

The UK has played a leading role in the creation of a successful single financial market in the European Union over the past two decades.

In its own right, and as a prominent Member State of the European Union, it has also taken significant steps to help prevent another financial crisis by agreeing major changes to the global, European and UK regulatory regime.

It is clear that the regulatory reform effort of recent years has placed significant pressure on both the UK financial industry and the regulatory community. This has led to questions as to whether the burden of EU rules now outweighs the benefits of access to the single market. It is also too early to see whether recently agreed regulation has had any negative impact on economic growth, in its attempt to increase financial stability.

Nevertheless, in JPMorgan's view, significant benefits have resulted from UK membership of the EU's single market and its ability to influence its direction.

We believe that the future regulation of our sector can benefit from a gradual evolution from creating new rules towards consistent application and ongoing review of existing legislation; improved supervisory arrangements and greater expertise; and that it should also be flexible enough to ensure that any unintended consequences, such as rules that limit growth, can be quickly addressed.

Policy action as a result of this balance of competences exercise is a matter for the British Government and the people of the United Kingdom. As a significant employer in the UK and given our role as a key player in European financial markets, we believe that UK membership of the EU contributes positively to providing an appropriate regulatory framework at the same time as supporting a single market relevant to the economic well-being of the Union and its Member States and people.

Thank you for the opportunity to comment on this important matter.

Yours Sincerely,

Daniel Pinto

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