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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
Via e-mail: balanceofcompetences@hmtreasury.gsi.gov.uk

Subject: **Nomura's response to Balance of Competences Review – Single Market: Financial Services and the Free Movement of Capital**

Dear Madam/Sir,

Nomura is grateful for the opportunity to comment on the Balance of Competences Review – Single Market: Financial Services and the Free Movement of Capital.

As a pure-play international investment bank with an Asian heritage that operates across the Single Market with our regional headquarters in London, we believe we have a unique perspective that we hope will prove useful to this review.

We have framed our response against this backdrop, providing opinions and evidence where we feel we can add value, rather than answering every question.

Summary

Nomura's EMEA business is dependent on the EU, the Single Market and the free flow of capital within that market place. We have a presence in 11 Member States with London as our regional headquarters. We are a significant inward investor into the UK and EU in our own right, as well as being a facilitator of the investment of Asian capital through our client base.

The Single Market has been a key attraction for us in choosing to locate in the UK. Given that Nomura's international headquarters is based in the UK, we want to ensure that any legislative proposals protect the integrity of the Single Market and ensure that no Member States are discriminated against.

We are fully supportive of a Single Market which we believe must have a coherent, evidence-based approach to financial services legislation designed to promote a stable financial regime. We think that some current proposals on financial services legislation do not meet this test, including a Financial Transaction Tax (FTT) and measures on remuneration.

We do not judge that there would be any substantial benefit in repatriation of competences from the EU to the UK in the area of financial services. Indeed we believe there would be a danger that repatriation would lead to a fragmentation of the Single Market. What is, however, of great importance to Nomura is the UK's positive role in influencing the legislative agenda in order to ensure that proposals do not have a negative impact on the financial services sector.

We develop our argument in more detail below.

The Single Market is a key attraction for the UK as a gateway to Europe. Nomura is an inward investor into the UK and EU in our own right as well as a facilitator of investment of Asian capital in the region through our client base. Within the EU our regional headquarters, and largest operation, is in London. We recognise the wide-ranging benefits of London as a financial centre, including its global outlook, proximity to customers, time zone, expertise and talent. But the Single Market is also a vital component of this, and its role in making London so attractive to international financial firms and investors should not be taken for granted.

The UK's influence and engagement to further the Single Market is vital for the economic prospects of both the UK and the EU. Since the financial crisis, EU regulation has been subject to radical changes and complying with these changes has placed a considerable burden on firms. This should not mean, however, that the UK loses focus on the wider benefits of the Single Market and the opportunities that its further strengthening and development could present.

London being the financial services centre of the Single Market is a mutually beneficial relationship. As a non-EU financial services firm, it is advantageous for us to have a well-judged, properly applied and coherent Single Market. A global financial centre to service that Single Market is more attractive as a place to do business for non-EU firms than a series of smaller hubs within the Single Market. In addition, London has benefitted by consolidating the Euro denominated securities market, which has now become a major component of London security trades. This clearly benefits both the Single Market and the UK by operating as a globally connected, international financial services centre that includes a market for Euro-denominated products. This will prove particularly important over the coming years as the Eurozone recovers from its sovereign debt crisis.

The instigation of the Single Market has reinforced London's position as one of the pre-eminent financial centres in the world, which has associated benefits for the UK and its citizens. A large number of professional and financial services firms choose to locate in London, bringing with them the associated increase in corporation and payroll tax. This is a clear demonstration that the development of the Single Market has had a material positive impact on the UK. For these reasons, the Exchequer and the UK more broadly should seek to support and participate in the next stage of developing the project.

It is essential that an effective Banking Union is created for the Eurozone, but the integrity of the Single Market must also be maintained. We are fully supportive of a Single Market with a coherent, evidence-based approach to financial services legislation. However the progress of the Banking Union and the differences between regulations, directives and enhanced cooperation procedures give rise to incoherence in many instances. This is unhelpful and creates the potential for an uneven playing field across the EU, obliging financial services firms to comply with differing requirements in different

Member States. A more harmonised, evidence-based and non-discriminatory financial services regulatory landscape would be of clear benefit to all Member States.

However, we also recognise that the Eurozone needs to have a single rulebook to function effectively and that certain countries, the UK included, are unlikely to sign up to this rulebook or to become members of the Eurozone. We therefore support a credible Banking Union, which is a key element of addressing the Eurozone crisis. We therefore encourage the UK to ensure that the interests of non-Eurozone countries are represented in the legislation. We support the proposed European Banking Authority (EBA) voting arrangements as agreed by the EU Finance Ministers in December 2012, whereby a majority of both banking union and non-banking union members need to approve a measure. We believe that this is a suitable approach to address the concerns of Member States both within, and outside of, the Banking Union.

As a country outside the Eurozone, the more the UK is prepared to harmonise the easier it is for us, an Asian bank, to do cross-border business and the more likely it is for London to further cement its place as the pre-eminent financial centre in the Single Market.

Engagement is the key. In our view there is a danger that some parties within the EU could undermine the public good of open financial markets for their own benefit. It is important to the health of the City of London as a financial services centre that the UK Government works to build its networks and influence during the EU legislative process. The UK could also look to encourage more interaction and secondments into European institutions at all levels. This could include working together with industry to encourage secondments of talented people from the UK to the new European Supervisory Authorities (ESAs). With more competence falling to the ESAs under EU legislation it is vital that they are properly resourced, providing an opportunity for the UK to act quickly in this area.

An evidence based approach to regulation is critical for the EU to remain competitive. We are fully supportive of a Single Market with a coherent, evidence-based approach to financial services legislation that promotes a stable financial regime. This should be based on the principles of international agreement and proposals that are backed up by impact assessments. Our concern is that proposals on certain issues appear to run counter to the approach set out above.

The insertion of remuneration caps into the Capital Requirements Directive (CRD) IV package undermines the stated aim of Basel III, namely the need to establish a stable global financial system. It increases fixed costs and favours larger banks with more diversified revenue streams, further ossifying the financial landscape and raising barriers to entry. In addition we can point to the Financial Transaction Tax (FTT) currently proceeding under the enhanced cooperation procedure, whereby a group of Member States can impose particular legislation, which does not then apply to other Member States. This creates regulatory divergence and fragmentation of the Single Market.

Conclusion

These examples show that there is a trade off between good policymaking, an unimpeded Single Market and national versus EU level responsibilities. In our view, even though some EU level regulation has been of low quality there is no compelling argument for repatriation of competences in this area.

We hope our comments are helpful and look forward to engaging with HM Treasury on this issue in the future. We would be delighted to meet you in person if you feel it would be useful to discuss our views further.

Yours Sincerely,

David Benson
Vice Chairman, Risk and Regulatory Affairs
Nomura

Meeting with Paul Morton (Reed Elsevier) on Balance of Competences on the Free Movement of Capital, 23 January 2014

- **General EU environment**
    - Sound environment for business in the EU. Cost of capital generally lowered as a result of EU measures.
    - Still some way to go. For instance, recent measures introduced in France (with retroactive effect) restrict the tax deductibility of costs of financing in some circumstances.
- **Balance of competences**
    - Balance of competences broadly appropriate from a business perspective. Capital can be moved very freely in the EU and feel far less constrained than in some parts of the world. It was also helpful that the UK still has extensive competence in direct taxation (i.e. corporate taxes) and is therefore able to implement a low tax patent box (to encourage investment). Looking forward, there was scope for the EU to catch up with digital developments, for example to address distortions in the imposition of VAT on e-books.
    - Country-by-country reporting issue is an example of where the balance of competences with and between EU institutions is important. European Council, advised by national experts and informed by representations from large corporates, reflected widely held concerns that some of the European Parliament's suggestions were not workable.
    - "Common Consolidated Corporate Tax Base" was generally considered by some informed stakeholders to be a complex option for global multinationals which might increase rather than reduce administrative burdens but this regime might be suitable for others, particularly less global enterprises.
    - There are still problems with current tax regime. For example, the difference in VAT rates paid on paper books (zero) and e-books (standard rate). Reed Elsevier has advocated that this distortion should be addressed. However, whilst the Commission have not been willing to act on this, it is not clear that UK competence in this area would achieve a different outcome.
- **ECJ judgements**
    - Some discontent over how the ECJ had arrived at certain decisions. But on balance, the ECJ has had a positive impact on the tax regime in the EU and the scope of its competence is broadly appropriate from a business perspective. ECJ judgements can ensure that EU firms operate on a consistent platform, and have helped the EU create a corporate tax regime which in many respects is more coherent with respect

to the taxation of activities in the rest of the world, than, for example, the US tax system.

- The Marks and Spencer group relief case provides a good example. The ECJ ruled that losses incurred by Marks and Spencer in other Member States, which could not be relieved elsewhere, could be deducted from UK profits before tax. This brought the UK regime more in line with other Member States. This was seen as a positive step by multinational firms, although arguably smaller UK firms (domestic only) could not benefit from this. There were other examples of areas where the ECJ had, perhaps, tended to increase uncertainty.

- Particular ECJ rulings do not *immediately* translate into uniformity across the EU in the relevant area, insofar that all member states do not always adapt their domestic legislation to reflect the ECJ ruling. In some cases this may increase differences in tax systems and business uncertainty in the *medium term*.

- The ECJ process is very different to the UK's judicial process. The processes in court are shorter than in the UK system, and are quicker. However outcomes are less easy to forecast, and thus it can give rise to uncertainty for firms whilst a case is being considered (the outcome might have considerable impact on earnings per share and therefore affect valuations). There is also a certain bias towards firms joining action against the tax authorities in the ECJ process, as if you do not join an action, you may not be able to benefit from it.

- **UK staff in EU institutions**

    - UK representation in EU institutions has had a positive impact both for the UK and in terms of the quality of outcomes for the EU as a whole.