



afme/

asifma

sifma

22 May 2018

Dear President Draghi and Governor Carney,

The Global Financial Markets Association (“GFMA”) welcomes the leadership of the European Central Bank (“ECB”) and the Bank of England (“BOE”), in concert with the European Commission and the HM Treasury, to convene a technical working group (“Working Group”) on risk management in the period around 30 March 2019 (“Brexit period”) in the area of financial services.

The GFMA brings together three of the world’s capital markets associations, Association of Financial Markets in Europe (“AFME”), Asia Securities Industry and Financial Markets Association (“ASIFMA”), and the Securities Industry and Financial Markets Association (“SIFMA”) to provide a forum for global systemically important banks (GSIBs) to speak with the clarity of one voice in support of efficient market functioning, economic growth and financial stability. GFMA is supportive of policymakers and all relevant national competent authorities coming together to support the regulatory objectives of effective risk management during the Brexit period by mitigating operational risks in the interests of financial stability and an orderly withdrawal.

While the political and legal process will determine the outcomes of Brexit, the common interests of the Working Group in ensuring the stability and functioning of the financial system should help inform this process and avoid some key risks. Our members share this interest and are committed to working in good faith to prepare for Brexit. They have conducted extensive planning to adapt their businesses to Brexit and are in the process of implementing these plans in close coordination with supervisors. We have identified a number of “cliff edge” risks which we believe cannot be addressed by market participants alone and would merit assessment by the Working Group with a view to coordination in addressing them in advance of 30 March 2019. GFMA, AFME, ASIFMA and SIFMA stand ready to support the work of the Working Group¹.

Important risks which we believe require addressing for global systemically important banks in the period around 30 March 2019 in the area of financial services include, at least:

- **Continuity of contracts;**
- **Access to Financial Market Infrastructures, CCPs, CSDs and trade repositories;**
- **Cross-Border Data Flows;**
- **Supervisory cooperation to support oversight of Global Capital Market Participants’ Operational and Business Models;**
- **Recognition of Resolution Actions; and**
- **Settlement finality.**

¹ Terms of Reference for EU/UK Cooperation on Risk Management in the Period around March 30 2019 in area of financial services

We believe that addressing these issues is of significant importance to ensure financial stability and market functioning within Europe and globally. The GFMA provides the Working Group with the perspective of GSIBs, that operate on a cross-border basis to serve end user demands. We identify below a number of the most important risks where effective coordination, continuing supervisory cooperation and regulatory intervention is vital in supporting an orderly withdrawal and financial stability.

GFMA welcomes the political agreement on a transition period from the Brexit period to 31 December 2020. The transition period should assist in providing further time to support an orderly withdrawal. However, we note that full legal certainty on the transition period will not be provided until the Withdrawal Agreement is ratified. Our members continue to plan for all scenarios, but with less than ten months remaining, it is important that greater clarity is provided on the issues highlighted below as a matter of urgency. We have also included an annex with links to a selection of publications which provide additional detail on these issues.

Contractual continuity: Following the UK's departure from the single market, existing passports for financial services will cease. This calls into question the ability of banks to continue to service their clients under existing cross-border contracts and the risk of inconsistent legal treatments. Firms may lose permissions required to perform regular "life cycle" events which are important to enable them to service their clients. With respect to derivatives, lifecycle events involving a buy/sell notion, such as extending existing positions, notional amount adjustments and trade compressions, can probably not be performed and result in disruptive consequences to the market and counterparties.

There is potential for significant market disruption: around a quarter of uncleared OTC derivative contracts entered into by parties in both the UK and EU could be affected. According to the Bank of England, the gross notional amount outstanding of OTC contracts impacted is around £26 trillion, of which £12 trillion matures after Q1 2019. Private transfer solutions are insufficient given the scale of the issue and the limited scope of bulk transfer mechanisms. For the dealers concerned, this would require the agreement of a very significant number of counterparties, who may themselves need to secure agreement with other involved parties. Clients may suffer tax, accountancy, regulatory and other consequences as a result of transferring transactions and the scale of the issue represents a capacity problem and potential operational risk. Policymakers and regulators should minimise the risk and provide certainty to the market by permitting continued servicing of existing contracts post Brexit.

Access to Financial Market Infrastructures, CCPs, CSDs and Trade Repositories: Brexit will have major implications for derivatives clearing that require legal certainty well in advance of the Brexit period. EU27 banks face potential breach of regulation for maintaining positions in UK central counterparties ("CCPs") that would no longer be authorised or recognised under EU regulations. For instance, they could no longer clear OTC derivatives that are subject to the clearing obligation through UK CCPs. Similar to the negotiations with respect to US CCPs², unless UK CCPs are recognised under EU legislation on the basis of an "equivalence" determination by the European Commission, EU27 banks would be required to hold a significantly increased amount of regulatory capital against positions in UK CCPs because the corresponding risk weights for such positions would increase. The same could apply to UK banks with positions in EU27 CCPs, depending upon the UK regulatory regime.

There is a risk that UK CCPs are not recognised from the date of Brexit. It is necessary to ensure that there is no gap to maintain financial stability and continue to meet G20 objectives for OTC derivatives reform. The European Supervisory Authorities have also noted the risks to market continuity, as EU27-based banks would face increased capital requirements for exposures to UK CCPs and liquidity provided by UK-based

² http://europa.eu/rapid/press-release_IP-16-807_en.htm

counterparties could be adversely impacted.³ Clearing members and end-users would face legal, operational, and governance challenges in transferring positions and are likely to be adversely affected in relation to market liquidity. It has been suggested that EU27 banks could move positions to EU CCPs. However, this would seem unrealistic in the limited time available, would involve systemic risk, and it is questionable whether the market alone could supply sufficient liquidity for significant shifts of positions between CCPs. Conflicts of national laws that would govern such transfer, differences in membership and authorisation between relevant CCPs and the length of time needed to plan, obtain consents and execute the transfer make this a cliff edge risk. It is also necessary to carefully consider the potential impact of Brexit on other global market infrastructures including central securities depositaries ("CSDs") and trade repositories.

Cross-Border Data Flows: The impending departure of the UK from the EU creates significant uncertainty as to the ability of global financial market participants and other businesses to continue to transfer personal data between the EEA and the UK post-Brexit. Many firms that serve European clients rely on data centres located in the third countries to provide financial services across Europe and depend upon the ability to transfer personal data between the third country and EU27 to operate their businesses. The ability to transfer personal data between entities is also vital in order to comply with regulatory requirements, such as identifying suspicious transactions, assessing suitability, and combating money laundering, terrorist financing and market abuse. Any gap in the ability for firms to transfer personal data due to lack of adequacy decisions in place will not only pose issues for intra-group transfers, but also in regard to sharing with vendors or suppliers, thereby severely disrupting the ability of financial market participants to serve clients on a cross-border basis. There are limitations to the available additional safeguards under Article 46 of the General Data Protection Regulation (GDPR), which are complex to implement, do not provide full legal certainty, and do not ensure a continuous flow of data post Brexit. Clarity is required as soon as possible to ensure that global financial market participants can support ongoing cross-border trade. We believe that the EC and the UK should, as a matter of priority (i) start discussions in preparation for adequacy decisions without delay; and (ii) commit to a transitional solution while adequacy assessments are undertaken.⁴

Supervisory Cooperation: We believe that the Working Group should provide a helpful forum to consider supervisory cooperation arrangements including potentially the type and content of a Memorandum of Understanding ("MoU) between the Bank of England and the ECB, as well as other relevant European Supervisory Authorities and national competent authorities. This will be particularly important given the interconnectedness and significant cross-border activities between the Banking Union and the UK. Close cooperation in the fields of capital market oversight, prudential supervision and recovery and resolution planning will be vital to address risks during and after the Brexit period whatever the end state. The development and agreement of an MoU is a process that should not be underestimated, and reflection on the practical set-up of supervisory cooperation and the development of such an MoU should begin as soon as possible.

We would encourage the BoE and ECB Working Group to separately keep in mind specific issues and risks that arise for global, cross-border banks, as it is these types of banks which play a particularly important role in the development of capital markets and market-based financing. Capital market activities tend to be global in nature and these banks engage in cross-border activities, client booking and risk management approaches which reflect the various geographic locations of markets, products and their clients. It is more effective and efficient for certain types of risk to be managed centrally, fostering efficient cross-border flows in support of global growth and financial stability. A number of global financial centres such as the US, Singapore, London, Australia facilitate the

³ See Joint Committee of the European Supervisory Authorities, "Joint Committee Report on Risks and Vulnerabilities in the EU Financial System," April 2018, page 12.

⁴ See AFME, Effective Flow of Personal Data post Brexit: Implications for capital markets, April 2018, [Link](#)

use of centralized risk management practices, remote booking, outsourcing and third country branches for global operating and business models, supported by effective supervisory dialogues. Global firms can maintain efficient liquidity risk management practices through supervisory engagement, enabling global firms to meet local end-user demands in the most cost-effective way, as well as enhancing the competitiveness of local markets and the diversity of services offered.

While we fully recognise that firms need to have appropriate governance arrangements and local capabilities in place, the principles of supervisory cooperation should ensure that economically justified global booking models are not unintentionally affected in a manner that will negatively impact markets and clients. Centralized risk management is common and well-established practice throughout the global financial services industry and is an integral part of the operating models of global firms in Europe and elsewhere. Such risk management practice allows global financial market participants to efficiently provide services to their customers as well as support market resilience, enabling local market participants access to an enhanced depth of liquidity in the most cost-effective way.

Recognition of Resolution Actions: The recognition of resolution actions is an important part of the post-crisis efforts to ensure that banks can fail without losses being borne by taxpayers and minimising the impact on financial stability. To support cross-border resolution and provide certainty regarding the eligibility of instruments and requirements to amend relevant contracts, the EU and UK should agree to the mutual recognition of resolution actions. Due to the high uncertainty of the impact on firms during the Brexit period, the recognition of resolution actions and resolution stays across jurisdictions is important for cross-border resolution to be effective.⁵ Currently, the Bank Recovery and Resolution Directive provides for the automatic recognition of resolution actions throughout the EU.

Absent an agreement to the contrary, automatic recognition of resolution actions would no longer apply as between the UK and EU27 during the Brexit period, although we expect that close cooperation between resolution authorities would continue. An end to automatic recognition creates issues for financial institutions, including: a) potential requirement for EU27 banks to amend contracts governed by English law (and UK-based banks to amend contracts governed by the law of a Member State) to include contractual recognition of bail-in and resolution stays or having to re-issue debt instruments; b) uncertainty regarding the continued eligibility of English law governed capital and debt instruments issued by EU27 banks to meet loss-absorbing capacity requirements (and instruments issued by UK-based banks under EU27 law); and the Single Resolution Board has estimated that around €100bn of outstanding liabilities may be affected. If these instruments are determined to be ineligible, this could significantly reduce the levels of eligible instruments and would either have to be amended or require banks to issue new eligible debt, potentially causing market disruption. Without such an agreement in the near-term, global resolution authorities should engage with relevant firms and consider appropriate and proportionate arrangements to address existing liabilities.

Settlement Finality: It is very important to address the implications of the UK leaving the scope of the Settlement Finality Directive (“SFD”) for payment and settlement systems (including CCPs). Some of the national transposition of SFD do not include a regime for the designation of third country systems thus some EU Member States will no longer be required to ensure that their laws protect settlement finality and enforceability of collateral in UK-based systems from the impact of insolvency proceedings. This could impact, inter alia, the ability of EEA-based clearing members to access UK Financial Market Infrastructure, such as CCPs and Continuous Linked Settlement (CLS) even if those CCPs are recognised under the European Market Infrastructure Regulation

⁵ As emphasised in FSB, Principles for Cross-border Effectiveness of Resolution Actions, [Link](#)

("EMIR"). It is therefore very important to enable the designation of UK-based systems including CCPs and CLS under the SFD to avoid significant potential disruption.

Thank you again for the leadership in launching a technical working group to address these important matters. It is vital that whatever the outcome of the political negotiations, financial stability and resilience of markets are upheld in the interests of investors, borrowers and savers across Europe and beyond. Our members continue to implement their plans to adapt to potential scenarios and we hope that the work of the Working Group will provide greater clarity to the market that these issues will be addressed ahead of the Brexit period. We look forward to continuing to work with regulators and policymakers in addressing the challenges posed by Brexit to support financial stability and an orderly withdrawal process.

Sincerely,



Mark Austen
CEO of GFMA, ASFIMA



Simon Lewis
CEO of AFME



Kenneth Bentsen
CEO of SIFMA

Cc:

Vice-President Dombrovskis, European Commission
Rt Hon Philip Hammond MP, Chancellor of the Exchequer
Michel Barnier, Chief Negotiator, Article 50 Task Force
Rt Hon David Davis MP, Secretary of State for Exiting the European Union
Olivier Guersent, European Commission
Katharine Braddick, HM Treasury
Steven Maijoor, ESMA
Andrew Bailey, FCA
Andrea Enria, EBA
Elke Koenig, SRB
Sabine Weyand, Article 50 Task Force

Annex: further background materials

Below is a selection of papers which address the issues raised in this letter in greater detail.

GFMA White Paper: Brexit: Implications for the Global Financial System (August 2017) [link](#)

GFMA Comments to the European Commission on its Proposed Enhanced Supervision Framework (October 2017) [link](#)

GFMA Principles for Achieving Consistent Regulatory Regimes and Supervisory Practices (April 2018) [link](#)

AFME, “Brexit: Key cliff edge risks in wholesale financial services” (January 2018) [link](#)

AFME, “How might wholesale financial services contracts be impacted by Brexit” (February 2018) [link](#)

AFME and UK Finance, “Impact of Brexit on cross-border financial services contracts” (September 2017) [link](#)

AFME, “Effective flow of personal data post-Brexit: Implications for capital markets” (April 2018) [link](#)

IRSG, “CCPs post-Brexit: Implications for the users of financial markets in the UK and EU27” (February 2017) [link](#)