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19 April 2018

Dear CEO,

### **Irredeemable preference shares and other similar capital instruments**

The FCA is currently reviewing the prevailing market for certain fixed income shares, particularly those shares that are described as being perpetual, irredeemable or in some other way that suggests permanence.

The FCA wants to ensure investors have access to the information that they require in order to properly assess the risks and rewards attaching to such shares.

Recently, Aviva plc announced an ability to cancel certain irredeemable shares it had issued at or close to par value through a reduction of capital under the Companies Act. This announcement affected the market for and price of those irredeemable shares. The market prices of a number of other similar shares issued by other listed companies fell at the same time. One of these issuers announced subsequently that it did not intend to cancel the irredeemable shares it had issued. Aviva plc subsequently stated that it had decided to take no action to cancel its irredeemable preference shares. As far as we are aware, other listed companies with irredeemable shares, or similar types of shares, have not clarified their position.

Listed companies will need to consider whether any intention to cancel or otherwise retire a class of irredeemable shares, or similar shares, at a price based on factors other than the prevailing market price, or their company's deliberation on any such intention, constitutes inside information under Article 7 of the Market Abuse Regulation<sup>1</sup> (MAR). Under Article 17 of MAR, inside information must be announced as soon as possible unless there are grounds for delay and must not be disclosed selectively or privately to individual investors.

In addition, you may wish to ensure that the following information is readily accessible to all holders and potential holders:

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

- The terms and conditions of the instrument as included in the original prospectus or similar document issued at the time of the offer and or admission of the shares;
- Details of any changes to the above that have been made post the issue of the shares;
- The articles of association of the issuer of the securities, especially those terms that are pertinent to the shares concerned, including the constituency and conduct of any relevant shareholder votes thereof; and
- A Q&A or similar publication, so that the information is clear and comprehensible for investors. Particular items that might usefully be clarified would include:
  - The extent to which the rights attaching to the shares can be changed by the company without specific resolution of the affected class of securities;
  - The existence of any ability to cancel the shares at a price that is less than the prevailing market price without the specific assent of the affected holders either individually or as a class; and
  - Whether the company has made a decision regarding its approach to the use of either of the above, in particular where it has the ability to cancel the shares at par or at a price less than the prevailing market price (noting the point made above regarding the application of MAR).

I would urge you to ensure that these details are available for your company's shares and also to consider, in conjunction with your advisers if necessary, whether there is a risk that the prevailing market price of any of your company's shares or other signals from investors suggest that there is a lack of understanding over the terms and conditions of those shares and/or your company's intention regarding them.

We recognise that there is a tension between investors' desire to see a permanent resolution to any remaining concerns and the desire of company boards not to limit their (and their successors') scope for action. However, in the event that you have publicly stated or propose to publicise your company's intentions regarding such securities, I would urge you to also set out the governance process and the approach to disseminating any future changes you might make.

I trust that you will understand the reasons for this letter and that you share our desire for the UK's securities markets to work well and in the interests of all their participants. If you have questions about the contents of this letter please contact the FCA's Market Integrity Unit via email at [Primary.market.integrity@fca.org.uk](mailto:Primary.market.integrity@fca.org.uk). I would also note that the FCA will publish this letter on our website and via a Regulatory Information Service.

Yours sincerely,

Andrew Bailey

Chief Executive