

Own funds

Chapter 3

Own funds

3.6 General requirements for own funds instruments

- 3.6.1** **R** (1) A *firm* must comply with Chapter 6 of Title I of Part Two of the *UK CRR*, as modified by the *rules* in this section.
- (2) Any reference to the *UK CRR* in this section is to the *UK CRR* as applied by (1) and modified by the *rules* in this section.

- 3.6.1A** **G** ■ MIFIDPRU 3 Annex 7R contains additional provisions relating to the eligibility of instruments to be classified as *own funds* and to the reduction of *own funds*.

Reduction of own funds instruments

- 3.6.2** **R** To apply for permission for the purposes of articles 77 and 78 of the *UK CRR* to do any of the following, a *firm* must save in the circumstances set out in ■ MIFIDPRU 3.6.3R, complete the form in ■ MIFIDPRU 3 Annex 4R and submit it to the *FCA* using the *online notification and application system*:

- (1) reduce, redeem or repurchase any of its *common equity tier 1 instruments*;
- (2) reduce, distribute or reclassify as another *own funds* item the share premium accounts related to any of its *own funds instruments*; or
- (3) effect the call, redemption, repayment or repurchase of its *additional tier 1 instruments* or *tier 2 instruments* prior to the date of their contractual maturity;

- 3.6.3** **R** Permission under ■ MIFIDPRU 3.6.2R is deemed to have been granted if the following conditions are met:

- (1) either of the conditions in ■ MIFIDPRU 3.6.4R apply;
- (2) at least 20 *business days* before the *day* on which the reduction, repurchase, call or redemption is proposed to occur, the *firm* has notified the *FCA* of:
 - (a) the proposed reduction, repurchase, call or redemption; and
 - (b) the basis on which the *firm* has concluded that either condition in (1) is satisfied;

- (3) the notification in (2) is made using the form in ■ MIFIDPRU 3 Annex 5R and submitted using the *online notification and application system*; and
- (4) the FCA has not notified the *firm* of any objection to the proposal before the *day* on which the reduction, repurchase, call or redemption is proposed to occur.

3.6.4

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The conditions referred to in ■ MIFIDPRU 3.6.3R are that:

- (1) before or at the same time as the reduction, repurchase, call or redemption, the *firm* replaces the relevant *own funds instruments* with *own funds instruments* of equal or higher quality on terms that are sustainable for the income capacity of the *firm*; or
- (2) the *firm* is redeeming *additional tier 1 instruments* or *tier 2 instruments* within five years of their date of issue and either:
 - (a) there is a change in the regulatory classification of the instruments that is likely to result in their exclusion from *own funds* or reclassification as a lower quality form of *own funds*, and both the following conditions are met:
 - (i) there are reasonable grounds to conclude that the change is sufficiently certain; and
 - (ii) the regulatory reclassification of the instruments was not reasonably foreseeable at the time of their issuance; or
 - (b) there is a change in the applicable tax treatment of those instruments which is material and was not reasonably foreseeable at the time of their issuance.

Notification of issuance of additional tier 1 and tier 2 instruments

3.6.5

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- (1) A *firm* must notify the FCA at least 20 *business days* before the intended issuance date of the *firm's* intention to issue:
 - (a) *additional tier 1 instruments*; or
 - (b) *tier 2 instruments*.
- (2) The notification requirement in (1) does not apply if:
 - (a) the *firm* has previously notified the FCA of an issuance of the same class of *additional tier 1 instruments* or *tier 2 instruments*; and
 - (b) the terms of the new instruments are identical in all material respects to the terms of the instruments in the issuance previously notified to the FCA.
- (3) The notification under (1) must:
 - be submitted to the FCA through the *online notification and application system* using the form in ■ MIFIDPRU 3 Annex 6R; and
 - (b) include the following:

- (i) confirmation of whether the instruments are intended to be classified as *additional tier 1 instruments* or *tier 2 instruments*;
- (ii) confirmation of whether the instruments are intended to be issued to external investors or only to other members of the *firm's group* or connected parties;
- (iii) a copy of the term sheet and details of any features of the capital instrument which are novel, unusual or different from a capital instrument of a similar nature previously issued by the *firm* or widely available in the market;
- (iv) confirmation from a member of the *firm's senior management* or *governing body* who has oversight of the intended issuance that the instrument meets the conditions in ■ MIFIDPRU 3.4 or ■ MIFIDPRU 3.5 (as applicable, and including any conditions in the *UK CRR* applied by those sections) to be classified as *additional tier 1 instruments* or *tier 2 instruments*; and
- (v) a properly reasoned legal opinion from an appropriately qualified *individual*, confirming that the capital instruments meet the conditions in (iv).

3.6.6

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- (1) *MIFIDPRU investment firms* that were classified as *CRR firms* immediately before 1 January 2022 should refer to ■ MIFIDPRU TP 1 for transitional provisions relating to *own funds* permissions that were issued, and notifications that were made, before that date.

Those *firms* should also refer to ■ MIFIDPRU TP 7, which contains transitional provisions about capital instruments issued before 1 January 2022 and in respect of which the *firm* had not obtained *own funds* permissions or made notifications under the legal requirements in force at that time.

- (2) *MIFIDPRU investment firms* that were in existence immediately before 1 January 2022, but were not classified as *CRR firms*, should refer to ■ MIFIDPRU TP 7 for transitional provisions relating to *own funds* instruments issued before that date.

- (3) *Parent undertakings* should also refer to the following:

- (a) ■ MIFIDPRU TP 1, where they were subject to the *UK CRR* on an individual or a consolidated basis immediately before 1 January 2022 and had obtained permissions or made notifications under the *UK CRR* relating to *own funds* instruments issued before that date; or
- (b) ■ MIFIDPRU TP 7 in either of the following cases:
 - (i) where they were not subject to the *UK CRR* on either an individual or a consolidated basis immediately before 1 January 2022, but wish to rely on transitional provisions relating to capital instruments issued before that date; or
 - (ii) where they were subject to the *UK CRR* on an individual or a consolidated basis immediately before 1 January 2022, but wish to rely on transitional provisions relating to capital instruments issued before that date in respect of which the *parent undertaking* had not obtained *own funds* permissions

or made notifications under the legal requirements in force at that time.

3.6.7 **G** *Firms* that are proposing to classify an issuance of capital instruments as *common equity tier 1 capital* should refer to the obligations and guidance in ■ MIFIDPRU 3.3.3R and ■ MIFIDPRU 3.3.4G. In particular, *firms* must obtain the FCA's prior permission for the first issuance of a class of instruments that is intended to comprise *common equity tier 1 capital*.

3.6.8 **R**

(1) A *UK parent entity* must apply the modifications in (2) when either of the following apply on a *consolidated basis* in accordance with ■ MIFIDPRU 2.5.7R:

(a) ■ MIFIDPRU 3.3.2R to ■ MIFIDPRU 3.3.4G; and

(b) ■ MIFIDPRU 3.6.5R.

(2) The *Handbook* provisions in (1)(a) and (b) apply as if a reference to:

(a) a "*firm*" is a reference to the *UK parent entity*;

(b) "*capital instruments*" is a reference to capital instruments issued by the *UK parent entity*;

(c) "*additional tier 1 instruments*" and "*tier 2 instruments*" is a reference to these instruments issued by the *UK parent entity*; and

(d) "*common equity tier 1 capital*" is a reference to that type of capital as calculated on a *consolidated basis*.

3.6.9 **G** Submitting a notification in accordance with ■ MIFIDPRU 3.6.5R to ■ MIFIDPRU 3.6.8R does not guarantee that the relevant instruments meet the required conditions in ■ MIFIDPRU 3.4 or ■ MIFIDPRU 3.5 to qualify as *own funds*. The *firm* or *parent undertaking* must ensure that an instrument continues to meet the conditions to be counted as *own funds*, including if its terms are varied on a later date.