

# Prudential sourcebook for MiFID Investment Firms

## MIFIDPRU TP 1 Own funds transitional provisions

		Application
1.1	R	MIFIDPRU TP 1 applies to: <ul style="list-style-type: none"> <li>(1) a <i>MIFIDPRU investment firm</i>; and</li> <li>(2) a <i>UK parent entity</i> that is required by MIFIDPRU 2.5.7R to comply with MIFIDPRU 3 on the basis of its <i>consolidated situation</i>; and</li> <li>(3) a <i>parent undertaking</i> to which the <i>group capital test</i> applies.</li> </ul>
		Purpose
1.2	G	MIFIDPRU TP 1 contains transitional provisions relating to certain permissions granted by the <i>FCA</i> before 1 January 2022 for the purposes of the <i>own funds</i> provisions of the <i>UK CRR</i> . These provisions set out where a <i>firm</i> with such a permission may continue to rely on it under the <i>MIFIDPRU</i> regime.
1.3	G	MIFIDPRU TP 1 also contains transitional provisions relating to the continued eligibility of <i>additional tier 1 instruments</i> issued before 1 January 2022 under the <i>UK CRR</i> (in the form in which the <i>UK CRR</i> stood prior to that date).
		Continuing application of certain UK CRR permissions
1.4	R	MIFIDPRU TP 1.5 applies for the duration of a permission to which it relates, except to the extent that the <i>FCA</i> revokes, varies or replaces the permission.
1.5	R	<ul style="list-style-type: none"> <li>(1) This <i>rule</i> applies to any permission listed in column (A) of the table in MIFIDPRU TP 1.6R where that permission was granted to a <i>firm</i> by the <i>FCA</i> for the purposes of the <i>UK CRR</i> before 1 January 2022.</li> <li>(2) Where this <i>rule</i> applies, a permission in column (A) of the table in MIFIDPRU TP 1.6R is deemed to have been granted for its remaining duration on equivalent terms by the <i>FCA</i> under the corresponding provision in column (B) of that table.</li> </ul>
1.6	R	This table belongs to MIFIDPRU TP 1.5R.
		(A)
		(B)
		UK CRR permission granted before 1 January 2022
		Deemed basis for permission on or after 1 January 2022
		Article 26(2) <i>UK CRR</i> : inclusion of interim or year-end profits in <i>common equity tier 1 capital</i> before the <i>firm</i> has taken a formal decision confirming the final profit or loss for the year
		MIFIDPRU 3.3.2R
		Article 26(3) <i>UK CRR</i> : classification of an issuance of capital instruments as <i>common equity tier 1 capital</i>
		MIFIDPRU 3.3.3R
1.7	G	The effect of MIFIDPRU TP 1.5 and MIFIDPRU TP 1.6 is that a permission that was initially granted under article 26(2) or 26(3) of the <i>UK CRR</i> will continue to produce an equivalent effect under the corresponding provisions in MIFIDPRU 3.3. The duration of the original permission is not affected. For example, a permission granted on 1 June 2021 for a one-year duration will be treated from 1 Jan-

uary 2022 as if it had been granted under MIFIDPRU 3.3, but will still expire on 1 June 2022.

Additional tier 1 capital instruments issued before 1 January 2022

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| 1.8  | R | <p>(1) This <i>rule</i> applies where:</p> <p>(a) a <i>firm</i> which became a <i>MIFIDPRU investment firm</i> on 1 January 2022 issued instruments before that date which satisfied the conditions to be classified as <i>additional tier 1 instruments</i> under the <i>UK CRR</i> in the form in which it stood immediately before 1 January 2022; and</p> <p>(b) the instruments in (1) remain in issue on 1 January 2022.</p> <p>(2) Where this <i>rule</i> applies, by no later than 1 February 2022, a <i>MIFIDPRU investment firm</i> must:</p> <p>(a) notify the <i>FCA</i> using the form in MIFIDPRU TP 1 Annex 1R, submitted via the <i>online notification and application</i> system, to confirm whether:</p> <p>(i) the relevant instruments satisfy the conditions in MIFIDPRU 3.4 to be classified as <i>additional tier 1 instruments</i>; or</p> <p>(ii) the relevant instruments do not satisfy the relevant conditions in MIFIDPRU 3.4 and the <i>firm</i> has therefore ceased to recognise them as part of its <i>additional tier 1 capital</i> or has otherwise redeemed or replaced them; or</p> <p>(b) apply to the <i>FCA</i> under section 138A of the <i>Act</i> for a modification of the relevant provisions in MIFIDPRU 3.4 to continue to allow the <i>firm</i> to classify the instruments as <i>additional tier 1 instruments</i> for the purposes of MIFIDPRU.</p> |
| 1.9  | G | <p>(1) A <i>MIFIDPRU investment firm</i> may have issued instruments that, immediately before 1 January 2022, met the conditions in the <i>UK CRR</i> (in the form in which it then stood) to be classified as <i>additional tier 1 instruments</i> and which remain in issue on 1 January 2022.</p> <p>(2) Although MIFIDPRU 3.4 contains provisions for the classification of instruments under MIFIDPRU as <i>additional tier 1 instruments</i> which are broadly equivalent to those in the <i>UK CRR</i>, the trigger event under article 54(1)(a) of the <i>UK CRR</i> does not apply under MIFIDPRU. This is because the <i>own funds requirement</i> under MIFIDPRU is calculated on a different basis and therefore the trigger event for conversion of <i>additional tier 1 instruments</i> under MIFIDPRU is defined by reference to different criteria.</p>  |
| 1.10 | G | <p>An <i>additional tier 1 instrument</i> issued before 1 January 2022 under the <i>UK CRR</i> may satisfy the conditions in MIFIDPRU 3.4 so that it can be classified as an <i>additional tier 1 instrument</i> for the purposes of MIFIDPRU. This may depend upon how the trigger events were defined in the terms of the relevant instrument and whether additional trigger events (i.e. over and above the mandatory <i>UK CRR</i> trigger event that was applicable at the time of issuance) were also included.</p>  |
| 1.11 | G | <p>(1) A <i>firm</i> may apply to the <i>FCA</i> under section 138A of the <i>Act</i> to modify the provisions of MIFIDPRU 3.4 for existing <i>additional tier 1 instruments</i> issued under the <i>UK CRR</i> before 1 January 2022, to allow those instruments to be recognised as <i>additional tier 1 instruments</i> under MIFIDPRU.</p> <p>(2) In the application, the <i>FCA</i> would expect a <i>firm</i> to demonstrate how the conversion or write-down of the <i>additional tier 1 instruments</i> would function to enable the <i>firm</i> to continue to satisfy its <i>own funds requirement</i> under MIFIDPRU in times of financial stress.</p>  |

		(3)	If the <i>FCA</i> grants a modification under section 138A of the Act in such circumstances, it may grant it on a temporary basis to facilitate the <i>firm's</i> orderly transition to the <i>MIFIDPRU</i> regime.
		Continuing validity of IFPRU own funds notifications	
1.12	R	(1)	This <i>rule</i> applies to any notification listed in column (A) of the table in MIFIDPRU TP 1.13R, where the notification was validly submitted by a <i>firm</i> or <i>parent undertaking</i> to the <i>FCA</i> for the purposes of the relevant <i>rule</i> in the <i>IFPRU</i> sourcebook before 1 January 2022.
		(2)	Where this <i>rule</i> applies, a notification in column (A) of the table in MIFIDPRU TP 1.13R is deemed to have been a valid notification for the purposes of the corresponding provision in column (B) in the same row of that table.
1.13	R	The table belongs to MIFIDPRU TP 1.12R.	
		(A)	(B)
		IFPRU notification submitted before 1 January 2022	Deemed notification for the purposes of MIFIDPRU on or after 1 January 2022
		IFPRU 3.2.10R: notification of issuance of own funds instruments	MIFIDPRU 3.6.5R(1) (for a <i>MIFIDPRU investment firm</i> ) MIFIDPRU 3.6.8R(1)(b) (for a <i>UK parent entity</i> to which consolidation under MIFIDPRU 2.5.7R applies) MIFIDPRU 3.7.4R(1)(b) (for a <i>parent undertaking</i> to which the <i>group capital test</i> applies)
		IFPRU 3.2.13R: notification of issuance of ordinary shares or debt instruments under a debt securities programme	MIFIDPRU 3.6.5R(1) (for a <i>MIFIDPRU investment firm</i> ) MIFIDPRU 3.6.8R(1)(b) (for a <i>UK parent entity</i> to which consolidation under MIFIDPRU 2.5.7R applies) MIFIDPRU 3.7.4R(1)(b) (for a <i>parent undertaking</i> to which the <i>group capital test</i> applies)
1.14	G	The effect of MIFIDPRU TP 1.12R and 1.13R is that a notification that was validly submitted for the purposes of the <i>rules</i> relating to the issuance of own funds in <i>IFPRU</i> is valid for the purposes of the notification requirements relating to the issuance of <i>own funds</i> in MIFIDPRU 3.6 or 3.7. This means that:	
		(1)	a <i>MIFIDPRU investment firm</i> or <i>parent undertaking</i> to which <i>IFPRU</i> applied is not required to submit another notification to the <i>FCA</i> in relation to pre-existing instruments to treat those instruments as <i>additional tier 1 instruments</i> or <i>tier 2 instruments</i> under <i>MIFIDPRU</i> ; and
		(2)	where the <i>MIFIDPRU investment firm</i> or <i>parent undertaking</i> issues the same class of instruments on or after 1 January 2022, it can rely on the exemption from the notification requirement in MIFIDPRU 3.6.5R(2), provided that the instruments are identical in all material respects to the previous issuance notified to the <i>FCA</i> under <i>IFPRU</i> .
1.15	G	MIFIDPRU TP 1.12R and 1.13R do not affect the underlying criteria in MIFIDPRU 3 for classifying an instrument as <i>own funds</i> . Instead, the provisions deem existing notifications to be notifications for equivalent purposes under <i>MIFIDPRU</i> . This means that if the instruments that are the subject of the notifications do not meet the criteria in MIFIDPRU 3 to be classified as <i>own funds</i> , a <i>firm</i> or <i>parent undertaking</i> must not treat those instruments as such. It is the responsibility of the <i>firm</i> or <i>parent undertaking</i> relying on the transitional provisions in this annex to assess whether the relevant criteria are met in relation to any particular instrument.	

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Notification under MIFIDPRU TP 1.8R – treatment of instruments formerly classified as AT1 under UK CRR		
Annex	1R	[ <i>Editor's note:</i> The form can be found at this address: <a href="https://www.handbook.fca.org.uk/publication/form/mifidpru/MIFIDPRU_TP_1_Annex_1R_Notification_20211201.pdf">https://www.handbook.fca.org.uk/publication/form/mifidpru/MIFIDPRU_TP_1_Annex_1R_Notification_20211201.pdf</a> ]