

Prudential sourcebook for MiFID Investment Firms

MIFIDPRU TP 7

Transitional provision for own funds instruments without UK CRR approvals before 1 January 2022

Application			
7.1	R	(1)	MIFIDPRU TP 7 applies to a <i>MIFIDPRU investment firm</i> that, immediately before 1 January 2022: <ul style="list-style-type: none"> (a) was an <i>authorised person</i>; and (b) either: <ul style="list-style-type: none"> (i) was not classified as a <i>CRR firm</i> in accordance with the rules then in force; or (ii) met all of the conditions in (2).
		(2)	The conditions referred to in (1)(b)(ii) are: <ul style="list-style-type: none"> (a) the <i>firm</i> was classified as a <i>CRR firm</i> in accordance with the <i>rules</i> that applied immediately before 1 January 2022; and (b) in relation to an instrument to which MIFIDPRU TP 7.4R(1) applies, the <i>firm</i> had not, before 1 January 2022: <ul style="list-style-type: none"> (i) obtained <i>FCA</i> approval under article 26(3) of the <i>UK CRR</i> (in the form in which it stood immediately before 1 January 2022); or (ii) notified the <i>FCA</i> of the issuance of the instrument under IFPRU 3.2 (as it applied immediately before 1 January 2022).
7.2	R	(1)	MIFIDPRU TP 7 also applies to the following if the conditions in (2) are met: <ul style="list-style-type: none"> (a) a <i>UK parent entity</i> to which MIFIDPRU 3 applies on a <i>consolidated basis</i> in accordance with MIFIDPRU 2.5.7R; and (b) a <i>parent undertaking</i> to which the <i>group capital test</i> applies.
		(2)	The conditions are that immediately before 1 January 2022 the <i>UK parent entity</i> or <i>parent undertaking</i> : <ul style="list-style-type: none"> (a) formed part of the same <i>investment firm group</i> as a <i>firm</i>, which, on 1 January 2022 became a <i>MIFIDPRU investment firm</i>; and (b) either: <ul style="list-style-type: none"> (i) was not required to hold <i>own funds</i> on an individual or a consolidated basis in accordance with the <i>UK CRR</i>; or (ii) met all of the conditions in (3).

		(3)	The conditions referred to in (2)(b)(ii) are:
		(a)	the <i>UK parent entity</i> or <i>parent undertaking</i> was required to hold <i>own funds</i> on an individual or a consolidated basis in accordance with the <i>UK CRR</i> (in the form in which it stood immediately before 1 January 2022); and
		(b)	the <i>UK parent entity</i> or <i>parent undertaking</i> has issued an instrument to which MIFIDPRU TP 7.4R(1) applies;
		(c)	in relation to the instrument in (b), the <i>UK parent entity</i> or <i>parent undertaking</i> had not, before 1 January 2022:
		(i)	obtained <i>FCA</i> approval under article 26(3) of the <i>UK CRR</i> (in the form in which it stood immediately before 1 January 2022); or
		(ii)	notified the <i>FCA</i> of the issuance of the instrument under IFPRU 3.2 (as it applied immediately before 1 January 2022).
		(4)	A reference in (3)(c) to a notification or approval includes a notification or approval that was granted to another member of the <i>UK parent entity</i> or <i>parent undertaking's group</i> in relation to an instrument issued by the <i>UK parent entity</i> or <i>parent undertaking</i> .
	Purpose		
7.3	G	(1)	Before <i>MIFIDPRU</i> applied, certain <i>firms</i> that subsequently became <i>MIFIDPRU investment firms</i> determined their available capital resources according to various provisions in <i>GENPRU</i> or <i>IPRU-INV</i> . In addition, certain other <i>firms</i> were not subject to a dedicated prudential sourcebook in the <i>FCA Handbook</i> that contained a detailed regime for recognising the eligibility of capital resources.
		(2)	The <i>rules</i> on <i>own funds</i> in MIFIDPRU 3 broadly replicate the approach to recognising capital resources under the <i>UK CRR</i> . The purpose of MIFIDPRU TP 7 is to permit <i>firms</i> that were not <i>CRR firms</i> immediately before <i>MIFIDPRU</i> began to apply to recognise instruments as <i>own funds</i> under <i>MIFIDPRU</i> without requiring separate permission from, or notification to, the <i>FCA</i> if those instruments:
		(a)	were issued before <i>MIFIDPRU</i> began to apply; and
		(b)	meet the conditions to be classified as <i>own funds</i> under MIFIDPRU 3 (other than the conditions relating to the requirements to seek prior <i>FCA</i> consent or to notify the <i>FCA</i>).
		(3)	Under MIFIDPRU TP 1 , a permission recognising the issuance of capital instruments as <i>common equity tier 1 capital</i> under the <i>UK CRR</i> is deemed to be an equivalent permission under <i>MIFIDPRU</i> . A notification made before <i>MIFIDPRU</i> began to apply by a former <i>CRR firm</i> in relation to the issuance of <i>additional tier 1 instruments</i> and <i>tier 2 instruments</i> will also continue to be valid under MIFIDPRU TP 1 .
		(3A)	Where a former <i>CRR firm</i> did not obtain permission for an existing instrument under the <i>UK CRR</i> or make a notification under IFPRU 3.2 in relation to an instrument, there will be no existing permission or notification to carry forward under MIFIDPRU TP 1 . In that case, the former <i>CRR firm</i> may make a notification under MIFIDPRU TP 7 in relation to any outstanding capital instruments issued before 1 January 2022, provided that those instruments meet the conditions to be recognised as the relevant type of <i>own funds</i> under MIFIDPRU 3 .

- (4) MIFIDPRU TP 7 also applies to *UK parent entities* to which MIFIDPRU 3 applies on a *consolidated basis* and *parent undertakings* to which the *group capital test* applies, where those entities were not required to hold *own funds* on an individual or consolidated basis under the *UK CRR* immediately before MIFIDPRU began to apply. This means that provided that the existing instruments issued by these entities meet the relevant conditions in MIFIDPRU 3, they can be treated as *own funds* for the purposes of the application of MIFIDPRU 3 on a *consolidated basis* or the *group capital test* as long as the entity complies with MIFIDPRU TP 7.
- (5) MIFIDPRU TP 7 also applies to a *UK parent entity* or other *parent undertaking* that was required to hold *own funds* under the *UK CRR* (whether on an individual or consolidated basis) immediately before MIFIDPRU began to apply but did not:
- (a) obtain permission for an existing common equity tier 1 instrument under the *UK CRR*; or
 - (b) make a notification in accordance with IFPRU 3.2 in relation to an existing additional tier 1 instrument or a tier 2 instrument.
- (6) Where (5) applies, the *UK parent entity* or other *parent undertaking* may make a notification under MIFIDPRU TP 7 in relation to any outstanding capital instruments issued before 1 January 2022, provided that those instruments meet the conditions to be recognised as the relevant type of *own funds* under MIFIDPRU 3.
- (7) In some cases, the *FCA* may have granted permission to, or accepted a notification from, another member of the *UK parent entity* or other *parent undertaking's group* in relation to an instrument issued by the *UK parent entity* or other *parent undertaking* that counted towards the *consolidated situation*. This is because the *UK CRR* previously applied only indirectly to unregulated *parent undertakings*. In that case, the existing *UK CRR* permission or notification will be treated as a permission or notification of the *UK parent entity* or *parent undertaking*. This means that it will convert into an equivalent deemed MIFIDPRU 3 permission or notification of the *UK parent entity* or *parent undertaking* under MIFIDPRU TP 1. A notification under MIFIDPRU TP 7 is not required in this situation.

Eligibility of pre-MIFIDPRU capital resources meeting requirements in MIFIDPRU 3 to qualify as own funds under MIFIDPRU without a separate permission or notification

- 7.4 R (1) This *rule* applies to any capital instrument that:
- (a) was issued by a *firm*, *UK parent entity* or *parent undertaking* before 1 January 2022; and
 - (b) was still in issue on 1 January 2022.
- (2) The *firm*, *UK parent entity* or *parent undertaking* in (1)(a) is deemed to have been granted the permission, or to have complied with the notification obligation, in column (A) of the table in MIFIDPRU TP 7.5R in relation to a capital instrument where the following conditions are met:
- (a) the conditions in column (B) of the same row of the table in MIFIDPRU TP 7.5R are met in relation to that instrument; and
 - (b) the *firm* has submitted the notification in MIFIDPRU TP 7 Annex 1R using the *online notification and application system* by no later than 29 June 2022.
- (3) A deemed permission or notification under (2) ceases to apply in relation to a capital instrument if the terms of the instrument are varied on or after 1 January 2022 and the instrument ceases to meet:

		(a)	in relation to an instrument being treated as <i>common equity tier 1 capital</i> , the conditions in MIFIDPRU 3.3 (other than the condition for prior <i>FCA</i> permission to classify the instrument as <i>common equity tier 1 capital</i>);
		(b)	in relation to an instrument being treated as <i>additional tier 1 capital</i> , the conditions in MIFIDPRU 3.4; and
		(c)	in relation to an instrument being treated as <i>tier 2 capital</i> , the conditions in MIFIDPRU 3.5.
7.5	R	This table belongs to MIFIDPRU TP 7.4R.	

(A)	(B)
Requirement for permission or notification with which the <i>firm</i> , <i>UK parent entity</i> or <i>parent undertaking</i> is deemed to have complied	Conditions for deemed compliance to apply
<i>Individual MIFIDPRU investment firms</i>	
Article 26(3) <i>UK CRR</i> (as applied and modified by MIFIDPRU 3.3.1R) and MIFIDPRU 3.3.3R: Requirement for prior <i>FCA</i> permission to classify an issuance of capital instruments by a <i>firm</i> as <i>common equity tier 1 capital</i>	Immediately before <i>MIFIDPRU</i> began to apply or, if later, on the date on which the notification in MIFIDPRU TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as <i>common equity tier 1 capital</i> in MIFIDPRU 3.3, except for the requirement for prior <i>FCA</i> permission under article 26(3) of the <i>UK CRR</i> and MIFIDPRU 3.3.3R
MIFIDPRU 3.6.5R(1)(a): Requirement to notify the <i>FCA</i> of the intention to issue <i>additional tier 1 instruments</i>	Immediately before <i>MIFIDPRU</i> began to apply or, if later, on the date on which the notification in MIFIDPRU TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as <i>additional tier 1 capital</i> in MIFIDPRU 3.4
MIFIDPRU 3.6.5R(1)(b): Requirement to notify the <i>FCA</i> of the intention to issue <i>tier 2 instruments</i>	Immediately before <i>MIFIDPRU</i> began to apply or, if later, on the date on which the notification in MIFIDPRU TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as <i>tier 2 capital</i> in MIFIDPRU 3.5
<i>UK parent entities</i> to which consolidation under MIFIDPRU 2.5.7R applies	
Article 26(3) <i>UK CRR</i> (as applied and modified by MIFIDPRU 3.3.1R) and MIFIDPRU 3.6.8R, as they apply on a <i>consolidated basis</i> under MIFIDPRU 2.5.7R(1): Requirement for prior <i>FCA</i> permission to classify an issuance of capital instruments by a <i>UK parent entity</i> as <i>common equity tier 1 capital</i>	Immediately before <i>MIFIDPRU</i> began to apply or, if later, on the date on which the notification in MIFIDPRU TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as <i>common equity tier 1 capital</i> in MIFIDPRU 3.3 (as it applies on a consolidated basis), except for the requirement for prior <i>FCA</i> permission under article 26(3) of the <i>UK CRR</i> and MIFIDPRU 3.3.3R
MIFIDPRU 3.6.5R(1)(a), as modified by MIFIDPRU 3.6.8R: Requirement to notify the <i>FCA</i> of the intention to issue <i>additional tier 1 instruments</i>	Immediately before <i>MIFIDPRU</i> began to apply or, if later, on the date on which the notification in MIFIDPRU TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as <i>additional tier 1 capital</i> in MIFIDPRU 3.4 (as it applies on a consolidated basis)
MIFIDPRU 3.6.5R(1)(b), as modified by MIFIDPRU 3.6.8R: Requirement to notify the <i>FCA</i> of the intention to issue <i>tier 2 instruments</i>	Immediately before <i>MIFIDPRU</i> began to apply or, if later, on the date on which the notification in MIFIDPRU TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as <i>tier 2 capital</i> in MIFIDPRU 3.5 (as it applies on a consolidated basis)
<i>Parent undertakings</i> to which the <i>group capital test</i> applies	
Article 26(3) <i>UK CRR</i> (as applied and modified by	Immediately before <i>MIFIDPRU</i> began to apply or,

		(A)	(B)
		Requirement for permission or notification with which the <i>firm, UK parent entity or parent undertaking</i> is deemed to have complied	Conditions for deemed compliance to apply
		<i>Individual MIFIDPRU investment firms</i>	
		MIFIDPRU 3.3.1R) and MIFIDPRU 3.3.3R, as they apply to a parent undertaking under MIFIDPRU 3.7.4R(1)(a): Requirement for prior <i>FCA</i> permission to classify an issuance of capital instruments by a <i>parent undertaking</i> as <i>common equity tier 1 capital</i>	if later, on the date on which the notification in MIFIDPRU TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as <i>common equity tier 1 capital</i> in MIFIDPRU 3.3, except for the requirement for prior <i>FCA</i> permission under article 26(3) of the <i>UK CRR</i> and MIFIDPRU 3.3.3R
		MIFIDPRU 3.6.5R(1)(a), as modified by MIFIDPRU 3.7.4R(1)(b): Requirement to notify the <i>FCA</i> of the intention to issue <i>additional tier 1 instruments</i>	Immediately before <i>MIFIDPRU</i> began to apply or, if later, on the date on which the notification in MIFIDPRU TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as <i>additional tier 1 capital</i> in MIFIDPRU 3.4
		MIFIDPRU 3.6.5R(1)(b), as modified by MIFIDPRU 3.7.4R(1)(b): Requirement to notify the <i>FCA</i> of the intention to issue <i>tier 2 instruments</i>	Immediately before <i>MIFIDPRU</i> began to apply or, if later, on the date on which the notification in MIFIDPRU TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as <i>tier 2 capital</i> in MIFIDPRU 3.5
7.6	G	Where a <i>firm, UK parent entity or parent undertaking</i> is deemed under MIFIDPRU TP 7.3R and 7.4R to have notified the <i>FCA</i> of its intention to issue <i>additional tier 1 instruments</i> or <i>tier 2 instruments</i> , MIFIDPRU 3.6.5R(2)(a) will apply to a subsequent issuance of the same class of instruments. In practice, this means that provided that the subsequent issuance of the same class is on terms that are identical in all material respects to the existing class of those instruments, a notification to the <i>FCA</i> under MIFIDPRU 3.6.5R(1) is not required.	
		Notification under MIFIDPRU TP 7.4R(2)(b) on treating pre-MIFIDPRU capital instruments as own funds under MIFIDPRU 3	
TP 7 Annex 1	R	[Editor's note: The form can be found at this address: https://www.handbook.fca.org.uk/forms/	

