Chapter 10

Capital buffers

10.4 Capital conservation measures

Combined buffer

10.4.1 R A *firm* does not meet the *combined buffer* if the *common equity tier 1 capital* maintained by the *firm* which is not used to meet the *own funds requirement* under article 92(1)(c) of the *UK CRR* (Total capital ratio) does not meet the *combined buffer*.

[**Note:** articles 129(1) (part) and 130(5) (part) of *CRD*]

Restrictions on distributions

10.4.2 R A *firm* that meets the *combined buffer* must not make a *distribution in connection with common equity tier 1 capital* to an extent that would decrease its *common equity tier 1 capital* to a level where the *combined buffer* is no longer met.

[**Note:** article 141(1) of *CRD*]

10.4.3 R

(1) A *firm* that does not meet the *combined buffer* must:

(a) calculate the *MDA* in accordance with (4); and

(b) report the *MDA* to the *FCA* in writing no later than five *business days* after the *firm* identified that it did not meet the *combined buffer*.

(2) A *firm* that does not meet the *combined buffer* must not undertake any of the following actions before it has calculated the *MDA*:

(a) make a *distribution in connection with common equity tier 1 capital*;

(b) create an obligation to pay variable remuneration or *discretionary pension benefits* or pay variable remuneration or *discretionary pension benefits* if the obligation to pay was created at a time when the *firm* did not meet the *combined buffer*; and

(c) make payments on *additional tier 1 instruments*.

(3) If a *firm* does not meet the *combined buffer*, it must not distribute more than the *MDA*, calculated in (4), through any action in (2)(a) to (c).

(4) (a) A *firm* must calculate the *MDA* by multiplying the sum calculated in (5) by the factor determined in (6).

(b) Any of the actions in (2)(a), (b) or (c) shall have the effect of reducing the *MDA*.

(5) The sum to be multiplied in (4) shall consist of:

(a) interim profits not included in *common equity tier 1 capital* under article 26(2) of the *UK CRR* (Common equity tier 1 items) that have been generated since the most recent decision on the distribution of profits or any of the actions in 2(a), (b) or (c);

Plus

(b) year-end profits not included in *common equity tier 1 capital* under article 26(2) of the *UK CRR* that have been generated since the most recent decision on the distribution of profits or any of the actions in (2) (a), (b) or (c);

Minus

(c) amounts which would be payable by tax if the items specified in (a) and (b) were to be retained.

(6) The factor in (4) shall be determined as follows:

(a) if the *common equity tier 1 capital* maintained by the *firm* which is not used to meet the *own funds requirement* under article 92(1)(c) of the *UK CRR* expressed as a percentage of the *firm's total risk exposure amount* is within the first (ie, the lowest) quartile of the *combined buffer*, the factor shall be 0;

(b) if the *common equity tier 1 capital* maintained by the *firm* which is not used to meet the *own funds requirement* under article 92(1)(c) of the *UK CRR*, , expressed as a percentage of the *firm's total risk exposure amount* is within the second quartile of the *combined buffer*, the factor shall be 0.2;

(c) if the *common equity tier 1 capital* maintained by the *firm* which is not used to meet the *own funds requirement* under article 92(1)(c) of the *UK CRR* expressed as a percentage of the *firm's total risk exposure amount* is within the third quartile of the *combined buffer*, the factor shall be 0.4;

(d) if the *common equity tier 1 capital* maintained by the *firm* which is not used to meet the *own funds requirement* under article 92(1)(c) of the *UK CRR* expressed as a percentage of the *firm's total risk exposure amount* is within the fourth (ie, the highest) quartile of the *combined buffer*, the factor shall be 0.6.

(7) A *firm* must calculate the lower and upper bounds of each quartile of the *combined buffer* as follows:

$$lower\ bound\ of\ quartile = \frac{Combined\ buffer}{4} \times (Q_n - 1)$$

$$upper\ bound\ of\ quartile = \frac{Combined\ buffer}{4} \times Q_n$$

"Q_n" indicates the ordinal number of the quartile concerned.

(8) The restrictions imposed by this *rule* only apply to payments that result in a reduction of *common equity tier 1 capital* or in a reduction

of profits, and where a suspension of payment or failure to pay does not constitute an event of default or a condition for the commencement of proceedings for an order for the appointment of a liquidator or administrator of the *firm*.

(9) If a *firm* does not meet the *combined buffer* and intends to distribute any of its distributable profits or undertake an action in (2)(a), (b) and (c), it must give the *FCA* not less than one *month*'s notice before the intended date of distribution or action. When giving notice a *firm* must provide the following information:

(a) the amount of *own funds* maintained by the *firm*, subdivided as follows:

(i) *common equity tier 1 capital*;

(ii) *additional tier 1 capital*; and

(iii) *tier 2 capital*;

(b) the amount of its interim and year-end profits;

(c) the *MDA* calculated in (4);

(d) the amount of distributable profits it intends to allocate between the following:

(i) dividend payments;

(ii) share buybacks;

(iii) payments on *additional tier 1 instruments*; and

(iv) the payment of variable remuneration or *discretionary pension benefits*, whether by creation of a new obligation to pay, or payment pursuant to an obligation to pay created at a time when the *firm* did not meet its *combined buffer*.

[**Note:** article 141(2) to (9) of *CRD*]