

Chapter 3

Own funds

3.2 Capital

Application

- 3.2.1 **R** ■ IFPRU 3 applies to an *IFPRU investment firm*, unless it is an exempt IFPRU commodities firm.

Purpose

- 3.2.2 **G** This chapter:
- (1) contains the *rules* that exercise the discretion afforded to the *FCA* as *competent authority* under article 89 of the *UK CRR*;
 - (2) contains the *guidance* in relation to articles 4(1)(126) and 28 of the *UK CRR*; and
 - (3) contains the *rules* on notification to the *FCA* of intended issuance, or amendment to, *own funds* instruments and specified terms that meet the conditions for qualification as *own funds*.

Qualifying holding outside the financial sector

- 3.2.3 **R** In respect of the qualifying holdings described in article 89(1) and (2) of the *UK CRR*, a *firm* must, in accordance with article 89(3) of the *UK CRR*, comply with the requirement in article 89(3)(a) of the *UK CRR*.

Indirect or synthetic holdings

- 3.2.4 **G** For the purposes of article 4(1)(126) (Definition of synthetic holding) and Part Two (Own funds) of the *UK CRR*, the *FCA* considers the holdings described in ■ IFPRU 3.2.5 G to be examples of indirect or synthetic holdings by an *IFPRU investment firm* of own common equity tier 1 instruments.

- 3.2.5 **G** An indirect or synthetic holding includes a holding of a *firm* of *shares*, any other interest in the capital and subordinated debt, whether in the *trading book* or *non-trading book*, in:

- (1) an *institution* ; or
- (2) a *financial institution*;

that satisfies the following conditions:

- (3) the holding is the subject of an agreement or arrangement between the *firm* and either the issuer of the instrument in question or a member of the *group* to which the issuer belongs;
- (4) under the terms of the agreement or arrangement described in (3), the issuer invests in the *firm* or in a member of the *group* to which the *firm* belongs;
- (5) the effect of that agreement or arrangement on the capital position of the *firm*, the issuer or any member of a *group* to which either belongs, under any relevant rule is significantly more beneficial than in economic terms, taking into account the agreement or arrangement as a whole.

For this purpose, a relevant rule means a *rule* in *GENPRU*, *BIPRU*, *INSPRU* or *IFPRU* or any other capital adequacy or solvency requirements of the *FCA* or any other regulator, territory or country.

Connected transactions

3.2.6 **R** In determining whether an item of capital qualifies as *common equity tier 1 capital*, *additional tier 1 capital* or *tier 2 capital*, a *firm* must take into account any connected transaction which, when taken together with the item of capital, would cause it not to display the characteristics of *common equity tier 1 capital*, *additional tier 1 capital* or *tier 2 capital*.

3.2.7 **R** A *firm* must report to the *FCA* all connected transactions described in **IFPRU 3.2.6 R** at least one *month* in advance of entry into the relevant transaction and identify each relevant transaction with sufficient detail to allow the *FCA* to evaluate it.

Own funds instruments issued under third country law

3.2.8 **R** [deleted]

3.2.9 **R** [deleted]

Notification of issuance of own funds instruments

3.2.10 **R** A *firm* must notify the *FCA* of the following:

- (1) its intention; or
- (2) the intention of another member of its *group* that is not a *firm*, but is included in the supervision on a *consolidated basis* of the *firm*;

to issue a capital instrument that it believes will qualify under the *UK CRR* as *own funds* other than a *common equity tier 1 capital* at least one *month* before the intended date of issue.

3.2.11 **R** A *firm* does not have to give notice under **IFPRU 3.2.10 R** if the capital instrument is:

- (1) an ordinary *share*; or
- (2) a debt instrument issued under a debt securities programme under which the *firm* or *group* member has previously issued and the *firm* has notified the *FCA*, in accordance with ■ IFPRU 3.2.10 R, prior to a previous issuance under the programme.
- 3.2.12** **R** When giving notice, the *firm* must provide:
- (1) details of the amount and type of *own funds* the *firm* is seeking to raise through the intended issue and whether the capital instrument is intended to be issued to external investors or other members of its *group*;
- (2) 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;
- (3) confirmation from a member of the *firm's* senior management responsible for authorising the intended issue or, in the case of an issue by another *group* member, for the issue's inclusion in the *firm's* consolidated *own funds*, that the capital instrument meets the conditions for qualification as an *own funds* item; and
- (4) a properly reasoned legal opinion from an appropriately qualified individual confirming that the capital instrument meets the conditions for qualification as the relevant type of *own funds*.
- 3.2.13** **R** A *firm* must notify the *FCA* in writing, no later than the date of issue of its intention, or the intention of another member of its *group* that is not a *firm* included in the supervision on a *consolidated basis* of the *firm*, to issue a capital instrument described in ■ IFPRU 3.2.11 R.
- 3.2.14** **R** When giving notice under ■ IFPRU 3.2.13 R, the *firm* must provide:
- (1) confirmation that the terms of the capital instrument have not changed since the previous issue by the *firm* of that type of capital instrument; and
- (2) the information in ■ IFPRU 3.2.12 R (1) and-■ IFPRU 3.2.12 R (3).
- 3.2.15** **R** The *firm* must promptly notify the *FCA* of any change to the intended date of issue, amount of issue, type of investors, type of *own funds* or any other feature of the capital instrument to that previously notified to the *FCA* under ■ IFPRU 3.2.10 R or ■ IFPRU 3.2.13 R.
- 3.2.16** **R** **Notification of amendments to own funds instruments**
A *firm* must notify the *FCA* of its intention, or the intention of another member of its *group* that is not a *firm* included in the supervision on a *consolidated basis* of the *firm*, to amend or otherwise vary the terms of any *own funds* instrument included in its *own funds* or the *own funds* of its

consolidated *group* at least one *month* before the intended date of such amendment or other variation.

Notification of reduction of own funds

3.2.17

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A *firm* must notify the *FCA* of its intention, or the intention of another member of its *group* included in the supervision on a *consolidated basis* of the *firm*, to carry out any of the actions described in article 77 of the *UK CRR* (Conditions for reducing own funds) for an *own funds* instrument.

Common equity tier 1 capital: partnership capital account

3.2.18

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A partner's account of a *firm* that is a partnership:

- (1) into which capital contributed by partners is paid; and
- (2) from which under the terms of the partnership agreement an amount representing capital may be withdrawn by a partner only if:
 - (a) he ceases to be a partner and an equal amount is transferred to another such account by his former partners or any *person* replacing him as their partner; or
 - (b) the partnership is wound up or otherwise dissolved; or
 - (c) the *firm* has ceased to be *authorised* or no longer has a *Part 4A permission*;

may be considered as meeting the purposes of article 28(1)(e) (perpetual) and (f) (reduction or repayment) of the *UK CRR*.

Common equity tier 1 capital: eligible LLP members' capital

3.2.19

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A member's account of a *firm* that is a *limited liability partnership*:

- (1) into which capital contributed by the members is paid; and
- (2) from which, under the terms of the *limited liability partnership* agreement, an amount representing capital may be withdrawn by a partner only if:
 - (a) he ceases to be a member and an equal amount is transferred to another such account by his former fellow members or any *person* replacing him as a member;
 - (b) the *limited liability partnership* is wound up or otherwise dissolved; or
 - (c) the *firm* has ceased to be *authorised* or no longer has a *Part 4A permission*;

may be considered as meeting the purposes of article 28(1)(e) (perpetual) and (f) (reduction or repayment) of the *UK CRR*.

Variable capital calculation for collective portfolio management investment firms

3.2.20

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When a *collective portfolio management investment firm* calculates the total risk exposure amount in article 92(3) of the *UK CRR*, the *own funds requirements* referred to in article 92(3)(a) (Risk-weighted exposure amount

for credit risk and dilution risk) and article 92(3)(b) (Risk-weighted exposure amount for position risk) should include only those arising from its *designated investment business*. For this purpose, *managing an AIF* or *managing a UK UCITS* is excluded from *designated investment business*.