

VENTURE CAPITAL INVESTMENTS INSTRUMENT 2011

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 150(2) (Actions for damages);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 August 2011.

Amendments to the Handbook

- D. The General Prudential sourcebook (GENPRU) is amended in accordance with Annex A to this instrument.
- E. The Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Venture Capital Investments Instrument 2011.

By order of the Board
28 July 2011

Annex A

Amendments to the General Prudential sourcebook (GENPRU)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2.2 Capital resources

...

Deductions from tiers one and two: Material holdings (BIPRU firm only)

...

2.2.209 R (1) A Subject to (2) and (3), a material holding is:

~~(1)~~(a) a BIPRU firm's holdings of shares and any other interest in the capital of an individual *credit institution* or *financial institution* (held in the *non-trading book* or the *trading book* or both) exceeding 10% of the *share capital* of the issuer, and, where this is the case, any holdings of subordinated debt of the same issuer are also included as a *material holding*; the full amount of the holding is a *material holding*; or

~~(2)~~(b) a BIPRU firm's holdings of shares, any other interest in the capital and subordinated debt in an individual *credit institution* or *financial institution* (held in the *non-trading book* or the *trading book* or both) not deducted under ~~(1)~~ (a) if the total amount of such holdings exceeds 10% of that *firm's capital resources* at stage N (Total tier one capital plus tier two capital after deductions) of the calculation in the *capital resources table* (calculated before deduction of its *material holdings*); only the excess amount is a *material holding*; or

~~(3)~~(c) a bank or building society's aggregate holdings in the *non-trading book* of shares, any other interest in the capital, and subordinated debt in all *credit institutions* or *financial institutions* not deducted under ~~(1) or (2)~~ (a) or (b) if the total amount of such ~~holdings~~ holdings exceeds 10% of that *firm's capital resources* at stage N of the calculation in the *capital resources table* (calculated before deduction of its *material holdings*); only the excess amount is a *material holding*; or

~~(4)~~(d) a *material insurance holding*.

(2) If a BIPRU firm holds shares in the capital of Business Growth Fund plc or another financial institution which makes venture

capital investments (in this section and its related annexes, a “Venture Capital Investor”) and the following conditions are met:

- (a) the sole business of the Venture Capital Investor is the making of *venture capital investments* together with the performance of *ancillary activities* in relation to the administration of the *venture capital investments*;
- (b) none of the *venture capital investments* made by the Venture Capital Investor is an investment (direct or indirect) in:
 - (i) a *credit institution*; or
 - (ii) a *financial institution* the principal activity of which is to perform any activity other than the acquisition of holdings in other *undertakings*;
- (c) the relevant proportion of the Venture Capital Investor is included in the *firm’s UK consolidation group* in accordance with *BIPRU 8.5*; and
- (d) the *firm* assigns a *risk weight* to its *exposure* to the Venture Capital Investor as if it were an *equity exposure* to which the simple *risk weight* approach is applied as set out in *BIPRU 4.7.9R* to *BIPRU 4.7.12R* (and in calculating its *capital resources requirement* the *firm* must assign a *risk weight* to that *exposure* in accordance with those *rules* and notwithstanding that those *rules* would not otherwise apply to that calculation);

the Venture Capital Investor may be ignored for the purposes of determining whether there is a *material holding*.

- (3) If a *BIPRU firm* holds *shares* in the capital of a *subsidiary undertaking* which is a *financial institution* solely by reason of its principal activity being the acquiring of holdings and which in turn holds (directly or indirectly) *shares* in the capital of a Venture Capital Investor (in this section and its related annexes, a “Venture Capital Holding Company”) and the following conditions are met:

- (a) the Venture Capital Investor meets the conditions in (2)(a) and (b);
- (b) the Venture Capital Holding Company is included in the *firm’s UK consolidation group* in accordance with *BIPRU 8.5*;
- (c) the proportion of the value of the Venture Capital Holding Company attributable to investment in Venture Capital Investors and the proportion of the value of the

Venture Capital Holding Company attributable to investment in other investments can be identified and valued on a regular basis; and

- (d) the firm assigns a risk weight to its exposure to the proportion of the Venture Capital Holding Company that represents the value of its investment in Venture Capital Investors as if it were an equity exposure to which the simple risk weight approach is applied as set out in BIPRU 4.7.9R to BIPRU 4.7.12R (and in calculating its capital resources requirement the firm must assign a risk weight to that exposure in accordance with those rules and notwithstanding that those rules would not otherwise apply to that calculation);

the proportion of the firm's investment in the Venture Capital Holding Company that represents the value of its investment in Venture Capital Investors may be ignored for the purposes of determining whether there is a material holding. The proportion of the firm's investment in the Venture Capital Holding Company that represents the value of other investments is a material holding.

...

2.2.216A G (1) ...

- (2) The effect of those rules is to achieve the deduction of all investments in *subsidiary undertakings* and *participations* for *banks* and *building societies* by ensuring that amounts not already deducted under other rules are accounted for at this stage of the calculation of *capital resources*, except where the investment has been made in:

- (a) a Venture Capital Investor and the conditions in GENPRU 2.2.209R(2) are met; or
- (b) a Venture Capital Holding Company and the conditions in GENPRU 2.2.209R(3) are met;

- (3) The following investments in *subsidiary undertakings* and *participations* should be deducted at this stage:
- (a) those not deducted in Part 1 of stage M because of the operation of the thresholds in GENPRU 2.2.205R (on qualifying holdings) and GENPRU 2.2.209R (on material holdings); and
- (b) those which do not meet the definition of *qualifying holding* or *material holding*, but excluding investments in Venture Capital Investors which are ignored in

accordance with GENPRU 2.2.209R(2) and investments in Venture Capital Holding Companies which are ignored in accordance with GENPRU 2.2.209R(3), for the purposes of determining whether there is a *material holding*.

(4) ...

...

Deductions from tiers one and two: Connected lending of a capital nature (bank only)

2.2.221 R (1) *GENPRU 2.2.221R to GENPRU 2.2.235G only apply to a bank.*

(2) If a *firm* has elected to ignore an investment in a Venture Capital Investor or a Venture Capital Holding Company in accordance with GENPRU 2.2.209R(2) or (3), for the purposes of determining whether there is a *material holding*, GENPRU 2.2.221R to GENPRU 2.2.233R do not apply to any lending by the *firm* to that Venture Capital Investor or Venture Capital Holding Company, provided that any lending to the Venture Capital Holding Company is made to and deployed by the *firm* solely in connection with the Venture Capital Investor.

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2 Annex 2R Capital resources table for a bank

The capital resources calculation for a bank		
Type of capital	Related text	Stage
...
Deductions from the totals of tier one and two		(M)
...
<p><i>Reciprocal cross-holdings</i></p> <p>Investments in <i>subsidiary undertakings</i> and <i>participations</i> excluding:</p> <p>(1) any amount which is already deducted as <i>material holdings</i> or <i>qualifying holdings</i>; and</p> <p>(2) any investment in a <u>Venture Capital Investor</u> or a <u>Venture Capital Holding Company</u> which has been <u>ignored in accordance with GENPRU 2.2.209R(2) or (3) for the purposes of determining whether there is a material holding.</u></p>	<p>GENPRU 2.2.217R to GENPRU 2.2.220R</p> <p>GENPRU 2.2.216AG</p>	(Part 2 of stage M)
...

...

2 Annex 3R Capital resources table for a building society

The capital resources calculation for a building society		
Type of capital	Related text	Stage

...
Deductions from the totals of tier one and two		(M)
...
<p><i>Reciprocal cross-holdings</i></p> <p>Investments in <i>subsidiary undertakings</i> and <i>participations</i> excluding:</p> <p>(1) any amount which is already deducted as <i>material holdings</i> or <u><i>qualifying holdings</i></u>; and</p> <p>(2) any investment in a <u>Venture Capital Investor</u> or a <u>Venture Capital Holding Company</u> which has been <u>ignored in accordance with GENPRU 2.2.209R(2) or (3) for the purposes of determining whether there is a material holding.</u></p>	<p><i>GENPRU 2.2.217R to GENPRU 2.2.220R</i></p> <p><i>GENPRU 2.2.216AG</i></p>	(Part 2 of stage M)
...

Annex B

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

In this Annex, underlining indicates new text and striking through indicates deleted text.

8.6 Consolidated capital resources

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8.6.20 R ...

Venture Capital Investments

8.6.21 R Part 2 of stage M in the *capital resources table* for banks in *GENPRU 2 Annex 2R* and the *capital resources table* for building societies in *GENPRU 2 Annex 3R* is adjusted so as to read as follows in relation to the deduction of investments in *subsidiary undertakings* and *participations*:

<u>Deductions from the totals of tier one and tier two</u>		<u>(M)</u>
...
<p>...</p> <p><u>Investments in <i>subsidiary undertakings</i> and <i>participations</i> excluding:</u></p> <p><u>(1) any amount which is already deducted as <i>material holdings</i> or <i>qualifying holdings</i>; and</u></p> <p><u>(2) any investment in an <i>undertaking</i> that meets the following conditions:</u></p> <p><u>(a) the investment has been made by a Venture Capital Investor and the <i>firm</i> is entitled to ignore (i) the Venture Capital Investor making that investment in accordance with <i>GENPRU 2.2.209R(2)</i> or (ii) the Venture Capital Holding Company (or a proportion of it) which holds the Venture Capital Investor in accordance with <i>GENPRU</i></u></p>	<p>...</p> <p><u><i>GENPRU 2.2.216AG</i></u></p>	<p><u>(Part 2 of stage M)</u></p>

<p><u>2.2.209R(3) for the purposes of determining whether there is a material holding;</u></p> <p><u>(b) the investment is a venture capital investment; and</u></p> <p><u>(c) the undertaking is not (i) a credit institution or (ii) financial institution the principal activity of which is to perform any activity other than the acquisition of holdings in other undertakings.</u></p>		
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10.3 Identification of counterparties

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10.3.8 R (1) ~~For~~ Subject to (2), for the purposes of BIPRU 10, and in relation to a firm, a connected counterparty means another person ('P') to whom the firm has an exposure and who fulfils at least one of the following conditions:

~~(1)~~(a) P is *closely related* to the firm; or

~~(2)~~(b) P is an *associate* of the firm; or

~~(3)~~(c) the same *persons* significantly influence the *governing body* of P and of the firm; or

~~(4)~~(d) the firm has an *exposure* to P that was not incurred for the clear commercial advantage of the firm or the firm's group and which is not on an arm's length basis.

(2) Where P is Business Growth Fund plc or another financial institution which makes venture capital investments and the firm is entitled to ignore that financial institution in accordance with GENPRU 2.2.209R(2) for the purposes of determining whether there is a material holding, (1) applies with the following modifications to the definition of associate:

(a) paragraph (3)(c) (community of interest) of that definition does not apply; and

(b) in applying paragraph (3)(a) (affiliated company) of that definition, paragraph (1)(e) (participating interests) of the definition of group does not apply.

