

INVESTMENT FIRMS PRUDENTIAL REGIME (No. 2) INSTRUMENT 2021

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) 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 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 138D (Actions for damages);
 - (4) section 139A (Power of the FCA to give guidance);
 - (5) section 143D (Duty to make rules applying to parent undertakings);
 - (6) section 143E (Powers to make rules applying to parent undertakings);
 - (7) section 143Y (Statement of policy for penalties under section 143W); and
 - (8) section 395 (The FCA’s and PRA’s procedures).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 January 2022.

Amendments to the Handbook

- D. The modules of the FCA Handbook listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

| (1) | (2) |
|--|---------|
| Glossary of definitions | Annex A |
| Senior Management Arrangements, Systems and Controls sourcebook (SYSC) | Annex B |
| Prudential sourcebook for MiFID Investment Firms (MIFIDPRU) | Annex C |
| Supervision manual (SUP) | Annex D |
| Decision Procedure and Penalties Manual (DEPP) | Annex E |
| The Enforcement Guide (EG) | Annex F |

- E. The FCA confirms and remakes in the Glossary of definitions any defined expressions used in the rules and guidance in the modules of the Handbook referred to in paragraph D where the defined expressions relate to UK legislation that has been amended since those defined expressions were last made.

Notes

- F. In the annexes to this instrument, the “notes” (indicated by “**Note:**” or “*Editor’s note:*”) are included for the convenience of readers, but do not form part of the legislative text.

Citation

- G. This instrument may be cited as the Investment Firms Prudential Regime (No. 2) Instrument 2021.

By order of the Board
25 November 2021

Annex A

Amendments to the Glossary of definitions

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

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

| | |
|--|---|
| <i>Appropriately Diversified Indices RTS</i> | Part 1 (FCA) of the <i>UK</i> version of Regulation (EU) 945/2014 of 4 September 2014 laying down implementing technical standards with regard to relevant appropriately diversified indices according to Regulation (EU) No 575/2013 of the European Parliament and of the Council, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> . |
| AVA | an additional valuation adjustment calculated under <i>MIFIDPRU</i> 3 Annex 8R. |
| <i>cooperative society</i> | a cooperative society as defined in <i>MIFIDPRU</i> 3 Annex 7.4R. |
| <i>Covered Bonds RTS</i> | Part 1 (FCA) of the <i>UK</i> version of Regulation (EU) 523/2014 of 12 March 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for determining what constitutes the close correspondence between the value of an institution's covered bonds and the value of the institution's assets, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> . |
| <i>Directive 2002/87/EC UK law</i> | the law of the <i>United Kingdom</i> (or any part of it) which, immediately before <i>IP completion day</i> , implemented Directive 2002/87/EC, as that law has effect on <i>IP completion day</i> . |
| <i>intermediate entity</i> | an intermediate entity as defined in <i>MIFIDPRU</i> 3 Annex 7.32R. |
| <i>Market Definition RTS</i> | Part 1 (FCA) of the <i>UK</i> version of Regulation (EU) 525/2014 of 12 March 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the definition of market, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> . |
| <i>non-authorised parent undertaking</i> | has the meaning in section 143B(1) of the <i>Act</i> , which is a <i>parent undertaking</i> that: <ul style="list-style-type: none"> (a) is incorporated in the <i>United Kingdom</i> or has its principal place of business in the <i>United Kingdom</i>, and (b) is not an <i>authorised person</i>. |

| | |
|--|---|
| <i>relevant body</i> | (in <i>MIFIDPRU</i>) a general meeting of the shareholders of a <i>firm</i> or an equivalent meeting of the owners of a <i>firm</i> . |
| <i>similar institution</i> | a similar institution as defined in <i>MIFIDPRU</i> 3 Annex 7.5R. |
| <i>Solvency 2 Regulations 2015</i> | the Solvency 2 Regulations 2015 (SI 2015/575). |
| <i>third country insurance undertaking</i> | a third country insurance undertaking as defined in regulation 2 of the <i>Solvency 2 Regulations 2015</i> . |
| <i>third country reinsurance undertaking</i> | a third country reinsurance undertaking as defined in regulation 2 of the <i>Solvency 2 Regulations 2015</i> . |
| <i>tier 1 capital</i> | (in <i>MIFIDPRU</i>) the sum of a <i>firm's</i> common equity tier 1 capital and additional tier 1 capital. |
| <i>valuation exposure</i> | means the amount of a <i>valuation position</i> that is sensitive to the movement in a <i>valuation input</i> . |
| <i>valuation input</i> | means a market observable or non-observable parameter or matrix of parameters that influences the fair value of a <i>valuation position</i> . |
| <i>valuation position</i> | means a <i>financial instrument</i> or commodity or portfolio of <i>financial instruments</i> or commodities, which are measured at fair value. |

Amend the following definitions as shown.

| | |
|--------------------------------|---|
| <i>financial sector entity</i> | has the meaning in article 4(1)(27) of the UK CRR. <u>any of the following:</u> |
| | (a) <u>a financial sector entity as defined in article (4)(1)(27) of the UK CRR;</u> |
| | (b) <u>a MIFIDPRU investment firm; or</u> |
| | (c) <u>an ancillary services undertaking included in the consolidated financial situation of a MIFIDPRU investment firm.</u> |
| <i>management body</i> | (1) ... |
| | ... |
| | (3) (in relation to an operator of an electronic system in relation to lending) the governing body with ultimate decision-making authority comprising the supervisory |

and the managerial function or, if the two functions are separated, only the managerial function.

[Note: article 2(1)(s) of the *UCITS Directive*]

- (4) (in relation to a non-authorised parent undertaking of an FCA investment firm) the board of directors, committee of management or other governing body of the undertaking and senior personnel who are empowered to set the undertaking's strategy, objectives and overall direction, and which oversee and monitor management decision-making in the undertaking.

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

19G MIFIDPRU Remuneration Code

19G.1 General application

...

Application: where the application of SYSC 19G.1.1R changes in relation to a firm

19G.1.8 R ...

- (3) The notification in (2)(b) must be submitted through the *online notification and application system* using the form in *MIFIDPRU 4 Annex 3R 7 Annex 3R*.

...

19G.4 Fixed and variable components of remuneration

Categorising fixed and variable remuneration

...

19G.4.2 G ...

- (3) The *FCA* considers that:
- (a) *fixed remuneration*:
 - (i) should primarily reflect a staff member's professional experience and organisational responsibility as set out in the staff member's job description and terms of employment; and
 - (ii) should be permanent, pre-determined, non-discretionary, non-revocable and not dependent on performance; and
 - (b) *variable remuneration*:
 - (i) should be based on performance or, in exceptional cases, other conditions;

- (ii) where based on performance, should reflect the long-term performance of the staff member as well as performance in excess of the staff member's job description and terms of employment; ~~and~~
- (iii) includes *discretionary pension benefits*; and
- (iv) includes carried interest, as referred to in SYSC 19G.1.27R.

...

Annex C

Amendments to the Prudential sourcebook for MiFID Investment Firms (MIFIDPRU)

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

1 Application

1.1 Application and purpose

...

- 1.1.9 G (1) If a *firm* applies stricter measures than those required under *MIFIDPRU* in accordance with *MIFIDPRU* 1.1.8R, the *firm* must still ensure that it meets the basic requirements of *MIFIDPRU*. This is illustrated by the following two examples:
- (a) Example 1: A *firm* decides to hold *own funds* of 0.03% of its *average AUM*, rather than 0.02% as required under *MIFIDPRU* 4.7.5R. This would be a stricter measure that still meets the basic requirements of *MIFIDPRU* and therefore would be permitted under *MIFIDPRU* 1.1.8R.
 - (b) Example 2: A *firm* decides to hold a significant amount of additional *own funds* instead of applying the deductions from its *common equity tier 1 capital* required under *MIFIDPRU* 3.3.6R. This is on the basis that the additional *own funds* far exceed the estimated value of the required deductions and the *firm* considers that the deduction calculations are too onerous. While the *firm* may consider that holding these additional *own funds* is a stricter measure, this approach would not meet the basic requirements of *MIFIDPRU*, which require the *firm* to calculate and apply the deductions. In addition, the failure to apply the correct deductions to *common equity tier 1 capital* may result in the *firm* incorrectly applying the concentration risk requirements and limits in *MIFIDPRU* 5. This approach would therefore not be permitted under *MIFIDPRU* 1.1.8R because it does not meet the basic requirements of *MIFIDPRU*.
- (2) If a *firm* wishes to apply a stricter measure but is unsure of whether that measure would meet the basic requirements of *MIFIDPRU*, it should discuss the proposal with the *FCA* before applying the measure.

Notifications and applications under MIFIDPRU for which there is no dedicated form

- 1.1.10 R (1) This rule applies where:
- (a) a notification or an application for permission is required under a provision in (2); and
 - (b) the provisions in MIFIDPRU do not specify that a particular notification or application form must be used for that purpose.
- (2) The relevant provisions in (1) are:
- (a) a rule in MIFIDPRU;
 - (b) a provision of the UK CRR that is applied by MIFIDPRU; or
 - (c) a provision in binding technical standards made for the purposes of the UK CRR where those binding technical standards are applied by MIFIDPRU.
- (3) Where this rule applies, a firm, UK parent entity or GCT parent undertaking that is subject to the relevant provision in (2) must:
- (a) where the provision requires a notification, complete the notification form in MIFIDPRU 1 Annex 5R and submit it to the FCA using the online notification and application system; or
 - (b) where the provision requires an application for permission, complete the application form in MIFIDPRU 1 Annex 6R and submit it to the FCA using the online notification and application system.

...

Insert the following new annexes, MIFIDPRU 1 Annex 5R and MIFIDPRU 1 Annex 6R, after MIFIDPRU 1 Annex 4R (Notification under MIFIDPRU 1.2.16R that a firm no longer qualifies to be classified as an SNI investment firm). The new text is not underlined.

Application for a permission under MIFIDPRU for which there is no dedicated application form

1 Annex [*Editor’s note:* the form can be found at this address:
5R [https://www.fca.org.uk/publication/forms/\[xxx\]](https://www.fca.org.uk/publication/forms/[xxx])]

Application for a permission under MIFIDPRU for which there is no dedicated application form

NOTE: *This application form must not be used to apply for or vary a permission where MIFIDPRU contains a dedicated application form for that permission. In that case, the dedicated form must be used instead. This form is relevant only to MIFIDPRU permissions for which no other application form is provided.*

Name of Senior Manager responsible for this application:

If the application is being made in respect of a MIFIDPRU investment firm or another SMCR firm, we would expect the individual responsible for it to hold a senior management function (SMF).

| | |
|---|--|
| Title | |
| First names | |
| Surname | |
| Job title / position | |
| Individual reference number (if applicable) | |

1. Please confirm which of the following the applicant is:

- MIFIDPRU investment firm that is not a consolidating UK parent entity or a GCT parent undertaking
- MIFIDPRU investment firm that is a consolidating UK parent entity
- MIFIDPRU investment firm that is a GCT parent undertaking
- Consolidating UK parent entity (other than a MIFIDPRU investment firm)
- GCT parent undertaking (other than a MIFIDPRU investment firm)

2. If this application is being made on behalf of other entities within the same group, please identify those other entities below:

| Entity name | FRN (if applicable) |
|-------------|---------------------|
| | |

3. Please identify below the rule in MIFIDPRU that relates to the permission you are requesting. Where the permission relates to a provision of the UK CRR (or a binding technical standard originally made under the UK CRR) that is applied by a rule in MIFIDPRU, please identify the UK CRR provision or provision of the binding technical standard **and** the MIFIDPRU rule that applies it.

| | |
|--|--|
| MIFIDPRU rule | |
| UK CRR provision (if applicable) | |
| Binding technical standard provision (if applicable) | |

4. Are you applying for the variation of an existing permission that has previously been granted under MIFIDPRU?

Yes ▶ Please provide the reference number below of the previous permission

| |
|--|
| |
|--|

No

5. Is your application based on a precedent published written permission notice?

Yes ▶ Please provide the reference number of the precedent permission and an explanation of why you consider the precedent to be relevant to your application.

| | |
|---|--|
| Permission reference number | |
| Relevance of the precedent permission to this application | |

No

6. Please explain why you are applying for the MIFIDPRU permission (or a variation of the existing MIFIDPRU permission). Please give details of how the permission will affect your business, including the activities to which it relates and the types of clients or counterparties who may be affected.

| |
|--|
| |
|--|

7. Please explain how any requirements in the MIFIDPRU rule and, if applicable, the UK CRR provision or binding technical standard provision you identified in question 0 above are met.

Where the relevant provisions contain multiple requirements, you must explain how each separate requirement is met. This includes any requirements that may be applied by cross-references to other MIFIDPRU rules or provisions of the UK CRR. If you attach supporting documents to support your application, please tick the box below.

Supporting document(s) attached

Notification under MIFIDPRU for which there is no dedicated notification form

1 Annex [Editor's note: the form can be found at this address:
6R [https://www.fca.org.uk/publication/forms/\[xxx\]](https://www.fca.org.uk/publication/forms/[xxx])]

Notification under MIFIDPRU for which there is no dedicated notification form

NOTE: This form must **not** be used to:

- submit a notification where MIFIDPRU contains a separate dedicated form for that notification. In that case, the dedicated form must be used instead; or
- make a notification for purposes that are not connected with MIFIDPRU. A firm that needs to make a notification for other purposes should refer to the provisions in SUP 15.

This form is relevant only to notifications under MIFIDPRU for which no other notification form is provided.

Name of Senior Manager responsible for this notification:

If the notification is being made in respect of a MIFIDPRU investment firm or another SMCR firm, we would expect the individual responsible for it to hold a senior management function (SMF).

| | |
|---|--|
| Name of individual | |
| Job title / position | |
| Individual reference number (if applicable) | |

1. Please confirm which of the following is making this notification:

- a. MIFIDPRU investment firm that is not a consolidating UK parent entity or a GCT parent undertaking
- b. MIFIDPRU investment firm that is a consolidating UK parent entity
- c. MIFIDPRU investment firm that is a GCT parent undertaking
- d. Consolidating UK parent entity (other than a MIFIDPRU investment firm)
- e. GCT parent undertaking (other than a MIFIDPRU investment firm)

2. If this application is being made on behalf of other entities within the same group, please identify those other entities below:

| FRN | Entity name |
|-----|-------------|
| | |

3. Please identify below the rule in MIFIDPRU that relates to the notification you are making. Where the notification relates to a provision of the UK CRR (or a binding technical standard originally made under the UK CRR) that is applied by a rule in MIFIDPRU, please identify the UK CRR provision or provision of the binding technical standard **and** the MIFIDPRU rule that applies it.

| | |
|--|--|
| MIFIDPRU rule | |
| UK CRR provision (if applicable) | |
| Binding technical standard provision (if applicable) | |

4. Please provide details of the matter to which this notification relates.

Where a MIFIDPRU rule, UK CRR provision or binding technical standard provision that you have identified in question 3 requires particular information to be provided in the notification, you must include that information.

If you attach supporting documents relating to this notification, please tick the box below.

| |
|--|
| |
|--|

Supporting document(s) attached

Amend the following as shown.

2 Level of application of requirements

...

2.4 Investment firm groups: general

...

- 2.4.19 G In the *FCA's* view, where an *investment firm group* includes one or more undertakings that are *connected undertakings* (other than *connected undertakings* due to a *participation* in accordance with *MIFIDPRU 2.4.15R*), that are material (either individually or in aggregate), it is unlikely that the *investment firm group* will be sufficiently simple to be able to apply the *group capital test*. This is because the relationship between the relevant member of the *investment firm group* and the *connected undertaking* is likely to be more complex and because the *group capital test* can only apply to holdings in instruments issued by, or claims on, an entity. Therefore, prudential consolidation under *MIFIDPRU 2.5* is likely to be more appropriate in such circumstances.

Notifications relating to membership of a consolidation group or financial conglomerate

- 2.4.20 R (1) A *MIFIDPRU investment firm* must notify the *FCA* immediately if the *firm* becomes aware that:
- (a) it has become a member of an *investment firm group*;
 - (b) it has ceased to be a member of an *investment firm group*;
 - (c) there has been a change in the composition of an *investment firm group* of which that *firm* forms a part;
 - (d) it has become a member of a *financial conglomerate*; or
 - (e) it has ceased to be a member of a *financial conglomerate*.
- (2) A *firm* must:
- (a) notify the *FCA* under (1) using the form in *MIFIDPRU 2 Annex 8R* and submit it using the *online notification and application system*; and
 - (b) as part of the notification in (a):
 - (i) identify any entity that is becoming a member of the *investment firm group* or *financial conglomerate*;

- (ii) identify any existing members of the investment firm group or financial conglomerate that continue to be members of that investment firm group or financial conglomerate;
- (iii) identify any entity that is ceasing to be a member of the investment firm group or financial conglomerate; and
- (iv) where applicable, confirm that the investment firm group or financial conglomerate has ceased to exist.

(3) A firm (“X”) is not required to notify the FCA under (1) if:

- (a) another member of the relevant investment firm group or financial conglomerate (“Y”) has notified the FCA under (1); and
- (b) the notification submitted by Y includes information that accurately reflects X’s relationship to the investment firm group or financial conglomerate and any other information required under (2)(b).

...

2.5 Prudential consolidation

...

2.5.3 G The table below is a guide to the content of this section

| Provision of MIFIDPRU 2.5 | Summary of content |
|---|--|
| ... | ... |
| MIFIDPRU 2.5.49 [deleted] | Consolidated disclosure requirements [deleted] |
| ... | ... |

...

Prudential consolidation – main requirements

2.5.7 R A UK parent entity must comply with the following on the basis of its consolidated situation:

- (1) *MIFIDPRU 3* (Own funds);
- (2) *MIFIDPRU 4* (Own funds requirements);
- (3) *MIFIDPRU 5* (Concentration risk); and
- (4) ~~*MIFIDPRU 8* (Disclosure); and [deleted]~~
- (5) *MIFIDPRU 9* (Reporting).

...

- 2.5.10 R
- (1) When applying *MIFIDPRU 3* on a *consolidated basis*, the requirements in Title II of Part Two of the *UK CRR* shall also apply with the modifications in this rule.
 - (2) ~~When applying the provisions of article 84(1), article 85(1) and article 87(1) of the *UK CRR* under (1): A reference in Title II of Part Two of the *UK CRR* to an entity or person included within the “consolidation pursuant to Chapter 2 of Title II of Part One” is a reference to an entity or person included in the *consolidated situation* of the *investment firm group* under *MIFIDPRU 2.5*.~~
 - (a) ~~where those provisions refer to other provisions of the *UK CRR* that impose own funds requirements, only the references to article 92(1) of the *UK CRR* apply; and~~
 - (b) ~~the references to article 92(1) of the *UK CRR* must be read as if they were references to the *own funds requirement* under *MIFIDPRU*.~~
 - (3) The relevant *subsidiaries* for the purposes of articles 81(1)(a) and 82(a) of the *UK CRR* are:
 - (a) a *MIFIDPRU investment firm*;
 - (b) a *designated investment firm*; and
 - (c) a *UK credit institution* that is included in the *consolidated situation* under *MIFIDPRU 2.5* because it is a *connected undertaking*.
 - (4) The modifications in (5) apply where the following provisions of the *UK CRR* apply to a *subsidiary* that is a *MIFIDPRU investment firm*:
 - (a) article 84(1)(a)(i);
 - (b) article 85(1)(a)(i); and
 - (c) article 87(1)(a)(i).

- (5) The modifications referred to in (4) are as follows:
- (a) the relevant amount of *common equity tier 1 capital* in article 84(1)(a)(i) is the sum of:
- (i) the amount of *common equity tier 1 capital* required to meet the *firm's own funds threshold requirement*; and
 - (ii) any other requirements that apply to the *firm* under additional local supervisory regulations in *third countries* to the extent that those requirements must be met by *common equity tier 1 capital*;
- (b) the relevant amount of *tier 1 capital* in article 85(1)(a)(i) is the sum of:
- (i) the amount of *tier 1 capital* required to meet the *firm's own funds threshold requirement*; and
 - (ii) any other requirements that apply to the *firm* under additional local supervisory regulations in *third countries* to the extent that those requirements must be met by *tier 1 capital*; and
- (c) the relevant amount of *own funds* in article 87(1)(a)(i) is the sum of:
- (i) the amount of *own funds* required to meet the *firm's own funds threshold requirement*; and
 - (ii) any other requirements that apply to the *firm* under additional local supervisory regulations in *third countries* to the extent that those requirements must be met by *own funds*.
- (6) The following provisions of the *UK CRR* are modified as follows:
- (a) article 84(1)(a)(ii) applies as if it refers to the sum of:
- (i) the amount of consolidated *common equity tier 1 capital* that relates to the *subsidiary* that is required on a *consolidated basis* to meet the requirement in *MIFIDPRU 2.5*; and
 - (ii) any other requirements that apply to the *subsidiary* under additional local supervisory regulations in *third countries* to the extent that those requirements must be met by *common equity tier 1*

capital;

- (b) article 85(1)(a)(ii) applies as if it refers to the sum of:
 - (i) the amount of consolidated *tier 1 capital* that relates to the *subsidiary* that is required on a *consolidated basis* to meet the requirement in *MIFIDPRU 2.5*; and
 - (ii) any other requirements that apply to the *subsidiary* under additional local supervisory regulations in *third countries* to the extent that those requirements must be met by *tier 1 capital*; and
- (c) article 87(1)(a)(ii) applies as if it refers to the sum of:
 - (i) the amount of consolidated *own funds* that relates to the *subsidiary* that is required on a *consolidated basis* to meet the requirement in *MIFIDPRU 2.5*; and
 - (ii) any other requirements that apply to the *subsidiary* under additional local supervisory regulations in *third countries* to the extent that those requirements must be met by *own funds*.

2.5.10A G MIFIDPRU 3 Annex 7.57G and MIFIDPRU 3 Annex 7.58R contain supplementary provisions that may be relevant when a *firm* is applying MIFIDPRU 2.5.10R.

...

~~Prudential consolidation in practice: disclosure by investment firms~~

2.5.49 G ~~{This provision has been intentionally left blank} [deleted]~~

...

Insert the following annex after MIFIDPRU 2 Annex 7R (Application under MIFIDPRU 2.5.41R for permission to include portfolio of a third country entity in consolidated K-CMG). The text is not underlined.

Notification under MIFIDPRU 2.4.20R relating to membership of an investment firm group and/or a financial conglomerate

2 Annex [Editor's note: the form can be found at this address:
8R [https://www.fca.org.uk/publication/forms/\[xxx\]](https://www.fca.org.uk/publication/forms/[xxx])]

Notification under MIFIDPRU 2.4.20R of membership of an investment firm group and/or a financial conglomerate

Under MIFIDPRU 2.4.20R(3), a firm (X) is not required to submit this form if another member of the investment firm group or financial conglomerate (Y) has notified the FCA of any relevant changes and the information provided by Y includes information about X and all other information required under MIFIDPRU 2.4.20R.

1. Please confirm to which of the following this notification relates:

| | |
|---|--------------------------|
| a. Investment firm group only | <input type="checkbox"/> |
| b. Financial conglomerate only | <input type="checkbox"/> |
| c. Investment firm group and financial conglomerate | <input type="checkbox"/> |

2. Please confirm which of the following apply or applies:

| | |
|--|--------------------------|
| a. The firm has become part of an investment firm group | <input type="checkbox"/> |
| b. The firm has ceased to be part of an investment firm group | <input type="checkbox"/> |
| c. There has been one or more relevant entities being added to the investment firm group of which the firm is a part | <input type="checkbox"/> |
| d. There has been one or more relevant entities being removed from the investment firm group of which the firm is a part | <input type="checkbox"/> |
| e. The firm has become part of a financial conglomerate | <input type="checkbox"/> |
| f. The firm has ceased to be part of a financial conglomerate | <input type="checkbox"/> |

If you selected:

- option (a), please complete questions 3 and 4 (A or B) and questions 7A and 8
- option (b), please complete questions 5, 6, 7B and 8
- option (c), please complete questions 4A, 7B and 8
- option (d), please complete questions 4A, 7B and 8

- option (e), please complete questions 9 to 13
- option (f), please complete questions 14 to 16

Where you have selected multiple options, you must complete all questions that apply to each of those options.

Information on the investment firm group

3. Please confirm if the firm is becoming part of an existing investment firm group or if a new investment firm group is being created.

Existing investment firm group

New investment firm group

4. A. *[For notifications relating to existing investment firm groups]* Please provide the information below. The group reference number will have been notified to you after you originally notified of us the creation of the investment firm group.

| | |
|--|--|
| Name of existing investment firm group | |
| Group reference number (GRN) | |

B. *[For notifications relating to new investment firm groups]* Please provide the following information:

| | |
|--|--|
| Specify a name for the investment firm group (We suggest the name of the UK parent entity, plus the word "group") | |
| Date on which the investment firm group was/will be created | |

Firms ceasing to be part of an investment firm group

5. Please provide the following information in relation to the investment firm group of which the firm is ceasing to be a part.

| | |
|--|--|
| Name of existing investment firm group | |
| Group reference number (GRN) | |

6. Please confirm whether the investment firm group you have identified in question 4 will continue to exist after the firm ceases to be part of the investment firm group.

Investment firm group will continue to exist

Investment firm group will cease to exist

Information on membership of the investment firm group

7. Please provide the information in the following tables in relation to the investment firm group.

A. New entities joining the investment firm group

Note: For a new investment firm group, this should include all entities in that investment firm group

| FRN (if applicable) | Entity name | Type of group undertaking (select one): <i>- UK parent entity</i> <i>- intermediate parent</i> <i>- subsidiary (non-parent undertaking)</i> <i>- connected undertaking</i> | Sub-type of group undertaking (select one): <i>- MIFIDPRU investment firm</i> <i>- PRA designated investment firm</i> <i>- credit institution</i> <i>- other financial institution</i> <i>- ancillary services undertaking</i> <i>- tied agent</i> | Location (type country name) <i>Principal place of business and, separately, place of incorporation (if different)</i> |
|---------------------|-------------|--|--|---|
| | | | | |

B. Entities ceasing to be part of the investment firm group

Note: If an investment firm group is ceasing to exist, this should include all entities in that investment firm group

| FRN (if applicable) | Entity name | Type of group undertaking (select one): - UK parent entity - intermediate parent undertaking - subsidiary (non-parent undertaking) - connected undertaking | Sub-type of group undertaking (select one): - MIFIDPRU investment firm - PRA designated investment firm - credit institution - other financial institution - ancillary services undertaking - tied agent | Location (type country name) <i>Principal place of business and, separately, place of incorporation (if different)</i> |
|---------------------|-------------|--|--|---|
| | | | | |

8. *[Where the investment firm group will continue to exist following this notification]* Please attach a group structure chart showing the position of each entity in that investment firm group.

Attached

Firms becoming part of a financial conglomerate

9. Please confirm if the firm is becoming part of an existing financial conglomerate or if a new financial conglomerate is being created.

Existing financial conglomerate

New financial conglomerate

10. *[If you selected "Existing financial conglomerate" in response to question 9]* Please confirm whether the Classification of Groups form in GENPRU 3 Annex 3G has previously been provided to the FCA in relation to that financial conglomerate:

Yes

No

11. *[If you selected "No" in response to question 10]* Please complete the Classification of Groups form in GENPRU 3 Annex 3G in relation to the financial conglomerate and attach it to this notification.

Attached

12. *[If you selected "New financial conglomerate" in response to question 9]* Please complete the Classification of Groups form in GENPRU 3 Annex 3G in relation to the financial conglomerate and attach it to this notification.

Attached

13. Please provide a group structure chart showing each entity that will be part of the financial conglomerate following this notification.

Attached

Firms ceasing to part of a financial conglomerate

14. Please confirm whether the financial conglomerate the firm is ceasing to be a part of will continue to exist after the firm ceases to be part of it.

Financial conglomerate will continue to exist

Financial conglomerate will cease to exist

15. *[If you selected "Financial conglomerate will continue to exist"]* Please provide a group structure chart showing each entity that will be part of the financial conglomerate following this notification.

Attached

Amend the following as shown.

3 Own funds

3.1 Application and purpose

...

Purpose

- 3.1.4 G This chapter contains requirements for the calculation of a *MIFIDPRU investment firm's own funds*. These requirements are based on the provisions in Title I of Part Two of the *UK CRR*, but with the modifications set out in this chapter.

Supplementary provisions

- 3.1.5 G *MIFIDPRU 3 Annex 7R (Additional provisions relating to own funds) and MIFIDPRU 3 Annex 8R (Prudent valuation and additional valuation adjustments) contain supplementary provisions that are relevant to certain rules in this chapter or certain requirements in the UK CRR that are cross-applied by rules in this chapter. A firm, UK parent entity or GCT parent undertaking that is applying a relevant rule in this chapter should therefore also refer to those annexes.*

...

3.3 Common equity tier 1 capital

- 3.3.1 R (1) A *firm* must determine its *common equity tier 1 capital* in accordance with Chapter 2 of Title I of Part Two of the *UK CRR*, as modified by the *rules* in this section.
- (2) Any reference to the *UK CRR* in this section is to the *UK CRR* as applied by (1) and modified by the *rules* in this section.

- 3.3.1A R Article 34 of the *UK CRR* (Additional valuation adjustments) applies only in relation to positions held in a *firm's trading book*.

- 3.3.1B G (1) *MIFIDPRU 3 Annex 7R* contains supplementary provisions that may be relevant when a *firm* is calculating its *common equity tier 1 capital* under *MIFIDPRU 3.3.1R*.
- (2) *MIFIDPRU 3 Annex 8R* contains supplementary provisions that apply when a *firm* is calculating any additional valuation adjustments under article 34 of the *UK CRR* (as applied by *MIFIDPRU 3.3.1AR*).

...

- 3.3.4 G (1) ...

...

- (3) The *FCA* generally expects to receive a notification of a subsequent issuance of an existing form of *common equity tier 1 capital* instruments under article 26(3) of the *UK CRR* at least 20 *business days* before the *firm* intends to classify that issuance as *common equity tier 1 capital*.

Close correspondence between the value of a firm’s covered bonds and the value of its assets

3.3.4A R When determining whether there is a close correspondence between the value of a *firm*’s covered bonds and the value of the *firm*’s assets for the purposes of article 33(3)(c) of the *UK CRR*, the *Covered Bonds RTS* applies with the following modifications:

- (1) any reference to an “institution” is a reference to the *firm*; and
- (2) any reference to “Regulation (EU) No 575/2013” is a reference to the *UK CRR* as applied and modified by the *rules in MIFIDPRU*.

[Note: article 33(4) of the *UK CRR* and *BTS 523/2014*.]

...

Deductions from common equity tier 1 capital

...

3.3.6 R A *MIFIDPRU investment firm* must deduct the following from its common equity tier 1 items:

- (1) ...
- ...
- (9) the amount of items required to be deducted from additional tier 1 items under article 56 of the *UK CRR* that exceeds the additional tier 1 items of the *firm*; ~~and~~
- (10) any tax charge relating to common equity tier 1 items foreseeable at the moment of its calculation, except where the *firm* suitably adjusts the amount of common equity tier 1 items insofar as such tax charges reduce the amount up to which those items may be used to cover risks or losses; and
- (11) where a *firm* is a *partnership* or a *limited liability partnership*, the amount by which the aggregate of any amounts withdrawn by its *partners* or members exceeds the profits of the *firm*, except to the extent that the amount:

- (a) has already been deducted from the *firm's own funds* as a loss under (1);
- (b) was repaid in accordance with *MIFIDPRU 3.3.16R(2)* or *MIFIDPRU 3.3.17R(2)*; or
- (c) is already reflected in a reduction of the *firm's own funds* that was permitted under articles 77 and 78 of the *UK CRR*, as applied in accordance with *MIFIDPRU 3.6* (General requirements for own funds instruments).

...

3.4 Additional Tier 1 capital

- 3.4.1 R (1) A *firm* must determine its *additional tier 1 capital* in accordance with Chapter 3 of Title I of Part Two of the *UK CRR*, as modified by the *rules* in this section.
- (2) Any reference to the *UK CRR* in this section is to the *UK CRR* as applied by (1) and modified by the *rules* in this section.

3.4.1A G *MIFIDPRU 3 Annex 7R* contains supplementary provisions relating to the calculation of a *firm's additional tier 1 capital* and to write-down and conversion requirements for *additional tier 1 instruments*.

...

3.5 Tier 2 capital

- 3.5.1 R (1) A *firm* must determine its *tier 2 capital* in accordance with Chapter 4 of Title I of Part Two of the *UK CRR*, as modified by the *rules* in this section.
- (2) Any reference to the *UK CRR* in this section is to the *UK CRR* as applied by (1) and modified by the *rules* in this section.

3.5.1A G *MIFIDPRU 3 Annex 7R* contains additional provisions relating to the calculation of a *firm's tier 2 capital*.

...

3.6 General requirements for own funds instruments

- 3.6.1 R (1) A *firm* must comply with Chapter 6 of Title I of Part Two of the *UK CRR*, as modified by the *rules* in this section.
- (2) Any reference to the *UK CRR* in this section is to the *UK CRR* as applied by (1) and modified by the *rules* in this section.

3.6.1A G *MIFIDPRU 3 Annex 7R* contains additional provisions relating to the eligibility of instruments to be classified as *own funds* and to the

reduction of *own funds*.

MIFIDPRU 3 Annex 2R (Application under MIFIDPRU 3.3.3R(1) – permission to classify capital instruments as CET1) is replaced with the form below. The new text is not underlined.

Application under MIFIDPRU 3.3.3R for permission to classify an issuance of capital instruments as common equity tier 1 (CET1) capital

1. Please confirm which of the following the applicant firm is:
 - a. MIFIDPRU investment firm that is not a consolidating UK parent entity or a GCT parent undertaking
 - b. MIFIDPRU investment firm that is a consolidating UK parent entity
 - c. MIFIDPRU investment firm that is a GCT parent undertaking
 - d. Consolidating UK parent entity (other than a MIFIDPRU investment firm)
 - e. GCT parent undertaking (other than a MIFIDPRU investment firm)

If the application concerns more than one firm in the investment firm group, please submit separate applications for each firm.

For applications on consolidated basis, references to firm/institution should be interpreted as to a consolidated situation of the UK parent.

2. For the instrument you would like to classify as CET1 capital, please provide the following information:
 - a. Type of instrument (e.g. ordinary shares, partnership capital):
 - b. If there is more than one class of the instrument, please list the different instrument classes:
 - c. Total number of shares/units of instrument that have been issued or will be issued:
 - d. Nominal value per share/unit of instrument:

£

e. Share premium per share, if applicable:

£

f. Total amount of capital being raised:

£

e. Proposed date to be issued:

f. Total expected CET 1 after the inclusion of the amounts to which this application relates (please complete for all that apply):

| | |
|---|---|
| MIFIDPRU investment firm (solo CET1) | £ |
| GCT parent undertaking (expected value of own funds instruments as specified in MIFIDPRU 2.6.2R(1)) | £ |
| Consolidating UK parent undertaking basis (consolidated CET1) | £ |

3. For capital instruments to qualify as CET 1 instruments, the following conditions must be met (see article 28 of the UK CRR). Please confirm whether these conditions are met:

a. The instruments are issued directly by your institution, with prior approval of the owners or, if permitted by national law, the management body of the institution:

Yes/No

b. The instruments are paid up and their purchase is not funded directly or indirectly by your institution (indirect funding is defined in MIFIDPRU 3 Annex 7.20R):

Yes/No

c. The instruments meet all of the following conditions as regards their classification:

i. they qualify as capital within the meaning of Art 28(1)(c)(i) of the UK CRR:

- ii. they are classified as equity within the meaning of the applicable accounting framework:

- iii. they are classified as equity capital for the purposes of determining balance sheet insolvency, where applicable under national insolvency law:

- d. The instruments are clearly and separately disclosed on the balance sheet in the financial statements of your institution:

- e. The instruments are perpetual:

- f. The principal amount of the instruments may not be reduced or repaid except in the following cases:

- i. the liquidation of your institution; or
 ii. discretionary repurchases of the instruments or other discretionary means of reducing capital (e.g. call, redemption or repayment), where your institution has been granted prior permission of the competent authority under article 77 of the UK CRR:

- g. The provisions governing the instruments do not indicate expressly or implicitly that the principal amount of the instruments would or might be reduced or repaid other than in the liquidation of your institution, and your institution does not otherwise provide such an indication prior to or at issuance of the instruments:

- h. The instruments meet the following conditions regarding distributions:

- i. there is no preferential distribution treatment regarding the order of distribution payments, including in relation to other Common Equity Tier 1 instruments, and the terms governing the instruments do not provide preferential rights to payment of distributions:

- ii. distributions to holders of the instruments may be paid only out of distributable items:

Yes/No

- iii. the conditions governing the instruments do not include a cap or other restriction on the maximum level of distributions:

Yes/No

- iv. the level of distributions is not determined on the basis of the amount for which the instruments were purchased at issuance:

Yes/No

- v. the conditions governing the instruments do not include any obligation for your institution to make distributions to their holders and your institution is not otherwise subject to such an obligation:

Yes/No

- vi. non-payment of distributions does not constitute an event of default of your institution:

Yes/No

- vii. the cancellation of distributions imposes no restrictions on your institution:

Yes/No

- i. Compared to all the capital instruments issued by your institution, the instruments absorb the first and proportionately greatest share of losses as they occur, and each instrument absorbs losses to the same degree as all other Common Equity Tier 1 instruments:

Yes/No

- j. The instruments rank below all other claims in the event of insolvency or liquidation of your institution:

Yes/No

- k. The instruments entitle their owners to a claim on the residual assets of your institution, which, in the event of its liquidation and after the payment of all senior claims, is proportionate to the amount of the instruments issued and is not fixed or subject to a cap:

Yes/No

- I. The instruments are not secured, or subject to a guarantee that enhances the seniority of the claim by any of the following: (Answer yes if the instruments are not secured in this way)
- i. your institution or its subsidiaries:
 - ii. the parent undertaking of your institution or its subsidiaries:
 - iii. the parent financial holding company or its subsidiaries:
 - iv. the mixed activity holding company or its subsidiaries:
 - v. the mixed financial holding company and its subsidiaries:
 - vi. any undertaking that has close links with the entities referred to in points i. to v.:

Yes/No

- m. The instruments are not subject to any arrangement, contractual or otherwise, that enhances the seniority of claims under the instruments in insolvency or liquidation: (Answer "yes" if the instruments are not subject to any arrangement in this way)

Yes/No

4. Partnership capital (this section should only be completed by partnerships).

Is the capital contributed in accordance with MIFIDPRU 3.3.15R or MIFIDPRU 3.2.16R?

Yes/No

Material on how UK CRR article 28(1)(e) and (f) may be complied with can be found in MIFIDPRU 3.3.15R and 3.3.16R.

5. Please confirm whether the capital issuance to which this application relates meets the criteria required by the UK CRR (as applied by MIFIDPRU 3), including any relevant requirements in MIFIDPRU 3 Annex 7R.

Yes/No

Please note that the FCA may request a copy of the terms of the instrument, or further information.

Insert the following new annexes, MIFIDPRU 3 Annex 7R and MIFIDPRU 3 Annex 8R, after MIFIDPRU 3 Annex 6R (Notification under MIFIDPRU 3.6.5R of issuance of additional tier 1 or tier 2 instruments). The text is not underlined.

3 Annex 7 Additional provisions relating to own funds

Application and purpose

- 7.1 R This annex applies to any of the following entities when that entity is determining its *own funds* under *MIFIDPRU 3*:
- (1) a *MIFIDPRU investment firm*;
 - (2) a *UK parent entity*; and
 - (3) a *GCT parent undertaking*.
- 7.2 G This annex contains additional *rules* and *guidance* that supplement the requirements in *MIFIDPRU 3* and *UK CRR* (as applied by *MIFIDPRU 3*) relating to the calculation of *own funds*.
- 7.3 R Any reference in this annex to the *UK CRR* is to the *UK CRR* as applied and modified by *MIFIDPRU 3*.

Definition of cooperative societies and similar undertakings

- 7.4 R For the purposes of article 27(1)(a)(ii) of the *UK CRR*, a *firm* is a *cooperative society* where the following conditions are met:
- (1) the *firm* is a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014, or a society registered or treated as registered under the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969;
 - (2) with respect to *common equity tier 1 capital*, the *firm* is able to issue, under the applicable law of the *United Kingdom* (or any part of it) or the *firm's* statutes, at the level of the legal entity, only capital instruments referred to in article 29 of the *UK CRR*;
 - (3) where, under the applicable law of the *United Kingdom* (or any part of it), the holders of the *firm's common equity tier 1 instruments* (whether they are members or non-members of the *firm*) have the ability to resign and return the capital instrument to the *firm*, this must be subject to any applicable restrictions under the following:
 - (a) the law of the *United Kingdom* (or any part of it);
 - (b) the statutes of the *firm*;

- (c) any provision of the *UK CRR* that is applied by *MIFIDPRU*; and
- (d) any provision of the *Handbook*.

[**Note:** article 4 of BTS 241/2014]

7.5 R For the purposes of article 27(1)(a)(iv) of the *UK CRR*, a *firm* is a *similar institution* where the following conditions are met:

- (1) with respect to *common equity tier 1 capital*, the *firm* is able to issue, under the applicable law of the *United Kingdom* (or any part of it) or the *firm's* statutes, at the level of the legal entity, only capital instruments referred to in article 29 of the *UK CRR*; and
- (2) at least one of the following applies:
 - (a) where the holders of the *firm's common equity tier 1 instruments* (whether they are members or non-members of the *firm*) have the ability to resign under the applicable law of the *United Kingdom* (or any part of it) and have the right to put the capital instrument back to the *firm*, this must be subject to any applicable restrictions under the following:
 - (i) the law of the *United Kingdom* (or any part of it);
 - (ii) the statutes of the *firm*;
 - (iii) any provision of the *UK CRR* that is applied by *MIFIDPRU*; and
 - (iv) any provision of the *Handbook*;
 - (b) the sum of capital, reserves and interim or year-end profits is not allowed, under the applicable law of the *United Kingdom* (or any part of it), to be distributed to holders of the *common equity tier 1 instruments* of the *firm*, except where:
 - (i) the *common equity tier 1 instruments* grant the holders, on a going concern basis, a right to a part of the profits and reserves that is proportionate to their contribution to the capital and reserves of the *firm* or is otherwise determined in accordance with an alternative arrangement, and in either case, this is permitted under applicable law;
 - (ii) the *common equity tier 1 instruments* grant the holders, in the case of the insolvency or

liquidation of the *firm*, the right to reserves that need not be proportionate to the contribution to capital and reserves, provided that the conditions in article 29(4) and article 29(5) of the *UK CRR* are met; or

- (iii) the total amount or a partial amount of the sum of capital and reserves is owned by members of the *firm* who do not, in the ordinary course of business, benefit from direct distribution of the reserves, in particular through the payment of dividends.

[**Note:** article 7 of BTS 241/2014.]

- 7.6 R *MIFIDPRU 3 Annex 7.4R(3)* and *MIFIDPRU 3 Annex 7.5(2)(a)* do not prevent the *firm* from issuing, whether under the law of the *United Kingdom* (or any part of it) or of a *third country, common equity tier 1 instruments* to members or non-members that comply with article 29 of the *UK CRR* and do not grant a right to return the capital instrument to the *firm*.

[**Note:** article 4(4) and article 7(4)(a) of BTS 241/2014.]

Distributions constituting disproportionate drags on capital or preferential distributions

- 7.7 R (1) This *rule* applies for the purpose of determining whether a distribution on an instrument intended to qualify as a *common equity tier 1 capital instrument* constitutes a disproportionate drag on capital under article 28(1)(h)(iii) and 28(3) of the *UK CRR*.
- (2) References in this *rule* to the “dividend multiple” are to the dividend multiple referred to in article 28(3) of the *UK CRR*.
- (3) Distributions on an instrument will not constitute a disproportionate drag on capital for the purposes of (1) where:
- (a) the dividend multiple is a multiple of the distribution paid on the voting instruments and is not a predetermined fixed amount;
 - (b) the dividend multiple is set contractually or under the statutes of the *firm*;
 - (c) the dividend multiple is not revisable;
 - (d) the same dividend multiple applies to all instruments with a dividend multiple;

- (e) the amount of distribution on one instrument with a dividend multiple does not represent more than 125% of the amount of the distribution on one voting *common equity tier 1 instrument*, as determined in accordance with the formula in (6);
- (f) the total amount of the distributions paid on all *common equity tier 1 instruments* during a one-year period does not exceed 105% of the amount that would have been paid if instruments with fewer or no voting rights received the same distributions as voting instruments, as determined in accordance with the formula in (7).
- (4) Where the conditions in (3)(a) to (3)(e) are not met, all outstanding instruments with a dividend multiple shall be deemed to cause a disproportionate drag on capital for the purposes of (1).
- (5) Where the condition in (3)(f) is not met, only the amount of the instruments with a dividend multiple that exceeds the threshold in that provision shall be deemed to cause a disproportionate drag on capital for the purposes of (1).
- (6) The formula referred to in (3)(e) is:
- $$l \leq 1.25 \times k$$
- where:
- k = the amount of the distribution on one instrument without a dividend multiple; and
- l = the amount of the distribution on one instrument with a dividend multiple.
- (7) The formula referred to in (3)(f) applies on a one-year basis and is as follows:
- $$kX + lY \leq (1.05) \times k \times (X + Y)$$
- k = the amount of the distribution on one instrument without a dividend multiple;
- l = the amount of the distribution on one instrument with a dividend multiple;
- X = the number of voting instruments; and
- Y = the number of non-voting instruments.

[**Note:** article 7a of BTS 241/2014.]

- 7.8 R A distribution on a *common equity tier 1 instrument* referred to in article 28 of the *UK CRR* shall be deemed to be a preferential distribution under article 28(1)(h)(i) of the *UK CRR* relative to other *common equity tier 1 instruments* where there are differentiated levels of distributions, unless the conditions in *MIFIDPRU 3 Annex 7.7R* are met.

[**Note:** article 7b(1) of BTS 241/2014.]

- 7.9 R (1) This *rule* applies where:
- (a) a *common equity tier 1 instrument* has been issued by a *firm* that is a *cooperative society* or a *similar institution*;
 - (b) the instrument in (a) has fewer or no voting rights when compared to a *common equity tier 1 instrument* of the *firm* with full voting rights;
 - (c) the distribution on the instrument in (a) is a multiple of the distribution on the voting instruments; and
 - (d) the distribution in (c) is set contractually or under statute.
- (2) Where this *rule* applies, a distribution on the instrument in (1)(a) is deemed not to be preferential relative to the *common equity tier 1 instrument* in (1)(b) for the purposes of article 28(1)(h)(i) of the *UK CRR* where:
- (a) the dividend multiple is a multiple of the distribution paid on the voting instruments and not a predetermined fixed amount;
 - (b) the dividend multiple is set contractually or under the statutes of the *firm*;
 - (c) the dividend multiple is not revisable;
 - (d) the same dividend multiple applies to all instruments with a dividend multiple;
 - (e) the amount of the distribution on one instrument with a dividend multiple does not represent more than 125% of the amount of the distribution on one voting *common equity tier 1 instrument*, as determined in accordance with the formula in (5); and
 - (f) the total amount of distributions paid on all *common equity tier 1 instruments* during a one-year period does not exceed 105% of the amount that would have been paid if instruments with fewer or no voting rights received the same distributions as the voting instruments, as determined in accordance with the formula in (6).

- (3) Where any of the conditions in (2)(a) to (2)(e) are not met, all outstanding instruments with a dividend multiple shall be disqualified from the *common equity tier 1 capital* of the firm.
- (4) Where the condition in (2)(f) is not met, only the amount of the instruments with a dividend multiple that exceeds the threshold defined in that provision shall be disqualified from the *common equity tier 1 capital* of the firm.

- (5) Subject to (7), the formula referred to in (2)(e) is:

$$l \leq 1.25 \times k$$

where:

k = the amount of the distribution on one instrument without a dividend multiple; and

l = the amount of the distribution on one instrument with a dividend multiple.

- (6) Subject to (7), the formula referred to in (2)(f) applies on a one-year basis and is as follows:

$$kX + lY \leq (1.05) \times k \times (X + Y)$$

where:

k = the amount of the distribution on one instrument without a dividend multiple;

l = the amount of the distribution on one instrument with a dividend multiple;

X = the number of voting instruments; and

Y = the number of non-voting instruments.

- (7) Where the distributions on *common equity tier 1 instruments* (whether for voting or non-voting instruments) are expressed with reference to the purchase price of the instrument at issuance, the formulae in (5) and (6) shall be adapted as follows for those instruments:

(a) l shall represent the amount of the distribution on one instrument without a dividend multiple divided by the purchase price at issuance of that instrument; and

(b) k shall represent the amount of the distribution on one instrument with a dividend multiple divided by the purchase price at issuance of that instrument.

- (8) The one-year period referred to in (6) shall be deemed to end on the date of the last financial statements of the *firm*.

[**Note:** article 7b(2) to 7b(5) of BTS 241/2014.]

- 7.10 R (1) This *rule* applies where:
- (a) a *common equity tier 1 instrument* has been issued by a *firm* that is a *cooperative society* or a *similar institution*;
 - (b) the instrument in (a) has fewer or no voting rights when compared to a *common equity tier 1 instrument* of the *firm* with full voting rights; and
 - (c) the distribution on the instrument in (a) is not a multiple of the distribution on the voting instruments.
- (2) Where this *rule* applies, a distribution on the instrument in (1)(a) shall be deemed not to be preferential relative to the *common equity tier 1 instrument* in (1)(b) for the purposes of article 28(1)(h)(i) of the *UK CRR* where:
- (a) either of the conditions in (3) is met; and
 - (b) both of the conditions in (5) are met.
- (3) The relevant conditions in (2)(a) are that either:
- (a) both of the following points are satisfied:
 - (i) the instrument with fewer or no voting rights can only be subscribed and held by the holders of voting instruments; and
 - (ii) the number of the voting rights of any single holder is limited, as specified in (4); or
 - (b) the distributions on the voting instruments issued by the *firm* are subject to a cap set out under the applicable law of the *United Kingdom* (or any part of it), or of a *third country*.
- (4) For the purposes of (3)(a)(ii), the voting rights of any single holder shall be deemed to be limited in the following cases:
- (a) where each holder only receives one voting right irrespective of the number of voting instruments for any holder;
 - (b) where the number of voting rights is capped irrespective of the number of voting instruments held by any holder;

or

- (c) where the number of voting instruments any holder may hold is limited under the statutes of the *firm* or under the applicable law of the *United Kingdom* (or any part of it), or of a *third country*.
- (5) The relevant conditions in (2)(b) are that:
 - (a) the average of the distributions on voting instruments of the *firm* during the preceding 5 years is low in relation to other comparable instruments; and
 - (b) the payout ratio as calculated under *MIFIDPRU 3 Annex 7.12R* is under 30%.
 - (6) A *firm* must assess compliance with the conditions in (3) and (5) and notify the *FCA* of the results of that assessment in the following situations:
 - (a) every time the *firm* takes a decision on the amount of distributions on *common equity tier 1 instruments*; and
 - (b) every time the *firm* issues a new class of *common equity tier 1 instruments* with fewer or no voting rights when compared with *common equity tier 1 instruments* of the *firm* with full voting rights.
 - (7) A *firm* must make the notification in (6) by completing the form in *MIFIDPRU 1 Annex 6R* and submitting it to the *FCA* using the *online notification and application system*.
 - (8) Where neither of the conditions in (3) are met, the distributions on all outstanding non-voting instruments are deemed to be preferential unless they meet the conditions in *MIFIDPRU 3 Annex 7.9R(2)*.
 - (9) Where the condition in (5)(a) is not met, the distributions on all outstanding non-voting instruments shall be deemed to be preferential unless they meet the conditions in *MIFIDPRU 3 Annex 7.9R(2)*.
 - (10) Where the condition in (5)(b) is not met, only the amount of the non-voting instruments for which distributions exceed the threshold specified in that provision shall be deemed to entail preferential distributions.

[**Note:** article 7b(6) to 7b(14) of BTS 241/2014.]

- 7.11 G A *firm* may apply under section 138A of the *Act* for a waiver of the requirements in *MIFIDPRU 3 Annex 7.10R(3)(a)(i)* or *MIFIDPRU 3*

Annex 7.10R(5)(b) where:

- (1) the *firm* is in breach of, or due to a rapidly deteriorating financial condition, is likely in the near future to be in breach of, the requirements in *MIFIDPRU* (other than those in *MIFIDPRU* 3 Annex 7.10R(3)(a)(i) or *MIFIDPRU* 3 Annex 7.10R(5)(b));
- (2) the *FCA* has required the *firm* to increase its *common equity tier 1 capital* within a specified period; and
- (3) the *firm* considers that it will not be able to rectify or avoid the breach of *MIFIDPRU* within that specified period unless the relevant requirement in *MIFIDPRU* 3 Annex 7.10R(3)(a)(i) or *MIFIDPRU* 3 Annex 7.10R(5)(b) is waived.

[**Note:** article 7b(15) of BTS 241/2014.]

- 7.12 R (1) A *firm* must calculate the payout ratio under *MIFIDPRU* 3 Annex 7.10R(5)(b) using the following formula:

$$R = \frac{D}{P}$$

where:

R = the payout ratio;

D = the sum of the distributions related to total *common equity tier 1 instruments* over the previous 5 yearly periods; and

P = the sum of profits related to the previous 5 yearly periods.

- (2) For the purposes of paragraph (1), profits shall be:
 - (a) in the case of a period for which the *firm* submitted *data item* FSA030 (Income Statement), the amount of profit after taxation reported in cell 25A of that *data item*;
 - (b) in the case of a period for which the *firm* submitted *data item* FSA002 (Income Statement), the amount of net profit reported in cell 46B of that *data item*; and
 - (c) in the case of a period for which the *firm* submitted FINREP return F02.00 (Statement of profit or loss), whether under IFRS or GAAP, the amount of profit after tax reported in row 670.

[**Note:** article 7c of BTS 241/2014.]

- 7.13 R For the purposes of article 28 of the *UK CRR*, a distribution on a *common equity tier 1 instrument* shall be deemed to be preferential relative to

other *common equity tier 1 instruments* regarding the order of distribution payments where at least one of the following conditions is met:

- (1) distributions are decided at different times;
- (2) distributions are paid at different times;
- (3) there is an obligation on the *firm* to pay the distributions on one type of *common equity tier 1 instruments* before paying the distributions on another type of *common equity tier 1 instruments*; or
- (4) a distribution is paid on some *common equity tier 1 instruments* but not on others, unless the condition in *MIFIDPRU 3 Annex 7.10R3(a)* is satisfied.

[**Note:** article 7d of BTS 241/2014.]

Deduction of foreseeable dividends from interim or year-end profits to be recognised as CET1 items

- 7.14 R (1) This *rule* applies for the purpose of determining the amount of any foreseeable dividend that must be deducted by a *MIFIDPRU investment firm* from its interim or year-end profits under article 26(2)(b) of the *UK CRR*.
- (2) Where the *firm's management body* has formally taken a decision or proposed a decision to the *firm's relevant body* regarding the amount of dividends to be distributed, that amount must be deducted from the corresponding interim or year-end profits.
- (3) Before the *firm's management body* has formally taken a decision or proposed a decision to the *firm's relevant body* on the distribution of dividends, the amount of foreseeable dividends to be deducted by the *firm* from the interim or year-end profits must equal the amount of interim or year-end profits multiplied by the dividend payout ratio (as calculated in accordance with *MIFIDPRU 3 Annex 7.16R*).
- (4) Where the *firm* pays an interim dividend, the residual amount of interim profit which is to be added to the *firm's* common equity tier 1 items must be reduced (taking into account the requirement in (3)), by the amount of any foreseeable dividend which can be expected to be paid out from that residual interim profit with the final dividends for the full business year.
- (5) This *rule* is subject to *MIFIDPRU 3 Annex 7.15R*.

[**Note:** article 2 of BTS 241/2014.]

- 7.15 R (1) Where a foreseeable dividend is to be paid in a form that does not reduce the common equity tier 1 items of the *firm* (such as through a scrip dividend), the amount of that dividend does not need to be deducted from a *firm's* interim or year-end profits for the purposes of article 26(2) of the *UK CRR*.
- (2) Where a *firm* is subject to a regulatory restriction on the amount of any dividend it can pay, the amount of any foreseeable dividend to be deducted must be determined taking into account that restriction.

[**Note:** article 2(9) and 2(10) of BTS 241/2014.]

- 7.16 R (1) This *rule* applies for the purposes of determining the dividend payout ratio referred to in *MIFIDPRU 3 Annex 7.14R(3)*.
- (2) Subject to (3), the dividend payout ratio must be determined on the basis of the dividend policy approved for the relevant period by the *firm's management body* or *relevant body*.
- (3) Where the *firm's* dividend policy in (2) contains a payout range instead of a fixed value, the upper end of the range must be used when determining the dividend payout ratio.
- (4) Where the *firm* does not have an approved dividend policy, the dividend payout ratio is the higher of the following:
- (a) the average dividend payout ratio over the three years prior to the year under consideration; or
 - (b) the dividend payout ratio of the year preceding the year under consideration.
- (5) The dividend payout ratio in (4)(a) and (4)(b) must be calculated using the following formula:

$$R = \frac{D}{N}$$

where:

R = the dividend payout ratio for the relevant period;

D = the sum of distributions made by the *firm* during the relevant period; and

N = the net income of the *firm* during the relevant period.

[**Note:** article 2(4) to 2(6) of BTS 241/2014.]

- 7.17 G (1) The *FCA* may require a *firm* to use the alternative calculation of the dividend payout ratio in *MIFIDPRU 3 Annex 7.16R(4)* where, even though the *firm* has an approved dividend policy, the *FCA* considers that:
- (a) the *firm* would not apply the dividend policy in practice; or
 - (b) the policy is not a prudent basis on which to determine the amount to be deducted from interim or year-end profits for the purposes of *MIFIDPRU 3 Annex 7.14R*.
- (2) In the circumstances in (1), the *FCA* will normally invite the *firm* to apply for the imposition of a *requirement* on the *firm* under section 55L(5) of the *Act* to apply the alternative calculation. Alternatively, the *FCA* may seek to impose such a *requirement* on its own initiative under section 55L(3) of the *Act*.

[**Note:** article 2(7) of BTS 241/2014.]

- 7.18 G A *firm* may apply to the *FCA* under section 138A of the *Act* for a modification of *MIFIDPRU 3 Annex 7.16R(4)* to exclude exceptional dividends where the *firm* has paid those dividends during the period for which the dividend payout ratio is being determined. The *FCA* will consider whether including those dividends in the calculation would be unduly onerous or would otherwise fail to achieve the purpose of that *rule*. This is likely to depend on whether the *firm* can demonstrate that the dividends are genuinely exceptional in nature.

[**Note:** article 2(8) of BTS 241/2014.]

Deduction of foreseeable charges from interim or year-end profits to be recognised as CET1 items

- 7.19 R (1) This *rule* applies for the purpose of determining the amount and timing of any foreseeable charge that must be deducted by a *MIFIDPRU investment firm* from its interim or year-end profits under article 26(2)(b) of the *UK CRR*.
- (2) The amount of foreseeable charges to be deducted must include the following:
- (a) any taxes;
 - (b) any amounts resulting from obligations or circumstances that may arise during the related reporting period where:
 - (i) those amounts are likely to reduce the profits of the *firm*; and
 - (ii) the *firm* has not made all necessary value

adjustments or provisions, including AVAs under article 34 of the *UK CRR*, to cover such amounts.

- (3) Where the *firm* has not already taken a foreseeable charge into account in the profit and loss account, the charge must be assigned to the interim period during which it was incurred.
- (4) For the purposes of (3), where a charge was incurred during more than one interim period, the *firm* must allocate the amount so that each interim period bears a reasonable amount of the relevant charge.
- (5) A charge that occurs from a material or non-recurrent event must be allocated in full without delay to the interim period during which the event arises.

[**Note:** article 3 of BTS 241/2014.]

Prohibition on direct or indirect funding of own funds instruments

- 7.20 R (1) This *rule* applies for the purpose of determining when an instrument has been funded indirectly by a *firm* for the purposes of any of the following provisions of the *UK CRR*:
- (a) article 28(1)(b);
 - (b) article 52(1)(c); or
 - (c) article 63(c).
- (2) Funding will be indirect funding for the purposes of (1) when it is not direct funding as defined in (3).
- (3) Direct funding is either of the following:
- (a) a situation where a *firm* has granted a loan or other funding in any form to an investor that is used to purchase the *firm's* capital instruments; or
 - (b) funding granted by the *firm* for purposes other than those in (a) to any natural or legal person in the following situations, where the conditions in (4) are not met:
 - (i) the person has a qualifying holding (as defined in article 4(1)(36) of the *UK CRR*) in the *firm*; or
 - (ii) the person is deemed to be a related party within the meaning of the definitions in paragraph 9 of International Accounting Standard 24 on Related Party Disclosures, as applied by *UK-adopted international accounting standards* on 1 January

2022.

- (4) The conditions in (3)(b) are:
- (a) the transaction is realised at similar conditions to other transactions with third parties; and
 - (b) the natural or legal *person* does not have to rely on the distributions or on the sale of the capital instruments held to support the payment of interest or the repayment of the funding granted by the *firm*.

[**Note:** article 8 of BTS 241/2014.]

- 7.21 R (1) The following are non-exhaustive examples of indirect funding for the purposes of the provisions of the *UK CRR* listed in *MIFIDPRU 3 Annex 7.20R(1)* where the condition in (2) is also satisfied:
- (a) funding of an investor's purchase, at issuance or thereafter, of a *firm's* capital instruments by entities over which the *firm* has direct or indirect control, or by entities included in any of the following:
 - (i) the scope of accounting or prudential consolidation of the *firm*; or
 - (ii) the scope of supplementary supervision of the *firm* under *Directive 2002/87/EC UK law*;
 - (b) funding of an investor's purchase, at issuance or thereafter, of a *firm's* capital instruments by external entities that are protected by a guarantee or by the use of a credit derivative or are secured in some other way so that the credit risk is transferred to the *firm* or to any entities on which the *firm* has a direct or indirect control or any entities included in any of the following:
 - (i) the scope of accounting or prudential consolidation of the *firm*; or
 - (ii) the scope of supplementary supervision of the *firm* under *Directive 2002/87/EC UK law*;
 - (c) funding of a borrower that passes the funding on to the ultimate investor for the purchase, at issuance or thereafter, of a *firm's* capital instruments.
- (2) The relevant condition is that the investor or, where applicable, the external entity is not included in any of the following:

- (a) the scope of accounting or prudential consolidation of the *firm*; or
- (b) the scope of supplementary supervision of the *firm* under *Directive 2002/87/EC UK law*.

[**Note:** article 9(1) and 9(2) of BTS 241/2014.]

- 7.22 R When establishing whether the purchase of a capital instrument involves direct or indirect funding for the purposes of *MIFIDPRU 3 Annex 7.20R*, the amount to be considered must be net of any individually assessed impairment allowance made.

[**Note:** article 9(3) of BTS 241/2014.]

- 7.23 R To prevent a loan or other form of funding or guarantee being classified as direct or indirect funding for the purposes of *MIFIDPRU 3 Annex 7.20R*, the *firm* must:

- (1) where the loan, funding or guarantee is granted to any natural or legal person referred to in *MIFIDPRU 3 Annex 7.20R(3)(b)(i)* or (ii), ensure on an ongoing basis that the loan, funding or guarantee has not been provided for the purpose of subscribing directly or indirectly for the *firm's* capital instruments; and
- (2) where the loan, funding or guarantee has been granted to other types of parties, use the *firm's* best efforts to avoid providing the loan, funding or guarantee for the purpose of subscribing directly or indirectly for the *firm's* capital instruments.

[**Note:** article 9(4) of BTS 241/2014.]

- 7.24 R (1) This *rule* applies to a *firm* that is:
- (a) a *cooperative society*; or
 - (b) a *similar institution*.
- (2) Where a *firm* in (1) has an obligation under the law of the *United Kingdom* (or any part of it) or the statutes of the *firm* for a customer to subscribe for capital instruments in the *firm* in order to receive a loan, that loan shall not be considered as direct or indirect funding for the purposes of *MIFIDPRU 3 Annex 7.20R* where the following conditions are met:
- (a) the value of the subscription amount is not material;
 - (b) the purpose of the loan is not the purchase of capital instruments in the *firm*; and
 - (c) subscription for one or more capital instruments of the

firm is necessary for the customer to become a member of the *firm*.

[**Note:** article 9(5) of BTS 241/2014.]

Requirements relating to the reduction of own funds instruments

- 7.25 R For the purposes of *MIFIDPRU* 3.6.4R(1), terms will be sustainable for the income capacity of the *firm* where:
- (1) the profitability of the *firm* will continue to be sound and will not see any negative change in the foreseeable future after the replacement of the original *own funds instruments* with *own funds instruments* of equal or higher quality; and
 - (2) the assessment of profitability in the foreseeable future in (1) takes into account the *firm's* profitability in stressed situations.

[**Note:** article 27 of BTS 241/2014.]

- 7.26 R Where the prior permission of the *FCA* is required for the redemption, repurchase or reduction of *own funds instruments* under article 77 of the *UK CRR*, a *firm* must not announce the redemption, repurchase or reduction to holders of the relevant *own funds instruments* until it has obtained that permission.

[**Note:** article 28(1) of BTS 241/2014.]

- 7.27 R (1) A *firm* must deduct from the corresponding elements of its *own funds* any amounts of its *own funds instruments* to be reduced, redeemed or repurchased as soon as the following conditions are met:
- (a) where required, the *firm* has obtained permission from the *FCA* under article 78 of the *UK CRR*; and
 - (b) the reduction, redemption or repurchase is expected to take place with sufficient certainty.
- (2) For the purposes of (1)(b), a situation in which sufficient certainty will exist includes, but is not limited to, where the *firm* has publicly announced its intention to redeem, reduce or repurchase an *own funds instrument*.

[**Note:** article 28(2) of BTS 241/2014.]

- 7.28 R (1) This *rule* applies for the purposes of limitations on redemption applied by any of the following under article 29(2)(b) of the *UK CRR* or article 78(3) of the *UK CRR*:
- (a) a *cooperative society*; or

- (b) a *similar institution*.
- (2) A *firm* may issue *common equity tier 1 instruments* with a possibility to redeem only where permitted by the applicable law of the *United Kingdom* (or any part of it) or of a *third country*.
- (3) The ability of a *firm* to limit the redemption of a capital instrument under article 29(2)(b) or article 78(3) of the *UK CRR* includes:
 - (a) the right to defer the redemption; and
 - (b) the right to limit the amount to be redeemed.
- (4) There is no specific limit on the period of time for which a *firm* may defer the redemption of a capital instrument or may limit the amount to be redeemed under (3), but the *firm* must comply with the requirement in (5).
- (5) The extent of the limitations on redemption included in the provisions governing the instruments must be determined by the *firm* on the basis of its prudential situation at any time, having regard in particular to the following non-exhaustive factors:
 - (a) the overall financial, liquidity and solvency situation of the *firm*;
 - (b) the amount of the *firm's common equity tier 1 capital, tier 1 capital* and total *own funds* compared to the *firm's own funds requirement*.
- (6) A *firm* must:
 - (a) document any decision to limit the redemption of a capital instrument under this *rule*; and
 - (b) notify the *FCA* of the decision by completing the form in *MIFIDPRU 1 Annex 6R* and submitting it via the *online notification and application system*, explaining the reasons for the limitation and how the factors in (5) apply.

[**Note:** article 10 and article 11(3) and 11(4) of BTS 241/2014.]

Gains on a sale

- 7.29 R (1) This *rule* applies for the purpose of defining the concept of a gain on sale under article 32(1)(a) of the *UK CRR*.
- (2) A gain on sale is any recognised gain on sale for the *firm* that:
 - (a) is recorded as an increase in any element of *own funds*;

and

- (b) is associated with future margin income arising from a sale of securitised assets when they are removed from the *firm's* balance sheet in the context of a securitised transaction.
- (3) The recognised gain on sale must be determined as the difference between the following, as determined by applying the relevant accounting framework:
 - (a) the net value of the assets received (including any new asset obtained) less any other asset given or any new liability assumed; and
 - (b) the carrying amount of the securitised assets or of the part derecognised.
 - (4) The recognised gain on sale which is associated with the future margin income is the expected future express spread, which is determined as the finance charge collections and other fee income received in respect of the securitised exposures net of costs and expenses.

[**Note:** article 12 of BTS 241/2014.]

Deductions from own funds

- 7.30 R (1) Subject to (3), for the purpose of calculating its *common equity tier 1 capital* during the year, and irrespective of whether the *firm* closes its financial accounts at the end of each interim period, the *firm* must determine its profit and loss accounts and deduct any resulting losses from common equity tier 1 items under *MIFIDPRU* 3.3.6R(1) as they arise.
- (2) For the purpose of determining a *firm's* profit or loss accounts under (1), a *firm* must:
 - (a) determine its income and expenses under the same process and on the basis of the same accounting standards as those used for the year-end financial report;
 - (b) prudently estimate income and expenses and assign them to the interim period in which they are incurred so that each interim period bears a reasonable amount of the anticipated annual income and expenses; and
 - (c) consider material or non-recurrent events in full and without delay in the interim period during which they arise.

- (3) Where losses for the current financial year have already reduced the *firm's* common equity tier 1 items as a result of an interim or a year-end financial report, a deduction is not required.
- (4) For the purposes of this *rule*, a “financial report” means that the profit and losses have been determined after a closing of the interim or the annual accounts in accordance with the applicable accounting framework.
- (5) This *rule* applies in the same manner to gains and losses included in accumulated other comprehensive income.

[**Note:** article 13 of BTS 241/2014.]

- 7.31 R
- (1) This *rule* applies for the purposes of determining the deduction of deferred tax assets that rely on future profitability under *MIFIDPRU* 3.3.6R(3).
 - (2) The offsetting between deferred tax assets and associated deferred tax liabilities must be done separately for each taxable entity.
 - (3) Associated deferred tax liabilities must be limited to those that arise from the tax law of the same jurisdiction as the deferred tax assets.
 - (4) For the calculation of deferred tax assets and liabilities at consolidated level, a taxable entity includes any number of entities which are members of the same tax group, fiscal consolidation, fiscal unity or consolidated tax return under any applicable law of the *United Kingdom* or of a *third country*.
 - (5) The amount of associated deferred tax liabilities which are eligible for offsetting deferred tax assets that rely on future profitability is equal to the difference between the following:
 - (a) the amount of deferred tax liabilities as recognised under the applicable accounting framework;
 - (b) the amount of associated deferred tax liabilities arising from intangible assets and from defined benefit pension fund assets.

[**Note:** article 14 of BTS 241/2014.]

- 7.32 R
- (1) This *rule* defines an *intermediate entity* for the purposes of *MIFIDPRU* 3 Annex 7.33R to *MIFIDPRU* 3 Annex 7.40R.
 - (2) An *intermediate entity* is any of the following entities, where that entity holds capital instruments of a *financial sector entity*:

- (a) a collective investment undertaking;
 - (b) a pension fund other than a defined benefit pension fund;
 - (c) a defined benefit pension fund, where the *firm* is supporting the investment risk and where the defined benefit pension fund is not independent from its sponsoring institution in accordance with (4);
 - (d) an entity that is directly or indirectly under the control or under significant influence of one of the following:
 - (i) the *firm* or its *subsidiaries*;
 - (ii) the *parent undertaking* of the *firm* or the *subsidiaries* of that *parent undertaking*;
 - (iii) the parent *financial holding company* of the *firm* or the *subsidiaries* of that parent *financial holding company*;
 - (iv) the parent *investment holding company* of the *firm* or the *subsidiaries* of that parent *investment holding company*;
 - (v) the parent *mixed-activity holding company* of the *firm* or the *subsidiaries* of the parent *mixed activity holding company*; or
 - (vi) the parent *mixed financial holding company* of the *firm* or the *subsidiaries* of the parent *mixed financial holding company*;
 - (e) a special purpose entity;
 - (f) an entity whose activity is to hold *financial instruments* of *financial sector entities*; and
 - (g) an entity that is used for the purpose of circumventing the rules relating to the deduction of indirect and synthetic holdings.
- (3) Except where (2)(g) applies, the following are not *intermediate entities*:
- (a) *mixed-activity holding companies*;
 - (b) *institutions*;
 - (c) *MIFIDPRU investment firms*;

- (d) *insurance undertakings*;
 - (e) *reinsurance undertakings*;
 - (f) *financial sector entities* (other than those in (a) to (e)) that are supervised and required to deduct the following from their regulatory capital:
 - (i) direct and indirect holdings of their own capital instruments; and
 - (ii) holdings of capital instruments of *financial sector entities*.
- (4) For the purposes of (2)(c), a defined benefit pension fund will be deemed to be independent from its sponsoring institution where the following conditions are met:
- (a) the defined benefit pension fund is legally separate from the sponsoring institution and its governance is independent;
 - (b) either:
 - (i) the statutes, the instruments of incorporation and the internal rules of the specific pension fund, as applicable, have been approved by an independent regulator; or
 - (ii) the rules governing the incorporation and functioning of the defined benefit pension fund, as applicable, are established in the applicable law of the relevant country;
 - (c) the trustees or administrators of the defined pension fund have an obligation under applicable national law to:
 - (i) act impartially in the best interests of the scheme beneficiaries instead of those of the sponsor;
 - (ii) manage assets of the defined pension fund prudently; and
 - (iii) conform to the restrictions set out in the statutes, the instruments of incorporation and the internal rules of the specific pension fund, as applicable, or statutory or regulatory framework described in point (b); and
 - (d) the statutes or the instruments of incorporation or the rules governing the incorporation and functioning of the

defined benefit pension fund referred to in point (b) include restrictions on investments that the defined pension scheme can make in own funds instruments issued by the sponsoring institution.

- (5) Where a defined benefit pension fund referred to in (2)(c) holds own funds instruments of the sponsoring institution, the sponsoring institution must:
- (a) treat that holding as an indirect holding of its own *common equity tier 1 instruments*, own *additional tier 1 instruments* or own *tier 2 instruments*, as applicable; and
 - (b) determine the amount to be deducted from its common equity tier 1 items, additional tier 1 items or tier 2 items (as applicable) in accordance with *MIFIDPRU 3 Annex 7.34R* and *MIFIDPRU 3 Annex 7.39R*.

[**Note:** article 15a of BTS 241/2014.]

- 7.33 R (1) The following financial products are synthetic holdings of capital instruments for the purposes of *MIFIDPRU 3.3.6R(5)*, (7) and (8):
- (a) derivative instruments that have capital instruments of a *financial sector entity* as their underlying or have the *financial sector entity* as their reference entity;
 - (b) guarantees or credit protection provided to a third party in respect of the third party's investments in a capital instrument of a *financial sector entity*.
- (2) The financial products in (1) include the following:
- (a) investments in total return swaps on a capital instrument of a *financial sector entity*;
 - (b) call options purchased by the *firm* on a capital instrument of a *financial sector entity*;
 - (c) put options sold by the *firm* on a capital instrument of a *financial sector entity* or any other actual or contingent contractual obligation of the *firm* to purchase its *own funds instruments*; and
 - (d) investments in forward purchase agreements on a capital instrument of a *financial sector entity*.

[**Note:** article 15b of BTS 241/2014.]

- 7.34 R (1) The amount of indirect holdings that a *firm* must deduct from its common equity tier 1 items under *MIFIDPRU 3.3.6R(5)*, (7) or

(8) must be calculated in one of the following ways:

- (a) according to the default approach set out in *MIFIDPRU 3 Annex 7.35R*; or
- (b) subject to (3), with the prior permission of the *FCA*, the structure-based approach in *MIFIDPRU 3 Annex 7.36R*.

(2) To obtain the permission in (1)(b), a *firm* must:

- (a) complete the application form in *MIFIDPRU 1 Annex 5R* and submit to the *FCA* using the *online notification and application system*; and
- (b) demonstrate to the satisfaction of the *FCA* that it would be impractical or excessively complex to apply the default approach in *MIFIDPRU 3 Annex 7.35R*.

(3) A *firm* must not use the structure-based approach to calculate deductions in relation to investments in the *intermediate entities* in *MIFIDPRU 3 Annex 7.32R(2)(d)* and (e).

[**Note:** article 15c of BTS 241/2014.]

- 7.35 R (1) This *rule* contains the default approach for the deduction of indirect holdings under *MIFIDPRU 3 Annex 7.34R(1)(a)*.
- (2) A *firm* must calculate the amount of indirect holdings of *common equity tier 1 instruments* to be deducted as follows:
- (a) where the exposures of all investors to the *intermediate entity* rank *pari passu*, the amount shall be equal to the percentage of funding multiplied by the amount of *common equity tier 1 instruments* of the *financial sector entity* held by the *intermediate entity*;
 - (b) where the exposures of all investors to the *intermediate entity* do not rank *pari passu*, the amount shall be equal to the percentage of funding multiplied by the lower of the following amounts:
 - (i) the amount of *common equity tier 1 instruments* of the *financial sector entity* held by the *intermediate entity*;
 - (ii) the *firm's* exposure to the *intermediate entity* together with all other funding provided to the *intermediate entity* that rank *pari passu* with the *firm's* exposure.
- (3) A *firm* must use the calculation method in (2)(b) for each tranche of funding that ranks *pari passu* with the funding provided by the

firm.

- (4) The percentage of funding in (2) is calculated as the *firm's* exposure to the *intermediate entity* divided by the sum of the *firm's* exposure to the *intermediate entity* and all other exposures to the *intermediate entity* that rank *pari passu* with the *firm's* exposure.
- (5) A *firm* must carry out the calculation in (2) separately for each holding in a *financial sector entity* held by each *intermediate entity*.
- (6) Where a *firm* holds investments in *common equity tier 1 instruments* of a *financial sector entity* indirectly through several *intermediate entities*, the *firm* must determine the percentage of funding in (2) by dividing the amount in (a) below by the amount in (b):
 - (a) the result of the multiplication of amounts of funding provided by the *firm* to *intermediate entities* by the amounts of funding provided by *these intermediate entities* to subsequent *intermediate entities* and by amounts of funding provided by these subsequent *intermediate entities* to the *financial sector entity*;
 - (b) the result of the multiplication of amounts of capital instruments or other instruments as relevant, issued by each *intermediate entity*.
- (7) The percentage of funding referred to in (6) must be calculated separately for each holding in a *financial sector entity* held by *intermediate entities* and for each tranche of funding that ranks *pari passu* with the funding provided by the *firm* and the subsequent *intermediate entities*.

[**Note:** article 15d of BTS 241/2014.]

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| 7.36 | R | <ol style="list-style-type: none"> (1) This <i>rule</i> contains the structure-based approach for the deduction of indirect holdings under <i>MIFIDPRU 3 Annex 7.34R(1)(b)</i>. (2) The amount to be deducted from common equity tier 1 items referred to in <i>MIFIDPRU 3.3.6R(5)</i> shall be equal to the percentage of funding, as defined in <i>MIFIDPRU 3 Annex 7.35R(4)</i>, multiplied by the amount of <i>common equity tier 1 instruments</i> of the <i>firm</i> held by the <i>intermediate entity</i>. (3) The amount to be deducted from common equity tier 1 items referred to in <i>MIFIDPRU 3.3.6R(7)</i> and (8) shall be equal to the percentage of funding, as defined in <i>MIFIDPRU 3 Annex 7.35R(4)</i>, multiplied by the aggregate amount of <i>common equity tier 1 instruments</i> of <i>financial sector entities</i> held by the |
|------|---|---|

intermediate entity.

- (4) For the purposes of (2) and (3), a *firm* must calculate separately for each *intermediate entity* the aggregate amount of *common equity tier 1 instruments* of the *firm* that the *intermediate entity* holds and the aggregate amount of *common equity tier 1 instruments* of other *financial sector entities* that the *intermediate entity* holds.
- (5) The *firm* must treat the amount of holdings in *common equity tier 1 instruments* of *financial sector entities* calculated in accordance with (3) as a significant investment referred to in article 43 of the *UK CRR* and must deduct the amount in accordance with *MIFIDPRU 3.3.6R(8)*.
- (6) Where investments in *common equity tier 1 instruments* are held indirectly through subsequent or several *intermediate entities*, *MIFIDPRU 3 Annex 7.35R(6)* and (7) apply.
- (7) Where a *firm* is not able to identify the aggregate amounts that the *intermediate entity* holds in *common equity tier 1 instruments* of the *firm* or in *common equity tier 1 instruments* of *financial sector entities*, the *firm* must estimate the amounts it cannot identify by using the maximum amounts that the *intermediate entity* is able to hold on the basis of its investment mandates.
- (8) Subject to (9), where the *firm* is not able to determine, on the basis of the investment mandate, the maximum amount that the *intermediate entity* holds in *common equity tier 1 instruments* of the institution or in *common equity tier 1 instruments* of *financial sector entities*, the *firm* must treat the amount of funding that it holds in the *intermediate entity* as an investment in its own *common equity tier 1 instruments* and must deduct them in accordance with *MIFIDPRU 3.3.6R(5)*.
- (9) By way of derogation from (8), the *firm* must treat the amount of funding that it holds in the *intermediate entity* as a non-significant investment and must deduct that investment in accordance with *MIFIDPRU 3.3.6R(7)*, where all of the following conditions are met:
 - (a) the amounts of funding are less than 0.25% of the *firm's common equity tier 1 capital*;
 - (b) the amounts of funding are less than £10 million;
 - (c) the *firm* cannot reasonably determine the amounts of its own *common equity tier 1 instruments* that the *intermediate entity* holds.
- (10) Where funding to the *intermediate entity* is in the form of units

or shares of a *CIU*, the *firm* may rely on the third parties referred to in article 132(5) of the *UK CRR*, and under the conditions set by that article, to calculate and report the aggregate amounts referred to in (7).

[**Note:** article 15e of BTS 241/2014.]

- 7.37 R (1) The amount of synthetic holdings to be deducted from common equity tier 1 items under *MIFIDPRU* 3.3.6R(5), (7) and (8) is determined as follows:
- (a) for holdings in the *trading book*:
 - (i) for options, the delta equivalent amount of the relevant instruments calculated in accordance with Title IV of Part III of the *UK CRR*; and
 - (ii) for any other synthetic holdings, the nominal or notional amount, as applicable; and
 - (b) for holdings that are not in the *trading book*:
 - (i) for call options, the current market value; and
 - (ii) for any other synthetic holdings, the nominal or notional amount, as applicable.
- (2) A *firm* must deduct the synthetic holdings in (1) from the date of signature of the contract between the *firm* and the counterparty.

[**Note:** article 15f of BTS 241/2014.]

- 7.38 R (1) For the purposes of *MIFIDPRU* 3.3.6R(8), in order to assess whether a *firm* owns more than 10% of the *common equity tier 1 instruments* issued by a *financial sector entity* in accordance with article 43(a) of the *UK CRR*, a *firm* must add together:
- (a) its gross long positions in direct holdings in the *financial sector entity*; and
 - (b) its indirect holdings in the *financial sector entity*, as calculated in accordance with *MIFIDPRU* 3 Annex 7.32R(2)(d) to (g).
- (2) A *firm* must take into account any indirect or synthetic holdings when assessing whether the conditions in article 43(b) or (c) of the *UK CRR* are met.

[**Note:** article 15g of BTS 241/2014.]

- 7.39 R (1) The methodology in *MIFIDPRU* 3 Annex 7.32R to *MIFIDPRU* 3 Annex 7.38R also applies with the modifications in (2) for the

purposes of the requirements relating to:

- (a) the deductions of holdings in *additional tier 1 instruments* in article 56(a), (c) and (d) of the *UK CRR*; and
 - (b) the deductions of holdings in *tier 2 instruments* in article 66(a), (c) and (d) of the *UK CRR*.
- (2) When applying *MIFIDPRU 3 Annex 7.32R* to *MIFIDPRU 3 Annex 7.38R*:
- (a) for the purpose in (1)(a), references to “common equity tier 1” are references to “additional tier 1”; and
 - (b) for the purpose in (1)(b), references to “common equity tier 1” are references to “tier 2”.

[**Note:** article 15h of BTS 241/2014.]

- 7.40 R (1) Subject to (2) and (3), where an *intermediate entity* holds *common equity tier 1 instruments, additional tier 1 instruments* or *tier 2 instruments* of *financial sector entities*:
- (a) the *common equity tier 1 instruments* must be deducted first;
 - (b) the *additional tier 1 instruments* must be deducted second; and
 - (c) the *tier 2 instruments* must be deducted last.
- (2) Where the intermediate entity holds *own funds instruments* of the *firm*, when applying (1), the *firm* must deduct the holdings of the *firm’s own funds instruments* first.
- (3) Where a *firm* holds capital instruments of *financial sector entities* indirectly, the amount to deducted from the *firm’s own funds* is limited to the lower of the following amounts:
- (a) the total funding provided by the *firm* to the *intermediate entity*; or
 - (b) the amount of *own funds instruments* held by the *intermediate entity* in the *financial sector entity*.

[**Note:** article 15i of BTS 241/2014.]

- 7.41 R (1) This *rule* applies for the purposes of the deduction of foreseeable tax charges under *MIFIDPRU 3.3.6R(10)* and article 56(f) of the *UK CRR*.
- (2) A *firm* may proceed on the basis that foreseeable tax charges

have already been taken into account, and therefore no further deduction is required, where:

- (a) the *firm* applies an accounting framework and accounting policies that provide for the full recognition of current and deferred tax liabilities related to transactions and other events recognised in the balance sheet or the profit and loss account; and
 - (b) all other necessary deductions have been made under applicable accounting standards or other adjustments.
- (3) Where the *firm* is calculating its *common equity tier 1 capital* on the basis of financial statements made in accordance with *UK-adopted international accounting standards*, the conditions in (2) are deemed to be met.
- (4) Where the *firm* does not meet, and has not been deemed to meet, the conditions in (2), it must decrease its common equity tier 1 items by the estimated amount of current and deferred tax charges not yet recognised in:
- (a) the balance sheet profit and loss account related to transactions; and
 - (b) other events in the balance sheet profit and loss account.
- (5) The estimated amount of current and deferred tax charges in (4) must be determined using an approach equivalent to the one provided by *UK-adopted international accounting standards*.
- (6) The estimated amount of deferred tax charges in (4) may not be netted against deferred tax assets that are not recognised in the financial statements.

[**Note:** article 16 of BTS 241/2014.]

Deduction of holdings of capital instruments issued by financial institutions

7.42 R Subject to *MIFIDPRU 3 Annex 7.43R*, for the purposes of article 36(3) of the *UK CRR*, a *firm* must deduct its holdings of capital instruments of *financial institutions* as follows:

- (1) the *firm* must deduct from its common equity tier 1 items any instruments of the *financial institution* that meet the following conditions:
 - (a) the instruments qualify as capital under the company law applicable to the *financial institution*; and
 - (b) where the *financial institution* is subject to solvency requirements, the instruments are included in the highest

- quality tier of regulatory own funds without any limits; or
- (c) where the *financial institution* is not subject to solvency requirements, the instruments:
- (i) are perpetual;
 - (ii) absorb the first and proportionately greatest share of losses as they occur;
 - (iii) rank below all other claims in the event of insolvency and liquidation; and
 - (iv) have no preferential or predetermined distributions;
- (2) the *firm* must deduct its holdings of subordinated capital instruments of the *financial institution* on the following basis:
- (a) where the subordinated instruments absorb losses on a going-concern basis (including where the issuer has the discretion to cancel coupon payments), the *firm* must:
- (i) deduct them from the *firm's* additional tier 1 items; and
 - (ii) if the value of the subordinated instruments exceeds the value of the *firm's* additional tier 1 capital, deduct the excess amount from the *firm's* common equity tier 1 items;
- (b) the *firm* must deduct all other subordinated instruments not included in (a) on the following basis:
- (i) the *firm* must first deduct them from the *firm's* tier 2 items; and
 - (ii) if the value of the subordinated instruments exceeds the value of the *firm's* tier 2 capital, the *firm* must deduct the excess amount from the *firm's* additional tier 1 items; and
 - (iii) if the additional tier 1 items are not sufficient, the *firm* must deduct the remaining excess amount from the *firm's* common equity tier 1 items;
- (3) the *firm* must deduct its holdings of any other instruments of the *financial institution* from the *firm's* common equity tier 1 items where:
- (a) the instruments are included in the *financial institution's* own funds under the prudential framework applicable to

the *financial institution*; and

- (b) the instruments do not meet the conditions to be deducted under (a) or (b).

[**Note:** article 36(3) of the *UK CRR* and article 17(1) of BTS 241/2014.]

- 7.43 R (1) In the cases set out in (2):
- (a) the deductions in *MIFIDPRU 3* Annex 7.42R do not apply; and
 - (b) a *firm* must instead apply the deductions in *MIFIDPRU 3* and the *UK CRR* (as applied by *MIFIDPRU 3*) for holdings of capital instruments based on the approach that would apply to the same component of capital for which those instruments would qualify if they were issued by the *firm* itself.
- (2) The relevant cases are where the *financial institution* is:
- (a) a *UK AIFM*;
 - (b) a *management company*;
 - (c) an *authorised payment institution*;
 - (d) an *authorised electronic money institution*; or
 - (e) an entity that is authorised and supervised by an *overseas regulator*, provided that the *firm* applying the deduction is able to apply the approach in (1)(b) in relation to that entity.

[**Note:** article 17(2) and 17(3) of BTS 241/2014.]

- 7.44 R (1) This *rule* applies to a *firm's* holdings of capital instruments in a *third country insurance undertaking* or a *third country reinsurance undertaking* where either of the following conditions are met:
- (a) the *third country insurance undertaking* or *third country reinsurance undertaking* is subject to a solvency regime that:
 - (i) before *IP completion day*, had been assessed as non-equivalent to that laid down in Title I, Chapter VI of the *Solvency II Directive* according to the procedure set out in article 227 of that directive; and
 - (ii) has not subsequently been subject to a

determination of equivalence by HM Treasury under article 379A of the Solvency II Delegated Regulation (EU) 2015/35 or by the *PRA* under regulation 19 of the *Solvency 2 Regulations 2015*; or

- (b) the *third country insurance undertaking* or *third country reinsurance undertaking* is subject to a solvency regime that has not been assessed for equivalence:
 - (i) before *IP completion day*, in accordance with the procedure in (a)(i); and
 - (ii) on or after *IP completion day*, in accordance with either of the procedures in (a)(ii).
- (2) Where this *rule* applies, a *firm* must deduct holdings in the capital instruments of the *third country insurance undertaking* or *third country reinsurance undertaking* in (1) as follows:
- (a) all instruments qualifying as capital under the company law applicable to the *third country insurance undertaking* or *third country reinsurance undertaking* that issued them, and which are included in the highest quality tier of regulatory own funds without any limits under the *third country* regime, must be deducted from the *firm's* common equity tier 1 items;
 - (b) for subordinated instruments absorbing losses on a going-concern basis (including where the issuer has discretion to cancel coupon payments):
 - (i) the amount must first be deducted from the *firm's* additional tier 1 items; and
 - (ii) where the amount of the subordinated instruments exceeds the amount of the *firm's additional tier 1 capital*, the excess amount must be deducted from the *firm's* common equity tier 1 items;
 - (c) for any subordinated instruments other than those in (b):
 - (i) the amount must first be deducted from the *firm's* tier 2 items;
 - (ii) where the amount of those subordinated instruments exceeds the amount of the *firm's tier 2 capital*, the excess amount must be deducted from the *firm's* additional tier 1 items; and
 - (iii) where the excess amount exceeds the amount of

the *firm's additional tier 1 capital*, the remaining excess amount must be deducted from the *firm's common equity tier 1 items*;

- (d) any holdings of other instruments of the *third country insurance undertaking* or *third country reinsurance undertaking* must be deducted from the *firm's common equity tier 1 items* where:
 - (i) the *third country insurance undertaking* or *third country reinsurance undertaking* is subject to prudential solvency requirements;
 - (ii) the instruments are included in the *third country insurance undertaking* or *third country reinsurance undertaking's* own funds under the applicable solvency regime; and
 - (iii) the instruments do not meet the conditions to be deducted under (a) to (c).

[**Note:** article 18(1) of BTS 241/2014.]

- 7.45 R (1) This *rule* applies to a *firm's* holdings of capital instruments in a *third country insurance undertaking* or a *third country reinsurance undertaking* where the *third country* solvency regime, including requirements on own funds, applicable to the *third country insurance undertaking* or *third country reinsurance undertaking* meets either of the following conditions:
- (a) before *IP completion day*, it has been assessed as equivalent to the requirements laid down in Title I, Chapter VI of the *Solvency II Directive*, according to the procedure set out in article 227 of that directive, and that assessment has not been revoked by HM Treasury on or after *IP completion day*; or
 - (b) on or after *IP completion day*, it has been assessed as equivalent to the requirements laid down in the law of the *United Kingdom* that implemented Title I, Chapter VI of the *Solvency II Directive*, according to the procedure set out in article 379A of the *Solvency II Delegated Regulation (EU) 2015/35*, or has been assessed as equivalent by the *PRA* according to the procedure in regulation 19 of the *Solvency 2 Regulations 2015*.
- (2) Where this *rule* applies, a *firm* must:
- (a) treat the relevant holdings of capital instruments as holdings of the capital instruments of insurance undertakings or reinsurance undertakings (as each is

defined in section 417(1) of the *Act*); and

- (b) apply the deductions in article 44(b), article 58(b) and article 68(b) of the *UK CRR*, as applicable, to the holdings in (a).

[**Note:** article 18(2) and (3) of BTS 241/2014.]

- 7.46 R A *firm* must deduct holdings of capital instruments of *undertakings* falling within article 4(1)(27)(k) of the *UK CRR* as follows:
- (1) a *firm* must deduct instruments meeting the following conditions from the *firm's common equity tier 1 capital*:
 - (a) the instruments qualify as capital under the company law applicable to the *undertaking* that issued them; and
 - (b) the instruments are included in the highest quality tier of regulatory own funds of the *undertaking* that issued them without any limits;
 - (2) a *firm* must deduct any subordinated instruments that absorb losses on a going-concern basis (including where the issuer has discretion to cancel coupon payments) on the following basis:
 - (a) first, the instruments must be deducted from the *firm's additional tier 1 items*; and
 - (b) if the amount of the subordinated instruments exceeds the amount of the *firm's additional tier 1 capital*, the excess amount must be deducted from the *firm's common equity tier 1 items*;
 - (3) a *firm* must deduct any subordinated instruments other than those in (2) on the following basis:
 - (a) first, the instruments must be deducted from the *firm's tier 2 items*;
 - (b) if the amount of the subordinated instruments exceeds the amount of the *firm's tier 2 capital*, the excess amount must be deducted from the *firm's additional tier 1 items*; and
 - (c) if the excess amount exceeds the *firm's additional tier 1 capital*, the remaining excess amount must be deducted from the *firm's common equity tier 1 items*; and
 - (4) a *firm* must deduct any other holdings of instruments issued by the *undertaking* from the *firm's common equity tier 1 capital* where the instruments:

- (a) are included in the *undertaking's* own funds under the solvency regime applicable to that *undertaking*; and
- (b) do not fall within (1) to (3) above.

[**Note:** article 19 of BTS 241/2014.]

Conversion and write-down of additional tier 1 instruments

- 7.47 R (1) This *rule* applies for the purposes of:
- (a) any write-down of the principal amount of an *additional tier 1 instrument* under article 52(1)(n) of the *UK CRR*; and
 - (b) any subsequent write-up of the principal amount of an *additional tier 1 instrument* for the purposes of article 52(2)(c) of the *UK CRR*.
- (2) The write-down of the principal amount of an *additional tier 1 instrument* of a *firm* must apply on a pro rata basis to all holders of *additional tier 1 instruments* that include a similar write-down mechanism and an identical trigger level.
- (3) For a write-down to be considered temporary, all of the following conditions must be met:
- (a) any distributions payable after a write-down must be based on the reduced amount of the principal;
 - (b) any write-up must be based on profits after the *firm* has taken a formal decision confirming the final profits;
 - (c) any write-up of the instrument or payment of coupons on the reduced amount of the principal must be operated at the full discretion of the *firm*, subject to the constraints arising from (d) to (f) below, and there must be no obligation for the *firm* to operate or accelerate a write-up under specific circumstances;
 - (d) a write-up must be operated on a pro rata basis among similar *additional tier 1 instruments* of the *firm* that have been subject to a write-down;
 - (e) the maximum amount to be attributed to the sum of the write-up of the *additional tier 1 instruments*, together with the payment of coupons on the reduced amount of the principal of *additional tier 1 instruments*, must be calculated according to the following formula, which must be applied at the time that the write-up operates:

$$M = P \times \frac{A}{T}$$

where:

M = the maximum amount to be attributed to the write-up, together with the payment of coupons on the reduced amount of principal;

P = the profit of the *firm*;

A = the sum of the nominal value (before write-down) of all *additional tier 1 instruments* of the *firm* that have been subject to a write-down; and

T = the *tier 1 capital* of the *firm*;

- (f) the sum of any write-up amounts and payments of coupons on the reduced amount of the principal of the *additional tier 1 instruments* must be treated as a payment that reduces the *common equity tier 1 capital* of the *firm*.

[**Note:** article 21 of BTS 241/2014.]

- 7.48 R (1) This *rule* applies for the purposes of specifying the procedures and timing for determining that a trigger event has occurred in relation to an *additional tier 1 instrument* under article 52(1)(n) of the *UK CRR*.
- (2) Where a *firm* establishes that its *common equity tier 1 capital* has fallen below the level of the trigger event of an *additional tier 1 instrument*:
- (a) the *management body* or any other *relevant body* of the *firm* must, without delay, determine that a trigger event has occurred; and
- (b) the *firm* is under an irrevocable obligation to write-down or convert the *additional tier 1 instrument*.
- (3) The amount to be written down or converted must be determined as soon as possible and in any case, within a maximum period of one *month* from the time that the *firm* has determined that a trigger event had occurred under (2).
- (4) If the terms of the *additional tier 1 instrument* require an independent review of the amount to be written down or converted, the *management body* or other *relevant body* of a *firm* must ensure that the review:
- (a) is commenced immediately;

- (b) is completed as soon as possible; and
- (c) does not create impediments to the *firm* writing-down or converting the *additional tier 1 instrument* or to meeting the requirement in (3).

[**Note:** article 22(1), (2) and (4) of BTS 241/2014.]

- 7.49 G In appropriate cases, the *FCA* may exercise its powers under:
- (1) section 55L of the *Act* to impose a *requirement* on a *firm* to determine the required write-down or conversion amount more quickly than the one-month period in *MIFIDPRU 3 Annex 7.48R(3)*; or
 - (2) section 166 of the *Act* to require the *firm* to commission an independent review of the amount to be written down or converted for the purposes of *MIFIDPRU 3 Annex 7.48R*.

[**Note:** article 22(3) and (4) of BTS 241/2014.]

- 7.50 R For the purposes of article 52(1)(o) of the *UK CRR*, features that could hinder the recapitalisation of a *firm* include provisions that require the *firm* to compensate existing holders of capital instruments where a new capital instrument is issued.

[**Note:** article 23 of BTS 241/2014.]

Incentives to redeem

- 7.51 R (1) For the purposes of article 52(1)(g) and article 63(h) of the *UK CRR*, an incentive to redeem means any feature that provides, at the date of issuance of a capital instrument, an expectation that the capital instrument is likely to be redeemed.
- (2) An incentive to redeem under (1) includes:
- (a) a call option combined with an increase in the credit spread of the instrument if the call is not exercised;
 - (b) a call option combined with a requirement or an investor option to convert the instrument into a *common equity tier 1 instrument* where the call is not exercised;
 - (c) a call option combined with a change in reference rate where the credit spread over the second reference rate is greater than the initial payment rate minus the swap rate;
 - (d) a call option combined with an increase of the redemption amount in the future;

- (e) a remarketing option combined with an increase in the credit spread of the instrument or a change in reference rate where the credit spread over the second reference rate is greater than the initial payment rate minus the swap rate where the instrument is not remarketed; and
- (f) a marketing of the instrument in a way which suggests to investors that the instrument will be called.

[**Note:** article 20 of BTS 241/2014.]

Use of special purpose vehicles for indirect issuance of own funds

- 7.52 R (1) This *rule* applies for the purposes of article 52(1)(p) and article 63(n) of the *UK CRR*.
- (2) Where the *firm* issues a capital instrument that is subscribed for by a special purpose entity, the capital instrument must not be recognised by the *firm* as capital of a higher quality than the lowest quality of:
- (a) the capital issued to the special purpose entity; and
 - (b) the capital issued to third parties by the special purpose entity.
- (3) Where another entity (“A”) within the same *consolidated situation* as the *firm* issues a capital instrument that is subscribed for by a special purpose entity, the capital instrument must not be recognised by A as capital of a higher quality than the lowest quality of:
- (a) the capital issued to the special purpose entity; and
 - (b) the capital issued to third parties by the special purpose entity.
- (4) The requirement in (2) also applies on an equivalent basis to a *UK parent entity* for the purposes of determining its consolidated *own funds*, with the reference to the “*firm*” being read as a reference to the *UK parent entity*.
- (5) The rights of the holders of instruments issued by a special purpose entity in (2), (3) or (4) must be no more favourable than if the instrument was issued directly by the *firm*, A or the *UK parent entity*, as applicable.

[**Note:** article 24 of BTS 241/2014.]

Distributions on own funds instruments

- 7.53 R (1) This *rule* contains the definition of a broad market index for the purpose of article 73(5) of the *UK CRR*.
- (2) An interest rate index is a broad market index if it fulfils all of the following conditions:
- (a) it is used to set interbank lending rates in one or more currencies;
 - (b) it is used as a reference rate for floating rate debt issued by the *firm* in the same currency, where applicable;
 - (c) it is calculated as an average rate by a body independent of the *institutions* or *MIFIDPRU investment firms* that are contributing to the index (a “panel”);
 - (d) each of the rates set under the index is based on quotes submitted by a panel of *institutions* or *MIFIDPRU investment firms* active in that interbank market; and
 - (e) the composition of the panel referred to in point (c) ensures a sufficient level of representativeness of *institutions* or *MIFIDPRU investment firms* present in the *United Kingdom*.
- (3) For the purposes of (2)(e), a sufficient level of representativeness will be deemed to exist in either of the following cases:
- (a) where the panel in (2)(c) includes at least six different contributors before any discount of quotes is applied for the purposes of setting the rate; or
 - (b) where both of the following conditions are met:
 - (i) the panel in (2)(c) includes at least four different contributors before any discount of quotes is applied for the purposes of setting the rate; and
 - (ii) the contributors to the panel in (2)(c) represent at least 60% of the related market.
- (4) The related market referred to in (3)(b)(ii) is calculated by dividing the amount in (a) by the amount in (b):
- (a) the sum of the assets and liabilities of the effective contributors to the panel in the domestic currency;
 - (b) the sum of assets and liabilities in the domestic currency of *credit institutions* in the *United Kingdom*, including branches established in the *United Kingdom*, and money market funds in the *United Kingdom*.

- (5) A stock index is deemed to be a broad market index where it is appropriately diversified in accordance with article 344 of the *UK CRR*.

[**Note:** article 24a of BTS 241/2014.]

Indirect holdings arising from index holdings

- 7.54 R (1) This rule applies for the purpose of determining whether an estimate is sufficiently conservative for the purposes of article 76(2) of the *UK CRR*.
- (2) An estimate is sufficiently conservative where either of the following conditions are met:
- (a) the investment mandate of the index specifies that a capital instrument of a *financial sector entity* that is part of the index cannot exceed a maximum percentage of that index and the *firm* uses that percentage as an estimate of the value of the holdings that must be deducted from:
- (i) its *common equity tier 1 capital, additional tier 1 capital* or *tier 2 capital* (as applicable) in accordance with *MIFIDPRU 3 Annex 7.43R(1)(b)*; or
- (ii) its *common equity tier 1 capital* where the *firm* cannot determine the precise nature of the holding; or
- (b) if the *firm* is unable to determine the maximum percentage referred to in (a) and the index includes capital instruments of *financial sector entities* (as evidenced by its investment mandate or other relevant information), the *firm* deducts the full amount of the index holdings from:
- (i) its *common equity tier 1 capital, additional tier 1 capital* or *tier 2 capital* (as applicable) in accordance with *MIFIDPRU 3 Annex 7.43R(1)(b)*; or
- (ii) its *common equity tier 1 capital* where the *firm* cannot determine the precise nature of the holding.
- (3) For the purposes of (2):
- (a) an indirect holding arising from an index holding consists of the proportion of the index invested in the *common equity tier 1 instruments, additional tier 1 instruments* and *tier 2 instruments of financial sector entities* included in the index; and

- (b) an index includes, but is not limited to, index funds, equity or bond indices or any other scheme where the underlying instrument is a capital instrument issued by a *financial sector entity*.

[**Note:** article 25 of BTS 241/2014.]

- 7.55 G (1) Under article 76(3) of the *UK CRR*, a *firm* may apply for permission to use the conservative estimate approach in article 76(2) of the *UK CRR* (as supplemented by *MIFIDPRU 3 Annex 7.54R*) where the *firm* has demonstrated that it would be operationally burdensome to monitor its underlying exposure to the items referred to in articles 76(2)(a) and (b) of the *UK CRR*.
- (2) For these purposes, “operationally burdensome” means situations in which the look-through approach to capital holdings in *financial sector entities* on an ongoing basis would be unjustified. When considering whether a situation is operationally burdensome, the *FCA* will take into account whether the *firm’s* index holding:
- (a) is immaterial when compared with the *firm’s own funds*; and
 - (b) has a short holding period or is highly liquid in nature.

[**Note:** article 26 of BTS 241/2014.]

Temporary waiver of deduction from own funds

- 7.56 G (1) In accordance with article 79 of the *UK CRR* (as applied by *MIFIDPRU 3.6.1R*), the *FCA* may waive the requirement for a *firm* to deduct holdings of capital instruments or subordinated loans that the *firm* has granted that qualify as *common equity tier 1 instruments, additional tier 1 instruments* or *tier 1 instruments* of a *financial sector entity* where:
- (a) the *firm* will hold the capital instruments or subordinated loans only temporarily; and
 - (b) the *FCA* considers that the holdings are for the purposes of a financial assistance operational designed to reorganise and save the *financial sector entity*.
- (2) A *firm* that wishes to apply for a waiver for the purposes of article 79 of the *UK CRR* should apply for a waiver of *MIFIDPRU 3.6.1R* (insofar as it applies that article) under section 138A of the *Act*.
- (3) When considering an application for a waiver under (2), the *FCA* considers that the conditions for a waiver will be unlikely to be

met where:

- (a) the duration of the waiver exceeds the timeframe envisaged under the financial assistance operation plan or exceeds five years;
- (b) the waiver is not limited to new holdings of instruments in the *financial sector entity*;
- (c) the financial assistance operation has not been discussed with and, where necessary, approved by the *FCA*; or
- (d) the financial assistance operation does not clearly state phases, timing and objectives and does not specify the interaction between the *firm's* temporary holdings and the broader financial assistance operation.

[**Note:** article 79 of the *UK CRR* and article 33 of BTS 241/2014.]

Own funds instruments issued by special purpose entities

- 7.57 G (1) Under article 83(1) of the *UK CRR* (as applied by *MIFIDPRU* 2.5.10R(1)), a *UK parent entity* may include *additional tier 1 instruments, tier 2 instruments* issued by a special purpose entity, and their related share premium accounts, in qualifying *own funds* under Title II of Part Two only where the conditions in article 83(1) are met.
- (2) Under article 83(1)(d) of the *UK CRR*, one of the conditions is that the only asset of the special purpose entity is its investment in the *own funds* of the *parent undertaking* or a *subsidiary* of that *parent undertaking* that is included within the same prudential consolidation group.
- (3) Article 83 of the *UK CRR* permits the *FCA* to waive the condition in article 83(1)(d) where the assets of the relevant special purpose entity (other than its investment in the *own funds* of the *parent undertaking* or *subsidiary*) are minimal and insignificant for that entity.
- (4) The *FCA* expects that a *firm* that wishes to obtain the waiver in (3) will make an application under section 138A of the *Act* to waive the application of *MIFIDPRU* 2.5.10R(1), insofar as it applies the condition in article 83(1)(d) of the *UK CRR*. When considering any such application, the *FCA* will normally consider, among other factors, whether the assets of the special purpose entity (other than the investments in the *own funds* of the *parent undertaking* or *subsidiary* within the same prudential consolidation group):
- (a) are limited to cash assets dedicated to the payment of

coupons and redemption of the *own funds instruments* that are due; and

- (b) are no higher than 0.5% of the average total assets of the special purpose entity over the last three years.

- (5) The *FCA* considers that it may be appropriate to grant a *firm* a waiver when a special purpose entity has a higher percentage of assets than that specified in (4)(b) provided that:

- (a) the higher percentage is necessary exclusively to cover the running costs of the special purpose entity; and
- (b) the corresponding nominal amount of those assets does not exceed £500,000.

[**Note:** article 83(1) of the *UK CRR* and article 34 of BTS 241/2014.]

- 7.58 R (1) For the purpose of the sub-consolidation calculation required under articles 84(2), 85(2) and 87(2) of the *UK CRR*, the qualifying minority interests of a *subsidiary* referred to in article 81 of the *UK CRR* (“X”) that is itself a *parent undertaking* of an entity referred to in article 81(1) of the *UK CRR* must be calculated in accordance with the remainder of this *rule*.
- (2) Where X complies with either of the following on the basis of its *consolidated situation*, the treatment in (3) applies:
- (a) *MIFIDPRU* 4 and 5; or
 - (b) Part Three of the *UK CRR*.
- (3) The relevant treatment in (2) is as follows:
- (a) the *common equity tier 1 capital* of X on a *consolidated basis* (as referred to in article 84(1)(a) of the *UK CRR*) shall be taken to include the eligible minority interests that arise from X’s own *subsidiaries* calculated under article 84 of the *UK CRR* and *MIFIDPRU* 3 Annex 7R;
 - (b) for the purpose of the sub-consolidation calculation, the amount of *common equity tier 1 capital* required under article 84(1)(a)(i) of the *UK CRR* is the amount required to meet X’s *common equity tier 1 capital* requirements at the level of its *consolidated situation* calculated in accordance with article 84(1)(a) of the *UK CRR*;
 - (c) for the purpose of the sub-consolidation calculation, the specific own funds requirements in article 84(1)(a)(i) of the *UK CRR* are:

- (i) any amount in excess of X's *own funds requirement* that X is required to hold to meet its *own funds threshold requirement*; or
 - (ii) any amount specified by the *PRA* under regulation 34 of the Capital Requirements Regulations 2013 in relation to X;
- (d) the amount of consolidated *common equity tier 1 capital* required under article 84(1)(a)(ii) of the *UK CRR* is the contribution of X on the basis of its *consolidated situation* to the common equity tier 1 own funds requirements of the *firm* for which the eligible minority interests are calculated on a consolidated basis ("Y");
- (e) for the purpose of calculating the contribution of X under (d):
- (i) all intra-group transactions between *undertakings* included in the scope of prudential consolidation of Y must be eliminated; and
 - (ii) X must not include capital requirements arising from its *subsidiaries* that are not included in the scope of prudential consolidation of Y.
- (4) Where a *UK parent entity* has an intermediate *subsidiary* that meets the following conditions, the treatment in (5) applies:
- (a) the intermediate *subsidiary* is not referred to in article 81(1) of the *UK CRR*; and
 - (b) the intermediate *subsidiary* has *subsidiaries* that are referred to in article 81(1) of the *UK CRR*.
- (5) Where (4) applies, the *UK parent entity*:
- (a) may include in its *common equity tier 1 capital* the amount of minority interests arising from those *subsidiaries* calculated in accordance with article 84(1) of the *UK CRR*; but
 - (b) must not include in its *common equity tier 1 capital* any minority interests arising from a *subsidiary* that is not referred to in article 81(1) of the *UK CRR*.
- (6) This *rule* applies on an equivalent basis to the calculation of:
- (a) qualifying *tier 1 instruments* under article 85 of the *UK CRR*, in which case references to "common equity tier 1" in this *rule* are references to "tier 1"; and

- (b) qualifying own funds under article 87 of the *UK CRR*, in which case references to “common equity tier 1” in this *rule* are references to “own funds”.

[**Note:** article 34a of BTS 241/2014.]

3 Prudent valuation and additional valuation adjustments

Annex 8R

Application and purpose

- 8.1 R (1) This annex applies for the purposes of calculating additional valuation adjustments under article 34 of the *UK CRR* (as applied by *MIFIDPRU* 3.3.1AR).
- (2) Any reference to the *UK CRR* in this annex is to the *UK CRR* as applied and modified by *MIFIDPRU* 3.3.1R.
- 8.2 G (1) Under article 34 of the *UK CRR*, a *firm* must apply the requirements of article 105 of the *UK CRR* to the *firm*'s assets measured at fair value when calculating the amount of its *own funds*.
- (2) Under *MIFIDPRU* 3.3.1AR, a *firm* is only required to apply article 34 of the *UK CRR* to positions held within its *trading book*.

Sources of market data

- 8.3 R (1) Where a *firm* calculates an *AVA* based on market data, it must consider the same range of market data as the data used in the independent price verification process referred to in article 105(8) of the *UK CRR*, subject to the adjustments in this *rule*.
- (2) A *firm* must consider the full range of available and reliable market data sources to determine a prudent value, including each of the following to the extent relevant:
- (a) exchange prices in a liquid market;
 - (b) trades in the *financial instrument* or a very similar instrument, either from the *firm*'s own records or, where available, trades from across the market;
 - (c) tradable quotes from brokers and other market participants;
 - (d) consensus service data;
 - (e) indicative broker quotes; and

- (f) counterparty collateral valuations.

[**Note:** article 3 of BTS 2016/101.]

Determination of AVAs

- 8.4 R (1) A *firm* must calculate the value of assets for which the *firm* must determine AVAs in accordance with this *rule*.
- (2) The value in (1) is the sum of the absolute value of fair-valued assets and liabilities, as stated in the *firm's* financial statements in accordance with the applicable accounting framework, modified as follows:
- (a) exactly matching offsetting fair-valued assets and liabilities must be excluded; and
- (b) where a change in the accounting valuation of fair-valued assets and liabilities would:
- (i) only be partially reflected in *common equity tier 1 capital*, the value of those assets or liabilities must only be included in proportion to the impact of the relevant valuation change on *common equity tier 1 capital*; or
- (ii) have no impact on *common equity tier 1 capital*, the value of those assets or liabilities must be excluded.

[**Note:** article 4 of BTS 2016/101.]

- 8.5 R A *firm's* total AVAs are 0.1% of the sum of the assets calculated under MIFIDPRU 3 Annex 8.4R(1).

[**Note:** articles 5 and 6 of BTS 2016/101.]

Documentation, systems and controls

- 8.6 R A *firm* must appropriately document its prudent valuation methodology and its policies on the following:
- (1) the range of methodologies for quantifying AVAs for each *valuation position*;
- (2) the hierarchy of methodologies for each asset class, product, or *valuation position*;
- (3) the hierarchy of market data sources used in the AVA methodology;

- (4) the required characteristics of market data to justify a zero *AVA* for each asset class, product, or *valuation position*; and
- (5) the fair-valued assets and liabilities for which a change in accounting valuation has a partial or no impact on *common equity tier 1 capital* according to *MIFIDPRU 3 Annex 8.4R(2)(b)*.

[**Note:** article 18(1) of BTS 2016/101.]

8.7 R The *firm* must ensure that the documentation and policies in *MIFIDPRU 3 Annex 8.6R* are:

- (1) reviewed at least annually; and
- (2) approved by the *firm's* senior management following each review.

[**Note:** article 18(3) of BTS 2016/101.]

8.8 R A *firm* must:

- (1) maintain records to allow the calculation of *AVAs* at *valuation exposure* level to be analysed; and
- (2) ensure that the senior management of the *firm* are provided with information from the *AVA* calculation process to permit them to understand the level of valuation uncertainty on the *firm's* portfolio of fair-valued positions.

[**Note:** article 18(3) of BTS 2016/101.]

Systems and controls requirements

8.9 R A *firm* must ensure that *AVAs* are authorised and subsequently monitored by an independent control function.

[**Note:** article 19(1) of BTS 2016/101.]

- 8.10 R (1) A *firm* must have:
- (a) effective controls related to the governance of all fair-valued positions; and
 - (b) adequate resources to implement the controls in (a) and ensure robust valuation processes even during a stressed period.
- (2) The controls and processes in (1) must include the following:
- (a) a review of the performance of the *firm's* valuation model

at least annually;

- (b) approval by senior management of all significant changes to valuation policies;
- (c) a clear statement of the *firm's* risk appetite for exposure to positions subject to valuation uncertainty, which must be monitored at an aggregate *firm-wide* level;
- (d) independence in the valuation process between risk-taking and internal control functions; and
- (e) a comprehensive internal audit process relating to valuation processes and controls.

[**Note:** article 19(2) of BTS 2016/101.]

- 8.11 R (1) A *firm* must:
- (a) have effective and consistently applied controls relating to the valuation process for all fair-valued positions; and
 - (b) ensure that the controls in (a) are subject to regular internal audit review.
- (2) The controls in (1) must include the following:
- (a) a precisely defined *firm-wide* product inventory, ensuring that every *valuation position* is uniquely mapped to a product definition;
 - (b) valuation methodologies for each product in the inventory covering:
 - (i) the choice and calibration of model;
 - (ii) fair value adjustments;
 - (iii) independent price verification;
 - (iv) AVAs;
 - (v) the methodologies applicable to the product; and
 - (vi) the measurement of valuation uncertainty.
 - (c) a validation process ensuring that, for each product, both the risk-taking and relevant control functions approve the product-level methodologies described in point (b) and certify that they reflect the actual practice for every *valuation position* mapped to the product;

- (d) defined thresholds based on observed market data for determining when valuation models are no longer sufficiently robust;
- (e) a formal independent price verification process based on prices independent from the relevant trading desk;
- (f) a new product approval process referencing the product inventory and involving all internal stakeholders relevant to risk measurement, risk control, financial reporting and the assignment and verification of valuations of *financial instruments*; and
- (g) a new deal review process to ensure that pricing data from new trades are used to assess whether valuations of similar valuation exposures remain appropriately prudent.

[**Note:** article 19(3) of BTS 2016/101.]

Amend the following as shown.

4 Own funds requirements

...

4.12 K-NPR requirement

...

4.12.2 R ...

- (3) When applying the *UK CRR* in accordance with (1):
 - (a) any provision in the *UK CRR* relating to the effect that the market risk of a position has on the “own funds requirement” should be interpreted as relating instead to the effect that the position has on the *K-NPR requirement* of the *MIFIDPRU investment firm*;
 - (b) article 363 of the *UK CRR* does not apply;
 - (c) any reference in Title IV of Part Three of the *UK CRR* to:
 - (i) article 363 of the *UK CRR* (permission to use internal models) refers to *MIFIDPRU* 4.12.4R to *MIFIDPRU* 4.12.7R; and
 - (ii) permissions granted under article 363 of the *UK CRR* refers to equivalent permissions granted under *MIFIDPRU* 4.12.4R to *MIFIDPRU*

4.12.7R.

- 4.12.2A R (1) When applying the *UK CRR* for the purposes of this section, a *firm* must apply the following, as modified by (2):
- (a) the *Appropriately Diversified Indices RTS*;
 - (b) the *Market Definition RTS*; and
 - (c) the *Non-Delta Risk of Options RTS*.
- (2) The relevant modifications are as follows:
- (a) a reference to an “institution” is a reference to the *firm*;
 - (b) a reference to “Regulation (EU) No 575/2013” is a reference to the *UK CRR* as modified by the *rules in MIFIDPRU*;
 - (c) a reference to an “own funds requirement” is a reference to the contribution of a position to the *firm’s K-NPR requirement*; and
 - (d) a reference to the calculation of requirements “on a consolidated basis” is a reference to the calculation of those requirements on a *consolidated basis* under *MIFIDPRU 2.5*.

[Note: BTS 525/2014, BTS 528/2014 and BTS 945/2014.]

- 4.12.2B R Where a provision in Title IV of Part Three of the *UK CRR* requires a *firm* to determine a risk weighting by reference to the Standardised Approach to credit risk, for the purposes of this section, a *firm* must:
- (1) apply the provisions in the *UK CRR* relating to the Standardised Approach to credit risk in the form in which they stood on 31 December 2021; but
 - (2) for the purposes of determining any mapping of credit quality steps under the provisions in (1), use the *ECAI mappings applied by the PRA for the purposes of the rules in the PRA Rulebook relating to the Standardised Approach to credit risk for CRR firms*, as amended from time to time.

[Note: BTS 2016/1799.]

- 4.12.2C G (1) Certain market risk provisions in the *UK CRR* (in the form in which it stood on 31 December 2021) require a *firm* to consider the underlying credit risk attaching to a position under the *UK CRR Standardised Approach to credit risk*. In certain cases, the credit risk rules require a *firm* to determine the risk attaching to the position by reference to “credit quality steps”, which are

mapped to credit ratings issued by particular *credit rating agencies*. As the credit risk requirements in the *UK CRR* are no longer directly relevant under *MIFIDPRU*, the *FCA* will no longer be maintaining an *FCA* version of the *ECAI* credit quality step mappings in *BTS 2016/1799* for these purposes.

- (2) The effect of *MIFIDPRU* 4.12.2BR is that where a *firm* needs to determine the underlying credit risk of a position for the purposes of the *K-NPR requirement* by reference to credit quality steps, the *firm* should use the updated *ECAI* mappings maintained by the *PRA* for the purposes of the Standardised Approach to credit risk as it applies to *CRR* firms under the *PRA Rulebook*.

4.12.2D R A *firm* may treat the currency pairs listed in *MIFIDPRU* 4 Annex 13R as closely correlated for the purposes of article 354(1) of the *UK CRR*.

...

Permission to use internal models

...

- 4.12.6 R (1) A *firm* that has a permission under *MIFIDPRU* 4.12.4R for an internal model must obtain approval from the *FCA* before it:
- (a) implements a material change to the use of the model; or
 - (b) makes a material extension to the use of the model.
- (2) To determine if a change or extension is material for the purposes of (1), a *firm* must apply the criteria and methodology set out in ~~articles~~ article 3 (to the extent that it relates to the Internal Models Approach (IMA)), articles 7a and 7b and Annex III of the *Market Risk Model Extensions and Changes RTS*.
- (3) To obtain the approval in (1), a *firm* must:
- (a) complete the application form in *MIFIDPRU* 4 Annex 3R and submit it to the *FCA* using the *online notification and application system*; and
 - (b) perform an initial calculation of stressed value-at-risk in accordance with article 365(2) of the *UK CRR* on the basis of the model as changed or extended and submit the results as part of the application in (a).

...

MIFIDPRU 4 Annex 6R (Application under MIFIDPRU 4.12.66R to use sensitivity models to calculate interest rate risk on derivative instruments) is replaced with the form below. The new text is not underlined.

Application under MIFIDPRU 4.12.66R for permission to use sensitivity models to calculate interest rate risk on derivative instruments in accordance with article 331(1) of the UK CRR

1. Please list all group undertakings in respect of which this application is being made.

| FRN | Undertaking name |
|-----|------------------|
| | |
| | |
| | |

2. Please confirm the scope of the consolidated application for the model:

- Not applicable, as the model will only be applied at solo level
- The use of the model at solo and consolidated level will involve the same types of instruments
- The consolidated application for a model will include a wider range of instrument types than those covered by the model at solo level ▶ Give details below

For group applications, the below section (questions 3 to 7) must be completed separately for each entity requiring the permission, including for the consolidated situation of the consolidating UK parent if the application concerns a consolidated application of the model. Questions 5 and onwards must be completed separately for each set of instruments for which a net sensitivity position, weighted by maturity, is computed.

3. Please confirm the FRN and name of the MIFIDPRU investment firm or consolidating UK parent this section relates to:

| | |
|--------------|--|
| FRN of firm | |
| Name of firm | |

4. Please give a brief description of the nature of the firm’s business and a full and clear explanation of why it is applying for this permission.

| |
|--|
| |
|--|

5. Please provide summary information for each of the items listed in the below table. For some items you are required to attach additional documentation.

| Item | Summary Information |
|---|---------------------|
| a. Description of the current methodology used for interest rate risk on derivative instruments covered in articles 328 to 330 UK CRR. | |
| b. Description of the sensitivity models used to calculate interest rate risk under article 331 UK CRR. | |
| c. Product scope of the requested permission – please indicate the instruments for which net sensitivity positions are used and the currencies in which those positions are denominated. | |
| d. For the product scope requested, confirm that the interest rate risk is managed on a discounted cashflow basis. | |
| e. For the product scope requested, briefly indicate any growth plans for the exposures. | |
| f. Capital impact of changing the calculation methodology from the existing approach (i.e. the capital impact of applying article 331 UK CRR) and total capital and market risk capital held at the same date. | |
| <p>g. Provide worked examples of capital calculation under the current methodology and the new (article 331 UK CRR) methodology for a test portfolio composed of:</p> <ul style="list-style-type: none"> • Long 100,000 1Y ATM equity index call option • Short 100,000 1Y ATM equity index put option • Long 100,000 2Y ATM equity index call option • Short 100,000 5Y ATM equity index call option • Short 3M equity index futures in sufficient quantity to hedge the equity delta of the options <p>Assume that the base index level is 100 and that the equity index volatility is 20%. Please</p> | |

| | |
|--|--|
| use these interest rate inputs ¹ for the purposes of calculating the interest rate exposure. All options are European style exercise. | |
| h. Please provide documentation describing how you construct interest rate curves from market data. Please list all models that rely on these curves to calculate sensitivity to interest rate movements. For each model, please provide the list of products to which it applies and the date of the last validation. | |
| i. Explanation of how you calculate the interest rate sensitivity of your portfolio in each bucket. | |
| j. Explanation of how you handle interest rate basis risk. | |

6. Please confirm whether each of the standards in the below table is met and provide information to demonstrate how it is met:

| Standard | Meets Standard? | Firm Analysis <i>Please demonstrate using examples where appropriate how the minimum standards are met</i> |
|---|---|--|
| a. Sensitivity models generate positions which have the same sensitivity to interest rate changes as the underlying cash flows. | <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| b. Sensitivities are assessed with reference to independent movements in sample rates across the yield curve, with at least one sensitivity point in each of the maturity bands set out in Table 2 in article 339 UK CRR. | <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| c. Sensitivities are appropriate to produce accurate valuation changes based on the assumed interest rate changes set out in Table 2 of article 339 UK CRR. | <input type="checkbox"/> Yes <input type="checkbox"/> No | |

¹ Editor's note: The interest rate inputs document is available at the following address:
<http://www.fca.org.uk/your-fca/documents/forms/crr-article-331-interest-rate-inputs>

Insert the following new annex, MIFIDPRU 4 Annex 13R, after MIFIDPRU 4 Annex 12G (Guidance on the interaction between K-AUM and K-COH). The text is not underlined.

**4 Annex K-NPR requirement - provisions on closely correlated currencies
13R**

Application and purpose

- 13.1 R This annex specifies currency pairs that may be treated as closely correlated for the purposes of article 354(1) of the *UK CRR* (as applied by *MIFIDPRU* 4.12.2R) when a *MIFIDPRU investment firm* or *UK parent entity* is calculating its *K-NPR requirement*.
- 13.2 R The following table lists closely correlated currencies for the purposes of *MIFIDPRU* 4 Annex 13.1R:

| | |
|--|--|
| Part 1 | List of closely correlated currencies against the euro (EUR) |
| Albanian lek (ALL), Bosnia and Herzegovina mark (BAM), Bulgarian lev (BGN), Czech koruna (CZK), British pound (GBP), Croatian kuna (HRK), Moroccan dirham (MAD), Romanian leu (RON). | |
| Part 2 | List of closely correlated currencies against the Arab Emirates dirham (AED) |
| Angolan kwanza (AOA), Canadian dollar (CAD), Chinese yuan (CNY), British pound (GBP), Hong Kong dollar (HKD), Lebanese pound (LBP), Macau pataca (MOP), Peruvian nuevo sol (PEN), Philippine peso (PHP), Singapore dollar (SGD), Thai baht (THB), Taiwanese dollar (TWD), US dollar (USD). | |
| Part 3 | List of closely correlated currencies against the Albanian lek (ALL) |
| Bosnia and Herzegovina mark (BAM), Bulgarian lev (BGN), Czech koruna (CZK), Danish krone (DKK), Croatian kuna (HRK), Moroccan dirham (MAD), Romanian leu (RON), euro (EUR). | |
| Part 4 | List of closely correlated currencies against the Angolan kwanza (AOA) |
| Arab Emirates dirham (AED), Chinese yuan (CNY), Hong Kong dollar (HKD), Lebanese pound (LBP), Macau pataca (MOP), Peruvian nuevo sol (PEN), Philippine peso (PHP), Singapore dollar (SGD), Thai baht (THB), Taiwanese dollar (TWD), US dollar (USD). | |
| Part 5 | List of closely correlated currencies against the Bosnia and Herzegovina mark (BAM) |

| | |
|---|--|
| Albanian lek (ALL), Bulgarian lev (BGN), Czech koruna (CZK), Danish krone (DKK), British pound (GBP), Croatian kuna (HRK), Moroccan dirham (MAD), Romanian leu (RON), euro (EUR). | |
| Part 6 | List of closely correlated currencies against the Bulgarian lev (BGN) |
| Albanian lek (ALL), Bosnia and Herzegovina mark (BAM), Czech koruna (CZK), Danish krone (DKK), British pound (GBP), Croatian kuna (HRK), Moroccan dirham (MAD), Romanian leu (RON), euro (EUR). | |
| Part 7 | List of closely correlated currencies against the Canadian dollar (CAD) |
| Arab Emirates dirham (AED), Hong Kong dollar (HKD), Macau pataca (MOP), Singapore dollar (SGD), Taiwanese dollar (TWD), US dollar (USD). | |
| Part 8 | List of closely correlated currencies against the Chinese yuan (CNY) |
| Arab Emirates dirham (AED), Angolan kwanza (AOA), British pound (GBP), Hong Kong dollar (HKD), Lebanese pound (LBP), Macau pataca (MOP), Peruvian nuevo sol (PEN), Philippine peso (PHP), Singapore dollar (SGD), Thai baht (THB), Taiwanese dollar (TWD), US dollar (USD). | |
| Part 9 | List of closely correlated currencies against the Czech koruna (CZK) |
| Albanian lek (ALL), Bosnia and Herzegovina mark (BAM), Bulgarian lev (BGN), Danish krone (DKK), Croatian kuna (HRK), Moroccan dirham (MAD), Romanian leu (RON), euro (EUR). | |
| Part 10 | List of closely correlated currencies against the Danish krone (DKK) |
| Albanian lek (ALL), Bosnia and Herzegovina mark (BAM), Bulgarian lev (BGN), Czech koruna (CZK), British pound (GBP), Croatian kuna (HRK), Moroccan dirham (MAD), Romanian leu (RON), Singapore dollar (SGD). | |
| Part 11 | List of closely correlated currencies against the British pound (GBP) |
| Arab Emirates dirham (AED), Bosnia and Herzegovina mark (BAM), Bulgarian lev (BGN), Chinese yuan (CNY), Danish krone (DKK), Hong Kong dollar (HKD), Croatian kuna (HRK), Lebanese pound | |

| | |
|--|---|
| (LBP), Moroccan dirham (MAD), Macau pataca (MOP), Singapore dollar (SGD), Taiwanese dollar (TWD), US dollar (USD), euro (EUR). | |
| Part 12 | List of closely correlated currencies against the Hong Kong dollar (HKD) |
| Arab Emirates dirham (AED), Angolan kwanza (AOA), Canadian dollar (CAD), Chinese yuan (CNY), British pound (GBP), Lebanese pound (LBP), Macau pataca (MOP), Peruvian nuevo sol (PEN), Philippine peso (PHP), Singapore dollar (SGD), Thai baht (THB), Taiwanese dollar (TWD), US dollar (USD). | |
| Part 13 | List of closely correlated currencies against the Croatian kuna (HRK) |
| Albanian lek (ALL), Bosnia and Herzegovina mark (BAM), Bulgarian lev (BGN), Czech koruna (CZK), Danish krone (DKK), British pound (GBP), Moroccan dirham (MAD), Romanian leu (RON), Singapore dollar (SGD), euro (EUR). | |
| Part 14 | List of closely correlated currencies against the South Korean won (KRW) |
| Peruvian nuevo sol (PEN), Philippine peso (PHP), Singapore dollar (SGD), Taiwanese dollar (TWD). | |
| Part 15 | List of closely correlated currencies against the Lebanese pound (LBP) |
| Arab Emirates dirham (AED), Angolan kwanza (AOA), Chinese yuan (CNY), British pound (GBP), Hong Kong dollar (HKD), Macau pataca (MOP), Peruvian nuevo sol (PEN), Philippine peso (PHP), Singapore dollar (SGD), Thai baht (THB), Taiwanese dollar (TWD), US dollar (USD). | |
| Part 16 | List of closely correlated currencies against the Moroccan dirham (MAD) |
| Albanian lek (ALL), Bosnia and Herzegovina mark (BAM), Bulgarian lev (BGN), Czech koruna (CZK), Danish krone (DKK), British pound (GBP), Croatian kuna (HRK), Romanian leu (RON), Singapore dollar (SGD), Thai baht (THB), Taiwanese dollar (TWD), euro (EUR). | |
| Part 17 | List of closely correlated currencies against the Macau pataca (MOP) |
| Arab Emirates dirham (AED), Angolan kwanza (AOA), Canadian dollar (CAD), Chinese yuan (CNY), British pound (GBP), Hong Kong dollar (HKD), Lebanese pound (LBP), Peruvian nuevo sol (PEN), Philippine peso (PHP), Singapore dollar (SGD), Thai baht (THB), Taiwanese dollar (TWD), US dollar (USD). | |

| | |
|---|---|
| Part 18 | List of closely correlated currencies against the Peruvian nuevo sol (PEN) |
| Arab Emirates dirham (AED), Angolan kwanza (AOA), Chinese yuan (CNY), Hong Kong dollar (HKD), South Korean won (KRW), Lebanese pound (LBP), Macau pataca (MOP), Philippine peso (PHP), Singapore dollar (SGD), Thai baht (THB), Taiwanese dollar (TWD), US dollar (USD). | |
| Part 19 | List of closely correlated currencies against the Philippine peso (PHP) |
| Arab Emirates dirham (AED), Angolan kwanza (AOA), Chinese yuan (CNY), Hong Kong dollar (HKD), South Korean won (KRW), Lebanese pound (LBP), Macau pataca (MOP), Malaysian Ringgit (MYR), Peruvian nuevo sol (PEN), Singapore dollar (SGD), Thai baht (THB), Taiwanese dollar (TWD), US dollar (USD). | |
| Part 20 | List of closely correlated currencies against the Romanian leu (RON) |
| Albanian lek (ALL), Bosnia and Herzegovina mark (BAM), Bulgarian lev (BGN), Czech koruna (CZK), Danish krone (DKK), Croatian kuna (HRK), Moroccan dirham (MAD), euro (EUR). | |
| Part 21 | List of closely correlated currencies against the Singapore dollar (SGD) |
| Arab Emirates dirham (AED), Angolan kwanza (AOA), Canadian dollar (CAD), Chinese yuan (CNY), Danish krone (DKK), British pound (GBP), Hong Kong dollar (HKD), Croatian kuna (HRK), South Korean won (KRW), Lebanese pound (LBP), Moroccan dirham (MAD), Macau pataca (MOP), Malaysian ringgit (MYR), Peruvian nuevo sol (PEN), Philippine peso (PHP), Thai baht (THB), Taiwanese dollar (TWD), US dollar (USD). | |
| Part 22 | List of closely correlated currencies against the Thai baht (THB) |
| Arab Emirates dirham (AED), Angolan kwanza (AOA), Chinese yuan (CNY), Hong Kong dollar (HKD), Lebanese pound (LBP), Moroccan dirham (MAD), Macau pataca (MOP), Peruvian nuevo sol (PEN), Philippine peso (PHP), Singapore dollar (SGD), Taiwanese dollar (TWD), US dollar (USD). | |
| Part 23 | List of closely correlated currencies against the Taiwanese dollar (TWD) |
| Arab Emirates dirham (AED), Angolan kwanza (AOA), Canadian dollar (CAD), Chinese yuan (CNY), British pound (GBP), Hong Kong | |

| | |
|---|--|
| dollar (HKD), South Korean won (KRW), Lebanese pound (LBP), Moroccan dirham (MAD), Macau pataca (MOP), Malaysian Ringgit (MYR), Peruvian nuevo sol (PEN), Philippine peso (PHP), Singapore dollar (SGD), Thai baht (THB), US dollar (USD). | |
| Part 24 | List of closely correlated currencies against the US dollar (USD) |
| Arab Emirates dirham (AED), Angolan kwanza (AOA), Canadian dollar (CAD), Chinese yuan (CNY), British pound (GBP), Hong Kong dollar (HKD), Lebanese pound (LBP), Macau pataca (MOP), Peruvian nuevo sol (PEN), Philippine peso (PHP), Singapore dollar (SGD), Thai baht (THB), Taiwanese dollar (TWD). | |

Amend the following as shown.

5 Concentration risk

...

5.8 Procedures to prevent investment firms from avoiding the K-CON own funds requirement

...

- 5.8.2 R A *firm* must maintain systems which ensure that any closing out or transfer that is prohibited by *MIFIDPRU* 5.8.1R is immediately reported to the *FCA* in accordance with *SUP 15.7* (~~Form and method of notification~~) *MIFIDPRU* 1.1.10R.

...

7 Governance and risk management

7.1 Application

...

- 7.1.2 G The following table summarises the content of *MIFIDPRU* 7:

| Section | Summary of content |
|-----------------------------|--|
| <i>MIFIDPRU</i> 7.2 | General requirements relating to a <i>firm's</i> governance arrangements |
| <u><i>MIFIDPRU</i> 7.2A</u> | <u>Requirements relating to the risk management function</u> |
| ... | |

...

7.1.3 R *MIFIDPRU 7* applies as follows:

| Section of <i>MIFIDPRU 7</i> | Application to <i>SNI MIFIDPRU investment firms</i> | Application to <i>non-SNI MIFIDPRU investment firms</i> | Application at the level of an <i>investment firm group</i> |
|--|--|---|--|
| <i>MIFIDPRU 7.2</i> (Senior management and systems and controls) (<u>Internal governance</u>) | Applies | Applies | Applies to the <i>UK parent entity</i> of an <i>investment firm</i> group to which consolidation applies under <i>MIFIDPRU 2.5</i> |
| <u><i>MIFIDPRU 7.2A (Risk management function)</i></u> | <u>Does not apply</u> | <u>Applies to a <i>non- SNI MIFIDPRU investment firm</i> that has a risk management function in accordance with article 23 of the <i>MIFID Org Regulation</i></u> | <u>Does not apply</u> |
| ... | | | |

...

7.2 Internal governance

...

Governance for risk management

- 7.2.3 R (1) The management body of a *MIFIDPRU investment firm* has overall responsibility for risk management. It must devote sufficient time to the consideration of risk.
- (2) The management body of a *MIFIDPRU investment firm* must be actively involved in, and ensure that adequate resources are allocated to, the management of all material risks, including the

valuation of assets, the use of external ratings and internal models relating to those risks.

- (3) A MIFIDPRU investment firm must establish reporting lines to the management body that cover all material risks and risk management policies and changes thereof.

7.2.4 R (1) A MIFIDPRU investment firm must ensure that the management body in its supervisory function and any risk committee that has been established have adequate access to information on the risk profile of the firm and, if necessary and appropriate, to the risk management function and to external expert advice.

- (2) The management body in its supervisory function and any risk committee that has been established must determine the nature, the amount, the format, and the frequency of the information on risk which they are to receive.

7.2A Risk management function

7.2A.1 R MIFIDPRU 7.2A.2R and MIFIDPRU 7.2A.3R apply to a non-SNI MIFIDPRU investment firm that has a risk management function in accordance with article 23 of the MIFID Org Regulation.

7.2A.2 R (1) A firm must ensure that its risk management function is independent from its operational functions and has sufficient authority, stature, resources and access to the management body.

(2) The risk management function in (1) must ensure that all material risks are identified, measured and properly reported. It must be actively involved in elaborating the firm's risk strategy and in all material risk management decisions, and it must be able to deliver a complete view of the whole range of risks of the firm.

(3) A firm in (1) must ensure that its risk management function is able to report directly to the management body in its supervisory function, independent from senior management, and that it can raise concerns and warn the management body, where appropriate, where specific risk developments affect or may affect the firm, without prejudice to the responsibilities of the management body in its supervisory and/or managerial functions.

7.2A.3 R The head of the risk management function must be an independent senior manager with distinct responsibility for the risk management function. Where the nature, scale and complexity of the activities of the MIFIDPRU investment firm do not justify a specially appointed person, another senior person within the firm may fulfil that function, provided there is no conflict of interest. The head of the risk management function must not be removed without prior approval of the management body and must be able to have direct access to the management body where necessary.

7.3 Risk, remuneration and nomination committees

Risk committee

- 7.3.1 R (1) Subject to (2), a *non-SNI MIFIDPRU investment firm* to which this *rule* applies must establish a risk committee.

...

- (5A) In order to assist in the establishment of sound remuneration policies and practices, the risk committee must, without prejudice to the tasks of the remuneration committee, examine whether incentives provided by the remuneration system take into consideration risk, capital, liquidity and the likelihood and timing of earnings.

...

...

The following text replaces the text of MIFIDPRU 8 (Disclosure). The text is not underlined.

8 Disclosure

8.1 Application

- 8.1.1 R (1) Subject to (2) and (3), the requirements in this chapter apply to a *non-SNI MIFIDPRU investment firm*.
- (2) *MIFIDPRU* 8.2 (Risk management objectives and policies), *MIFIDPRU* 8.4 (Own funds) and *MIFIDPRU* 8.5 (Own funds requirements) also apply to an *SNI MIFIDPRU investment firm* that has *additional tier 1 instruments* in issue.
- (3) *MIFIDPRU* 8.6 (Remuneration policies and practices) applies to every *MIFIDPRU investment firm*.
- (4) *MIFIDPRU* 8.7 (Investment policy) applies only to a *non-SNI MIFIDPRU investment firm* that does not fall within *MIFIDPRU* 7.1.4R(1).
- 8.1.2 G The requirements in *MIFIDPRU* 8.6 (Remuneration policies and practices) apply to all *MIFIDPRU investment firms*, with certain exceptions that are explained in that section.
- 8.1.3 G The basic conditions to be classified as an *SNI MIFIDPRU investment firm* are set out in *MIFIDPRU* 1.2.1R. *MIFIDPRU* 1.2.13R explains the circumstances in which a *non-SNI MIFIDPRU investment firm* will be reclassified as an *SNI MIFIDPRU investment firm*.

- 8.1.4 R Where a *non-SNI MIFIDPRU investment firm* is reclassified as an *SNI MIFIDPRU investment firm*, it must comply with the disclosure obligations that apply to a *non-SNI MIFIDPRU investment firm* in relation to the financial year in which it is reclassified.
- 8.1.5 R Where an *SNI MIFIDPRU investment firm* is reclassified as a *non-SNI MIFIDPRU investment firm*, it must comply with the disclosure obligations that apply to an *SNI MIFIDPRU investment firm* in relation to the financial year in which it ceased to be an *SNI MIFIDPRU investment firm*.
- 8.1.6 G Where an *SNI MIFIDPRU investment firm* is reclassified as a *non-SNI MIFIDPRU investment firm*, it may choose to comply with the higher disclosure requirements applicable to a *non-SNI MIFIDPRU investment firm* in relation to the financial year in which it is reclassified.

Application: Level of application

- 8.1.7 R A *MIFIDPRU investment firm* must comply with the *rules* in this chapter on an individual basis, unless the *firm* is exempt in accordance with *MIFIDPRU 2.3.1R*.

Application: proportionality

- 8.1.8 R In complying with the *rules* in this chapter, a *MIFIDPRU investment firm* must provide a level of detail in its qualitative disclosures that is appropriate to its size and internal organisation, and to the nature, scope, and complexity of its activities.
- 8.1.9 G By way of example, applying a proportionate approach to the qualitative disclosure requirements in *MIFIDPRU 8.6* (Remuneration policies and practices) means that the *FCA* would expect a *non-SNI MIFIDPRU investment firm* with a detailed *remuneration* policy to disclose more information than an *SNI MIFIDPRU investment firm*.

Application: when?

- 8.1.10 R As a minimum, a *firm* must publicly disclose the information specified in this chapter annually on:
- (1) the date it publishes its annual *financial statements*; or
 - (2) where it does not publish annual *financial statements*, the date on which its annual solvency statement is submitted to the *FCA* in accordance with requirements in *SUP 16.12*.
- 8.1.11 G The *FCA* considers it would be appropriate for a *firm* to consider making more frequent public disclosure where particular circumstances demand it, for example, in the event of a major change to its business model or where a merger has taken place.

- 8.1.12 G A *MIFIDPRU investment firm* is reminded of the transitional provisions for disclosure requirements in *MIFIDPRU* TP 12.

Application: how?

- 8.1.13 R A *firm* must publish the information required by this chapter in a manner that:
- (1) is easily accessible and free to obtain;
 - (2) is clearly presented and easy to understand;
 - (3) is consistent with the presentation used for previous disclosure periods or otherwise allows a reader of the information to make comparisons easily; and
 - (4) highlights in a summary any significant changes to the information disclosed, when compared with previous disclosure periods.
- 8.1.14 G A *firm* should consider the best way to make the disclosed information easy to understand, for example, by using tables, charts or diagrams, or cross-references to other information where relevant.
- 8.1.15 R A *firm* is not required to comply with *MIFIDPRU* 8.1.13R to the extent that compliance would breach the law of another jurisdiction.
- 8.1.16 E Making the disclosures required by this chapter available on a website will tend to establish compliance with the *rule* in *MIFIDPRU* 8.1.13R.
- 8.1.17 G Whilst the *FCA's* expectation is that a *firm* will use a website for the purpose of complying with *MIFIDPRU* 8.1.13R, if a *firm* does not maintain a website, or cannot use a website to publish some or all of the information required without breaching the law of another jurisdiction, it must nonetheless ensure that the alternative method of disclosure used complies with the overarching requirement in *MIFIDPRU* 8.1.13R.

8.2 Risk management objectives and policies

- 8.2.1 R A *firm* must disclose its risk management objectives and policies for the categories of risk addressed by:
- (1) *MIFIDPRU* 4 (Own funds requirements);
 - (2) *MIFIDPRU* 5 (Concentration risk); and
 - (3) *MIFIDPRU* 6 (Liquidity).
- 8.2.2 R The risk management objectives and policies for each of the items listed in *MIFIDPRU* 8.2.1R must include:

- (1) a concise statement approved by the *firm's governing body* describing the potential for harm associated with the business strategy; and
 - (2) a summary of the strategies and processes used to manage each of the categories of risk listed in *MIFIDPRU* 8.2.1R and how this helps to reduce the potential for harm.
- 8.2.3 G In complying with *MIFIDPRU* 8.2.2R, a *firm* may consider that information drawn from the *ICARA process* is a relevant and useful way of disclosing:
- (1) the *firm's* approach to risk management by reference to its risk management policies;
 - (2) details of the *firm's* risk management structure and operations, for example, the *senior management* responsible for each area of risk (where applicable), and any relevant committees and their responsibilities;
 - (3) how the *firm* sets its risk appetite; and
 - (4) a summary of how the *firm* assesses the effectiveness of its risk management processes.

8.3 Governance arrangements

- 8.3.1 R A *non-SNI MIFIDPRU investment firm* must disclose the following information regarding internal governance arrangements:
- (1) an overview of how the *firm* complies with the requirement in *SYSC* 4.3A.1R to ensure the *management body* defines, oversees and is accountable for the implementation of governance arrangements that ensure effective and prudent management of the *firm*, including the segregation of duties in the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interests of *clients*;
 - (2) subject to *MIFIDPRU* 8.3.2R, the number of directorships (executive and non-executive) held by each member of the *management body*;
 - (3) where relevant, whether the *FCA* has granted a modification or *waiver* of *SYSC* 4.3A.6R(1)(a) or (b) in order to allow a member of the *management body* to hold additional directorships;
 - (4) a summary of the policy promoting diversity on the *management body*, including explanations of:
 - (a) the objectives of the policy and any target(s) set out in the policy; and

- (b) the extent to which the objectives and any target(s) have been achieved; and
 - (c) where the objectives or target(s) have not been achieved:
 - (i) the reasons for the shortfall; and
 - (ii) the *firm's* proposed actions to address the shortfall; and
 - (iii) the proposed timeline for taking those actions;
 - (5) whether the *firm* has a risk committee; and
 - (6) whether the *firm*:
 - (a) is required by *MIFIDPRU* 7.3.1R to establish a risk committee; or
 - (b) would have been required by *MIFIDPRU* 7.3.1R to establish a risk committee, but that obligation has been removed as a result of a *waiver* or modification granted by the *FCA*.
- 8.3.2 R The following directorships are not within the scope of *MIFIDPRU* 8.3.1R(2):
- (1) executive and non-executive directorships held in organisations which do not pursue predominantly commercial objectives; and
 - (2) executive and non-executive directorships held within the same group or within an undertaking (including a *non-financial sector entity*) in which the *firm* holds a *qualifying holding*.
- 8.3.3 G When deciding what information to disclose to satisfy the obligations in *MIFIDPRU* 8.3.1R(1), a *firm* may find it helpful to consider:
- (1) the requirements in *SYSC* 4.3A.1R(1) to (7) regarding the responsibilities of the *management body*; and
 - (2) the requirements in *SYSC* 4.3A.3R regarding the necessary skills and attributes of members of the *management body*.
- 8.4 Own funds**
- 8.4.1 R (1) Subject to (2), a *firm* must disclose the following information regarding its *own funds*:
- (a) a reconciliation of common equity tier 1 items, additional tier 1 items, tier 2 items, and the applicable filters and

deductions applied in order to calculate the *own funds* of the *firm*;

- (b) a reconciliation of (a) with the capital in the balance sheet in the audited *financial statements* of the *firm*; and
- (c) a description of the main features of the *common equity tier 1 instruments*, *additional tier 1 instruments* and *tier 2 instruments* issued by the *firm*.

- (2) A *firm* that is not required to publish annual *financial statements* is only required to disclose the information specified at (1)(a) and (c).

8.4.2 R A *firm* must use the template available at *MIFIDPRU* 8 Annex 1R in order to disclose the information requested at *MIFIDPRU* 8.4.1R.

8.5 Own funds requirements

8.5.1 R A *firm* must disclose the following information regarding its compliance with the requirements set out in *MIFIDPRU* 4.3 (Own funds requirement):

- (1) the *K-factor requirement*, broken down as follows:
 - (a) the sum of the *K-AUM requirement*, the *K-CMH requirement* and the *K-ASA requirement*;
 - (b) the sum of the *K-COH requirement* and the *K-DTF requirement*; and
 - (c) the sum of the *K-NPR requirement*, the *K-CMG requirement*, the *K-TCD requirement* and the *K-CON requirement*; and
- (2) the *fixed overheads requirement*.

8.5.2 R A *firm* must disclose its approach to assessing the adequacy of its *own funds* in accordance with the *overall financial adequacy rule* in *MIFIDPRU* 7.4.7R.

8.6 Remuneration policy and practices

Application: general

8.6.1 R The *rules* in this section apply to all *MIFIDPRU investment firms*, unless otherwise specified.

Qualitative disclosures

8.6.2 R A *MIFIDPRU investment firm* must disclose a summary of:

- (1) its approach to *remuneration* for all staff (“staff” interpreted according to SYSC 19G.1.24G);
 - (2) the objectives of its financial incentives;
 - (3) the decision-making procedures and governance surrounding the development of the *remuneration* policies and practices the *firm* is required to adopt in accordance with the *MIFIDPRU Remuneration Code*, to include, where applicable:
 - (a) the composition of and mandate given to the *remuneration* committee; and
 - (b) details of any external consultants used in the development of the *remuneration* policies and practices.
- 8.6.3 G In complying with *MIFIDPRU* 8.6.2R(1), a *firm* may consider it appropriate to disclose:
- (1) the principles or philosophy guiding the *firm’s remuneration* policies and practices;
 - (2) how the *firm* links variable *remuneration* and performance;
 - (3) the *firm’s* main performance objectives; and
 - (4) the categories of staff eligible to receive variable *remuneration*.
- 8.6.4 R A *non-SNI MIFIDPRU investment firm* must disclose the types of staff it has identified as *material risk takers* under SYSC 19G.5, including any criteria in addition to those in SYSC 19G.5.3R that the *firm* has used to identify *material risk takers*
- 8.6.5 R A *MIFIDPRU investment firm* must disclose the key characteristics of its *remuneration* policies and practices in sufficient detail to provide the reader with:
- (1) an understanding of the risk profile of the *firm* and/or the assets it manages; and
 - (2) an overview of the incentives created by the *remuneration* policies and practices.
- 8.6.6 R For the purpose of *MIFIDPRU* 8.6.5R, a *firm* must disclose at least the following information:
- (1) the different components of *remuneration*, together with the categorisation of those *remuneration* components as fixed or variable;

- (2) a summary of the financial and non-financial performance criteria used across the *firm*, broken down into the criteria for the assessment of the performance of:
- (a) the *firm*;
 - (b) business units; and
 - (c) individuals.
- (3) for a *non-SNI MIFIDRU investment firm*:
- (a) the framework and criteria used for ex-ante and ex-post risk adjustment of *remuneration*, including a summary of:
 - (i) current and future risks identified by the *firm*;
 - (ii) how the *firm* takes into account current and future risks when adjusting *remuneration*; and
 - (iii) how malus (where relevant) and clawback are applied;
 - (b) the policies and criteria applied for the award of guaranteed variable *remuneration*; and
 - (c) the policies and criteria applied for the award of severance pay.
- (4) for a *non-SNI MIFIDPRU investment firm* not falling within SYSC 19G.1.1R(2):
- (a) details of the *firm's* deferral and vesting policy, including as a minimum:
 - (i) the proportion of variable *remuneration* that is deferred;
 - (ii) the deferral period;
 - (iii) the retention period;
 - (iv) the vesting schedule; and
 - (v) an explanation of the rationale behind each of the policies referred to in (i) to (iv).

Where the *firm's* deferral and vesting policy differs for different categories of *material risk takers*, the information should be presented and sub-divided accordingly.

- (b) a description of the different forms in which fixed and variable *remuneration* are paid, for example, whether paid in:
 - (i) *cash*;
 - (ii) share-linked instruments;
 - (iii) equivalent non-*cash* instruments;
 - (iv) *options*; or
 - (v) short or long-term incentive plans.

8.6.7 G In complying with *MIFIDPRU* 8.6.6R(1), a *firm* is reminded of the *rules* and *guidance* in *SYSC* 19G.4 on categorising fixed and variable *remuneration*.

Quantitative disclosures

- 8.6.8 R
- (1) Subject to (7), a *MIFIDPRU investment firm* must disclose the quantitative information required by (2) to (6) for the financial year to which the disclosure relates.
 - (2) An *SNI-MIFIDPRU investment firm* must disclose the total amount of *remuneration* awarded to all staff, split into:
 - (a) fixed *remuneration*; and
 - (b) variable *remuneration*.
 - (3) A *non-SNI MIFIDPRU investment firm* must disclose the total number of *material risk takers* identified by the *firm* under *SYSC* 19G.5.
 - (4) A *non-SNI MIFIDPRU investment firm* must disclose the following information, split into categories for *senior management*, other *material risk takers*, and other staff:
 - (a) the total amount of *remuneration* awarded;
 - (b) the fixed *remuneration awarded*; and
 - (c) the variable *remuneration* awarded.
 - (5) A *non-SNI MIFIDPRU investment firm* must disclose the following information, split into categories for *senior management* and other *material risk takers*:

- (a) the total amount of guaranteed variable *remuneration* awards made during the financial year and the number of *material risk takers* receiving those awards;
 - (b) the total amount of the severance payments awarded during the financial year and the number of *material risk takers* receiving those payments; and
 - (c) the amount of the highest severance payment awarded to an individual *material risk taker*.
- (6) A *non-SNI MIFIDPRU investment firm* not meeting the conditions in SYSC 19G.1.1R(2) must disclose the following information, split into categories for *senior management*, and other *material risk takers*:
- (a) the amount and form of awarded variable *remuneration*, split into *cash*, shares, share-linked instruments and other forms of *remuneration*, with each form of *remuneration* also split into deferred and non-deferred;
 - (b) the amounts of deferred *remuneration* awarded for previous performance periods, split into the amount due to vest in the financial year in which the disclosure is made, and the amount due to vest in subsequent years;
 - (c) the amount of deferred *remuneration* due to vest in the financial year in respect of which the disclosure is made, split into that which is or will be paid out, and any amounts that were due to vest but have been withheld as a result of performance adjustment;
 - (d) information on whether the *firm* uses the exemption for individual *material risk takers* set out in SYSC 19G.5.9R, together with details of:
 - (i) the provisions in SYSC 19G.5.9R(2) in respect of which the *firm* relies on the exemption;
 - (ii) the total number of *material risk takers* who benefit from an exemption from each provision referred to in (i); and
 - (iii) the total *remuneration* of those *material risk takers* who benefit from an exemption, split into fixed and variable *remuneration*.
- (7) (a) For the purposes of (4), (5)(a), (5)(b) and (6), a *non-SNI MIFIDPRU investment firm* must aggregate the information to be disclosed for *senior management* and other *material risk takers*, where splitting the information

between those two categories would lead to the disclosure of information about one or two people.

- (b) Where aggregation in accordance with (a) would still lead to the disclosure of information about one or two people, a *non-SNI MIFIDPRU investment firm* is not required to comply with the obligation in (4), (5)(a), (5)(b) or (6).

- 8.6.9 R A *non-SNI MIFIDPRU investment firm* that relies on *MIFIDPRU 8.6.8R(7)* must include a statement in the main body of its *remuneration* disclosure that:
- (1) explains the obligations in relation to which it has relied on the exemption; and
 - (2) confirms that the exemption is relied on to prevent individual identification of a *material risk taker*.
- 8.6.10 G The purpose of the exemption referred to in *MIFIDPRU 8.6.8R(7)* is to avoid *firms* having to disclose information:
- (1) that would enable a *material risk taker* to be identified; or
 - (2) that could be associated with a particular *material risk taker*.
- 8.6.11 G (1) When considering the exemptions in *MIFIDPRU 8.6.8R(7)*, the *non-SNI MIFIDPRU investment firm* should apply the conditions to each information item separately. Where the information contained in at least one of the categories of *senior management* and other *material risk takers* relates to one or two *material risk takers*, the *non-SNI MIFIDPRU investment firm* is exempt from the requirement to split the information into these categories, and should aggregate the information. Where the aggregated information still relates to only one or two individuals, the *non-SNI MIFIDPRU investment firm* is exempt from the requirement to disclose that information.
- (2) The *guidance* in (1) is illustrated by the following example:
- (a) Firm A does not meet the conditions in *SYSC 19G.1.1R(2)*. It has identified eight *material risk takers* under *SYSC 19G.5*.
 - (b) In relation to the information items required in *MIFIDPRU 8.6.8R(4)*, five of the *material risk takers* are *senior management*, and three are other *material risk takers*. Firm A cannot rely on the exemption in *MIFIDPRU 8.6.8R(7)* because neither of the categories of *senior management* and other *material risk takers* contains one or two individuals. It must disclose the *remuneration* information required at *MIFIDPRU 8.6.8R(4)* broken down into the categories of

senior management, other *material risk takers*, and other staff.

- (c) In relation to the information items required in *MIFIDPRU* 8.6.8R(5)(a), Firm A has awarded guaranteed *remuneration* to two material risk takers. Both are also *senior management*. The information in the category of *senior management* therefore relates to only two individuals. If Firm A aggregates the information from the *senior management* and other *material risk taker* categories in line with *MIFIDPRU* 8.6.8R(7), the figure is still two. Therefore, Firm A can rely on the exemption in *MIFIDPRU* 8.6.8R(7). It is exempt from the requirement to disclose the information on guaranteed *remuneration* required at *MIFIDPRU* 8.6.8(5)(a).
- (d) In relation to the information items required in *MIFIDPRU* 8.6.8R(5)(b), Firm A has awarded severance payments to four *material risk takers*, of which three are members of *senior management* and one is another *material risk taker*. Because the category of other *material risk takers* relates only to one individual, Firm A can rely on the exemption in *MIFIDPRU* 8.6.8R(7). It should aggregate the total for both categories and disclose the information on severance payments required at *MIFIDPRU* 8.6.8(5)(b) as a single item. Firm A cannot rely on the exemption in *MIFIDPRU* 8.6.8R(7) because the aggregated total of *senior management* and other *material risk takers* is more than two.
- (e) Firm A is not in scope of the disclosure requirements in *MIFIDPRU* 8.6.8R(6) because it meets the conditions in *SYSC* 19G.1.1R(2).

8.7 Investment policy

- 8.7.1 R A non-SNI *MIFIDPRU* investment firm not meeting the conditions in *MIFIDPRU* 7.1.4R must disclose:
 - (1) the proportion of voting rights attached to the shares held directly or indirectly by the *firm*, broken down by country or territory; and
 - (2) a complete description of voting behaviour in the general meetings of *companies* the shares of which are held in accordance with *MIFIDPRU* 8.7.4R, including:
 - (a) an explanation of the votes; and
 - (b) the ratio of proposals put forward by the administrative or governing body of the *company* that the *firm* has approved; and

- (3) an explanation of the use of proxy adviser firms; and
- (4) a summary of the voting guidelines regarding the *companies* in which the shares referred to in (1) are held with links to supporting non-confidential documents where available.
- 8.7.2 R *A firm* must use the template available at *MIFIDPRU* 8 Annex 2R in order to disclose the information requested at *MIFIDPRU* 8.7.1R.
- 8.7.3 R The disclosure requirements in *MIFIDPRU* 8.7.1R(2) do not apply if the contractual arrangements of all shareholders represented by the *firm* at the shareholders' meeting only authorise the *firm* to vote on their behalf when express voting orders are given by the shareholders after receiving the meeting's agenda.
- 8.7.4 R (1) To the extent that any data item required by *MIFIDPRU* 8.7 is treated as proprietary information in accordance with (2), or confidential information in accordance with (3), a *firm* may refuse to disclose it, noting on the template available at *MIFIDPRU* 8 Annex 2R which item has not been disclosed and why.
- (2) A *firm* may only treat information as proprietary information if sharing that information with the public would have a material adverse effect upon its business.
- (3) A *firm* may only treat information as confidential information if there are obligations to customers or other counterparty relationships binding the *firm* to confidentiality.
- 8.7.5 R Where a *firm* refuses to disclose information in reliance on *MIFIDPRU* 8.7.4 R(2), the *firm* should record why the information is considered proprietary and make that information available to the *FCA* if requested.
- 8.7.6 R A *firm* referred to in *MIFIDPRU* 8.7.1R must comply with that *rule*:
- (1) only in respect of a *company* whose shares are admitted to trading on a *regulated market*;
- (2) only where the proportion of voting rights that the *MIFIDPRU investment firm* directly or indirectly holds in that *company* is greater than 5% of all voting rights attached to the shares issued by the *company*; and
- (3) only in respect of shares in that *company* to which voting rights are attached.
- 8.7.7 R The voting rights referred to in *MIFIDPRU* 8.7.6R(2) must be calculated on the basis of all shares to which voting rights are attached, even if the exercise of any of those voting rights is suspended.

- 8.7.8 G For the purpose of complying with *MIFIDPRU* 8.7.1R and *MIFIDPRU* 8.7.6R:
- (1) reference to “directly or indirectly” held shares means that:
 - (a) a *firm* directly holds the shares on its balance sheet or the balance sheet of another group member; or
 - (b) the *firm* may exercise a voting right attaching to a share in a fiduciary capacity;
 - (2) in the circumstances described in (1), the disclosure requirement will apply where the voting rights are attached to shares held in the name of the *firm* and to shares held by clients where the *firm* exercises those voting rights;
 - (3) the fact that a *firm* has voting rights but chooses not to exercise them doesn’t remove its obligation to comply with *MIFIDPRU* 8.7.1R and *MIFIDPRU* 8.7.6R; and
 - (4) “greater than 5% of all voting rights” means that the *firm* holds at least 5% of shares with voting rights plus one share, and the requirement is triggered when the *firm* meets this threshold at any point during the course of the year.

Disclosure template for information required under MIFIDPRU 8.4.1R in respect of own funds

8 Annex [Editor's note: The form can be found at this address:
1R [https://www.fca.org.uk/publication/forms/\[xxx\]](https://www.fca.org.uk/publication/forms/[xxx])]

| Composition of regulatory own funds | | | |
|--|---|-------------------------------|---|
| | Item | Amount (GBP thousands) | Source based on reference numbers/letters of the balance sheet in the audited financial statements |
| 1 | OWN FUNDS | | |
| 2 | TIER 1 CAPITAL | | |
| 3 | COMMON EQUITY TIER 1 CAPITAL | | |
| 4 | Fully paid up capital instruments | | |
| 5 | Share premium | | |
| 6 | Retained earnings | | |
| 7 | Accumulated other comprehensive income | | |
| 8 | Other reserves | | |
| 9 | Adjustments to CET1 due to prudential filters | | |
| 10 | Other funds | | |
| 11 | (-)TOTAL DEDUCTIONS FROM COMMON EQUITY TIER 1 | | |
| 19 | CET1: Other capital elements, deductions and adjustments | | |
| 20 | ADDITIONAL TIER 1 CAPITAL | | |
| 21 | Fully paid up, directly issued capital instruments | | |
| 22 | Share premium | | |
| 23 | (-) TOTAL DEDUCTIONS FROM ADDITIONAL TIER 1 | | |
| 24 | Additional Tier 1: Other capital elements, deductions and adjustments | | |
| 25 | TIER 2 CAPITAL | | |
| 26 | Fully paid up, directly issued capital instruments | | |
| 27 | Share premium | | |
| 28 | (-) TOTAL DEDUCTIONS FROM TIER 2 | | |
| 29 | Tier 2: Other capital elements, deductions and adjustments | | |

| Own funds: reconciliation of regulatory own funds to balance sheet in the audited financial statements | | | | |
|---|-----------------------------------|---|--|--|
| Flexible template - rows to be reported in line with the balance sheet included in the audited financial statements of the investment firm. | | | | |
| Columns should be kept fixed, unless the investment firm has the same accounting and regulatory scope of consolidation, in which case the volumes should be entered in column (a) only. | | | | |
| Figures should be given in GBP thousands unless noted otherwise. | | | | |
| | | a | b | c |
| | | Balance sheet as in published/audited financial statements | Under regulatory scope of consolidation | Cross-reference to template OF1 |
| | | As at period end | As at period end | |
| Assets - Breakdown by asset classes according to the balance sheet in the audited financial statements | | | | |
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| | | | | |
| | | | | |
| | | | | |
| xxx | Total Assets | | | |
| Liabilities - Breakdown by liability classes according to the balance sheet in the audited financial statements | | | | |
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| | | | | |
| | | | | |
| | | | | |
| xxx | Total Liabilities | | | |
| Shareholders' Equity | | | | |
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| | | | | |
| xxx | Total Shareholders' equity | | | |

| Own funds: main features of own instruments issued by the firm |
|---|
| <i>Free text. A non-exhaustive list of example features is included below.</i> |
| |
| Examples |
| Public or private placement |
| Instrument type |
| Amount recognised in regulatory capital (GBP thousands, as of most recent reporting date) |
| Nominal amount of instrument |
| Issue price |
| Redemption price |
| Accounting classification |
| Original date of issuance |
| Perpetual or dated |
| Maturity date |
| Issuer call subject to prior supervisory approval |
| Optional call date, contingent call dates and redemption amount |
| Subsequent call dates, if applicable |
| Coupons/dividends |
| Fixed or floating dividend/coupon |
| Coupon rate and any related index |
| Existence of a dividend stopper |
| Convertible or non-convertible |
| Write-down features |
| Link to the terms and conditions of the instrument |

Disclosure template for information required under MIFIDPRU 8.7.1R in respect of voting rights

8 Annex [Editor's note: The form can be found at this address:
2R [https://www.fca.org.uk/publication/forms/\[xxx\]](https://www.fca.org.uk/publication/forms/[xxx])]

| |
|---|
| PROPORTION OF VOTING RIGHTS (insert additional rows as needed) |
|---|

| Company name | LEI | Proportion of voting rights attached to shares held directly or indirectly in accordance with MIFIDPRU 8.7.6R |
|---------------------|------------|--|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

Insert the following Annexes after MIFIDPRU TP 10 (Transitional capital and liquidity requirements for former IFPRU investment firms, BIPRU firms or their groups with ICG or ILG issued before 1 January 2022). The text is not underlined.

TP 11 Prudential reporting with a reference date before 1 January 2022

- 11.1 R Except where the context otherwise requires, a reference in *MIFIDPRU* TP 11 to any provision of *SUP* is to that provision as it applied on 31 December 2021.
- 11.2 R *MIFIDPRU* TP 11 applies where the following conditions are met:
- (1) the reference date for a *data item* under *SUP* 16.12 was before 1 January 2022;
 - (2) the submission date under *SUP* 16.12 for the *data item* in (1) fell on or after 1 January 2022; and
 - (3) a *firm* is no longer required to submit the *data item* in (1) due to amendments to *SUP* 16.12 that took effect on 1 January 2022.
- 11.3 R Where *MIFIDPRU* TP 11 applies to a *firm* in relation to a *data item*, the *firm* must submit the *data item* to the *FCA* in accordance with the provisions of *SUP* 16.12 (as applied under *MIFIDPRU* TP 11.1R).
- 11.4 G
- (1) As a result of the introduction of the *MIFIDPRU* regime for *MIFIDPRU investment firms*, *SUP* 16.12 was amended with effect from 1 January 2022 to introduce updated prudential reporting requirements.
 - (2) The effect of *MIFIDPRU* TP 11 is that where the reference date for a report falls on or before 31 December 2021, but the submission date for that report falls on after 1 January 2022, the *firm* must still submit the report in accordance with the reporting and submission requirements that applied on 31 December 2021.
 - (3) The purpose of *MIFIDPRU* TP 11 is to ensure that the *FCA* receives appropriate information on the prudential position of *firms* during the transition from previous prudential regimes to the *MIFIDPRU* regime.
 - (4) *MIFIDPRU* TP 11 does not apply to remuneration reporting. This is because *SYSC* TP 11.4R(1) requires a *firm* that was subject to any of the remuneration codes listed in *SYSC* TP 11.4R(2) on 31 December 2021 to comply with any reporting requirements relating to *remuneration* awarded for performance periods before the performance period to which the *MIFIDPRU Remuneration Code* first applies.
- 11.5 G
- (1) The following is an example of how *MIFIDPRU* TP 11 applies

in practice.

- (2) A *BIPRU firm* is required to report *data item* FSA003 (Capital adequacy) under *SUP* 16.12.11R. The reporting reference date for FSA003 is determined by reference to the *firm's accounting reference date*. Under *SUP* 16.12.13R, the *firm* has 30 *business days* after the reporting reference rate to submit the relevant *data item* to the *FCA*. The *firm's accounting reference date* is 1 December 2021.
- (3) The reporting reference date for the *firm's* FSA003 return (i.e. 1 December 2021) falls before 1 January 2022. The submission date for the return (which is 30 *business days* later on 17 January 2022) falls after 1 January 2022. *SUP* 16.12 was amended on 1 January 2022 to delete the requirement for *firms* to submit *data item* FSA003.
- (4) Under *MIFIDPRU* TP 11, the *firm* must still submit *data item* FSA003 to the *FCA*, reflecting the *firm's* position as at 1 December 2021. The *data item* must be submitted in accordance with the relevant *rules* in *SUP* 16.12 that applied on 31 December 2021.

TP 12 Disclosure requirements: transitional provisions

- 12.1 R *MIFIDPRU* TP 12 applies to a *MIFIDPRU investment firm*.
- 12.2 R For the purposes of *MIFIDPRU* TP 12, the “reference date” in relation to a set of disclosures means the date by reference to which those disclosures are prepared, being:
- (1) in relation to disclosures showing the position of a *firm* at a fixed point in time, that point in time; and
 - (2) in relation to disclosures that must be prepared by reference to a period, the last day of that period.

Delayed application of rules for a commodity and emission allowance dealer

- 12.3 R
- (1) This *rule* applies until 31 December 2026.
 - (2) A *commodity and emission allowance dealer* is exempt from the following requirements in this chapter:
 - (a) *MIFIDPRU* 8.2 (Risk management objectives and policies);
 - (b) *MIFIDPRU* 8.3 (Governance arrangements);
 - (c) *MIFIDPRU* 8.4 (Own funds);

- (d) *MIFIDPRU* 8.5 (Own funds requirements), and
- (e) *MIFIDPRU* 8.6 (Remuneration policies and practices).

Disclosures under *BIPRU* 11 or Part Eight of the *UK CRR* that have a publication date on or after 1 January 2022

- 12.4 R (1) This *rule* applies to disclosures required under either of the following, where the conditions in (2) are met:
- (a) *BIPRU* 11; or
 - (b) Part Eight of the *UK CRR*.
- (2) The conditions referred to in (1) are that:
- (a) the reference date for the relevant disclosures in (1) is before 1 January 2022;
 - (b) the deadline to publish the disclosures in (1) falls on or after 1 January 2022; and
 - (c) as a result of one of the following, a *firm* is no longer required to publish the disclosures in (1):
 - (i) the deletion of the *BIPRU* sourcebook with effect from 1 January 2022; or
 - (ii) changes to the scope of the *UK CRR* that took effect on 1 January 2022.
- (3) Where this *rule* applies, a *firm* must publish the relevant disclosures by no later than the deadline that would have applied under *BIPRU* 11 or Part Eight of the *UK CRR* (as applicable) if the *firm* had continued to be subject to those *rules* or that legislation in the form in which it stood immediately before 1 January 2022.
- (4) A *firm* may comply with this *rule* by being included within disclosures made on a *consolidated basis* where that would have been permitted by *BIPRU* 11 or Part Eight of the *UK CRR* (as applicable) in the form in which those *rules* or that legislation stood immediately before 1 January 2022.
- 12.5 G The effect of *MIFIDPRU* TP 12.4R is that where a *firm* is required by *BIPRU* 11 or Part Eight of the *UK CRR* to make disclosures with a reference date before 1 January 2022, it must still publish those disclosures even if the permitted deadline for publication falls on or after 1 January 2022. The deletion of *BIPRU* 11 or the removal of *MIFIDPRU investment firms* from the scope of the *UK CRR* with effect from 1 January 2022 does not relieve the *firm* of its obligation to make

those disclosures in accordance with the original deadline.

Disclosures under MIFIDPRU 8 with a reference date falling on or before 30 December 2022

- 12.6 R (1) This *rule* applies to disclosures required under *MIFIDPRU* 8 for which the reference date falls on or before 30 December 2022.
- (2) Where this *rule* applies, a *firm* is not required to disclose the information required by the following:
- (a) *MIFIDPRU* 8.2 (Risk management objectives and policies);
- (b) *MIFIDPRU* 8.7 (Investment policy).
- 12.7 G (1) The effect of *MIFIDPRU* TP 12.6R is that for disclosures that have a reference date under *MIFIDPRU* 8 that falls on or before 30 December 2022, a *firm* is not required to disclose the information about its risk management or its investment policy that would ordinarily be required by that chapter. The reference date under *MIFIDPRU* 8 is the *firm's accounting reference date*.
- (2) This means that for *firms* with an *accounting reference date* other than 31 December, their first disclosures under *MIFIDPRU* 8 in respect of the accounting year ending in 2022 do not need to include the information required under *MIFIDPRU* 8.2 or *MIFIDPRU* 8.7. Their disclosures for all subsequent accounting years must include all of the information required by *MIFIDPRU* 8.
- (3) Conversely, for *firms* with an *accounting reference date* of 31 December, their first disclosures under *MIFIDPRU* 8 in respect of the accounting year ending on 31 December 2022 must include all of the information required by *MIFIDPRU* 8 (i.e. including the information required by *MIFIDPRU* 8.2 and *MIFIDPRU* 8.7), except for remuneration disclosures to which *MIFIDPRU* TP 12.8R applies. This is because *MIFIDPRU* will have been in force for an entire calendar year by that date and the *firm* should therefore have all of the information required to produce a complete disclosure reflecting the position as at 31 December 2022.

Remuneration disclosures that relate to a performance period that began before and ends after 1 January 2022

- 12.8 R (1) This *rule* applies to remuneration disclosures required under either of the following, where the conditions in (2) are met:
- (a) *BIPRU* 11.5.18R to *BIPRU* 11.5.20R;

- (b) article 450 of the *UK CRR*.
- (2) The conditions referred to in (1) are that:
- (a) the performance period to which the relevant disclosures in (1) relate;
 - (i) began before 1 January 2022, and
 - (ii) ends on or after 1 January 2022; and
 - (b) as a result of one of the following, a *firm* is no longer required to publish the disclosures in (1):
 - (i) the deletion of the *BIPRU* sourcebook with effect from 1 January 2022; or
 - (ii) changes to the scope of the *UK CRR* that took effect on 1 January 2022.
- (3) Where this *rule* applies, a *firm*:
- (a) is not required to publish the information specified in *MIFIDPRU* 8.6 for the performance period in (2)(a); and
 - (b) must publish the relevant disclosures that would have been required for that performance period under the rules in (1)(a) or (1)(b) (as applicable) if the *firm* had continued to be subject to those *rules* or that legislation in the form in which they stood immediately before 1 January 2022.
- (4) A *firm* may comply with this *rule* by the remuneration disclosures required under (3)(b) being included within disclosures made on a *consolidated basis* where that would have been permitted by *BIPRU* 11 or article 450 of the *UK CRR* (as applicable) in the form in which those *rules* or that legislation stood immediately before 1 January 2022.
- 12.9 G (1) The effect of *MIFIDPRU* 12.8R is that for disclosures that relate to a remuneration performance period that begins before 1 January 2022 and ends on or after 1 January 2022, a *firm* is not required to disclose the information about its remuneration policies and practices that would ordinarily be required by *MIFIDPRU* 8.6. Instead, the *firm* must publish the remuneration information specified in the disclosure requirements that applied to the *firm* at the time at which the relevant performance period began (i.e. the remuneration information required either by *BIPRU* 11.5 or article 450 of the *UK CRR*, as applicable).
- (2) For the first full performance period starting after 1 January 2022, a *MIFIDPRU investment firm* will be required to make its

first disclosures under *MIFIDPRU* 8.6 (Remuneration policies and practices) on the next occasion following the end of the relevant performance period on which:

- (a) the *firm* publishes its annual *financial statements*; or
- (b) where it does not publish annual *financial statements*, the date on which its annual solvency statement is submitted to the *FCA* in accordance with the requirements in *SUP* 16.12.

Insert the following schedule after MIFIDPRU Schedule 5 (Rules that can be waived or modified). The text is not underlined.

Sch 6 List of Part 9C rules

- Sch 6.1 G This schedule contains a list of Part 9C rules (as defined in section 143F(1) of the *Act*) for the purposes of section 143F(2) of the *Act*.
- Sch 6.2 G (1) Except as specified in (2), each of the following is a Part 9C rule:
- (a) every *rule* in *MIFIDPRU*; and
 - (b) every *rule* in *SYSC* 19G (MIFIDPRU Remuneration Code).
- (2) The following provisions are not Part 9C rules:
- (a) *MIFIDPRU* 4.4.1R(3);
 - (b) *MIFIDPRU* 4.4.3R(2)(c);
 - (c) *MIFIDPRU* 4.4.4R(2)(c); and
 - (d) *MIFIDPRU* 4.4.6R.

Annex D

Amendments to the Supervision manual (SUP)

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

16 Reporting requirements

...

16.12 Integrated Regulatory Reporting

...

Regulated Activity Group 4

...

- 16.12.16 R The applicable reporting frequencies for *data items* referred to in SUP 16.12.15R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

| <i>Data item</i> | <i>Non-SNI MIFIDPRU investment firm</i> | <i>SNI MIFIDPRU investment firm</i> | <i>Investment firm group</i> | <i>Firm other than a MIFIDPRU investment firm</i> |
|------------------|---|-------------------------------------|------------------------------|---|
| ... | ... | ... | ... | ... |
| Section F RMAR | | | | Half yearly (note 1) <u>Quarterly</u> (note 2) |
| Note 1 | Annual regulated business revenue up to and including £5 million. | | | |
| Note 2 | Annual regulated business revenue over £5 million. | | | |
| ... | ... | | | |

...

Regulated Activity Group 7

...

16.12.22A R The applicable data items referred to in SUP 16.12.4R are set out according to type of firm in the table below:

| Description of <i>data item</i> | <i>Firms' prudential category and applicable data item (note 1)</i> | | |
|--|--|--|--|
| | <i>MIFIDPRU investment firms</i> | <i>Firms subject to IPRU(INV) Chapter 13</i> | <i>Firms that are also in one or more of RAGs 2 to 6 and not subject to IPRU(INV) Chapter 13</i> |
| ... | | | |
| Professional indemnity insurance (note 15 note 11) | Section E RMAR | Section E RMAR | Section E RMAR |
| ... | | | |
| Note 10 | Only applicable to <i>firms</i> that are <i>collective portfolio management investment firms</i> . | | |
| <u>Note 11</u> | <u>Only applicable to <i>firms</i> that are subject to an FCA requirement to hold professional indemnity insurance and are not <i>MIFIDPRU investment firms</i>.</u> | | |

...

Annex E

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

2 Statutory notices and the allocation of decision making

...

2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

...

| Section of the Act | Description | Handbook reference | Decision maker |
|--|--|--------------------|------------------------------------|
| ... | | | |
| S142T(1)/ (4) | When the <i>FCA</i> is proposing or deciding to take action against a <i>person</i> under section 142S* | | RDC |
| <u>S143T(1)</u> <u>S143T(3)</u> | <u>When the <i>FCA</i> is proposing or deciding to make a <i>Part 9C prohibition order</i> under S143S(2) of the Act</u> | | <u>RDC or executive procedures</u> |
| <u>S143U(2) (b)</u> <u>S143U(2) (c)</u> | <u>When the <i>FCA</i> is proposing or deciding to refuse an application for the variation or revocation of a <i>prohibition order</i> under S143U</u> | | <u>RDC or executive procedures</u> |
| <u>S143W(1)</u> <u>S143W(5)</u> | <u>When the <i>FCA</i> is proposing or deciding to impose a penalty on a <i>person</i> under section 143V (2) of the Act</u> | | <u>RDC or executive procedures</u> |
| <u>S143X(1)</u> <u>S143X(5)</u> | <u>When the <i>FCA</i> is proposing or deciding to publish a statement on a</u> | | <u>RDC or executive procedures</u> |

| | | | |
|-----|--|-----|-----|
| | <u>person under section 143P 143W((3) of the Act</u> | | |
| ... | ... | ... | ... |

...

2 Annex 2G Supervisory notices

...

| Section of the Act | Description | Handbook reference | Decision maker |
|-----------------------|---|--------------------|---|
| ... | | | |
| 137S(5) 137S(8)(a) | when the <i>FCA</i> gives a direction under section 137S | | <i>Executive procedures</i> |
| <u>S143U(2)(a)</u> | <u>When the <i>FCA</i> decides to grant an application for the variation or revocation of a prohibition order under S143N(1) of the Act</u> | | <u><i>Executive procedures</i></u> |
| <u>S143X</u> | <u>When the <i>FCA</i> decides to vary or cancel a restriction under S143W(6) of the Act</u> | | <u><i>RDC or executive procedures</i></u> |
| ... | ... | | ... |

...

6A The power to impose a suspension, restriction, condition limitation or disciplinary prohibition

...

6A.1 Introduction

6A.1.1 G *DEPP* 6A sets out the *FCA*'s statement of policy with respect to:

- (1) The imposition of suspensions or restrictions under sections 88A, 89Q, 143W and 206A of the *Act*, and the period for which

those suspensions or restrictions are to have effect, as required by sections 88C(1), 89S(1) and 210(1) of the *Act*;

...

6A.1.2 G

...

(2) “restriction” refers to limitations or other restrictions in relation to:

...

(c) the performance of services to which a *sponsor’s* approval relates (under section 88A(2)(c) of the *Act*), ~~and~~;

(d) the dissemination of *regulated information* by a primary information provider (under section 89Q(2)(c) of the *Act*); and

(e) the exercising of functions by a *person* of an *FCA investment firm* or a *parent undertaking* of an *FCA investment firm* (under section 143W(5) of the *Act*)).

...

6A.1.3 G

...

(1) ...

...

(3) we may impose a restriction on the exercise of the functions by a *person* of an *FCA investment firm* or a *parent undertaking* of an *FCA investment firm*.

6A.1.4 G

The powers to impose a suspension, restriction, condition or limitation in relation to *authorised persons* and *approved persons*, to impose a restriction on *non-authorised parent undertakings* of *FCA investment firms*, members of the *management body* and *employees* of *non-authorised parent undertakings* who are *knowingly concerned in contravention of FCA rules* and to impose a disciplinary prohibition in relation to individuals, are disciplinary measures; where the *FCA* considers it necessary to take action, for example, to protect *consumers* from an *authorised person*, the *FCA* will seek to cancel or vary the *authorised person’s permissions*.

...

...

...

6A.3 Determining the appropriate length of the period of suspension, restriction, condition or disciplinary prohibition

...

6A.3.2 G ...

(1) ...

...

(4) The impact of suspension, restriction, condition or disciplinary prohibition on the person in breach

The following considerations may be relevant to the assessment of the impact of suspension or restriction on an *authorised person, sponsor, ~~or primary information provider~~ or non-authorised parent undertaking*:

- (a) the *authorised person's, sponsor's, ~~or primary information provider's, or non-authorised parent undertaking's~~* expected lost revenue and profits from not being able to carry out the suspended or restricted activity;
- (b) the cost of any measures the *authorised person, sponsor, ~~or primary information provider~~ or non-authorised parent undertaking* must undertake to comply with the suspension or restriction;
- ...
- (d) the effect on other areas of the *authorised person's, sponsor's, ~~or primary information provider's~~ or non-authorised parent undertaking's* business; and
- (e) whether the suspension or restriction would cause the *authorised person, sponsor, ~~or primary information provider~~ or non-authorised parent undertaking* serious financial hardship.

The following considerations may be relevant to the assessment of the impact of suspension or condition on an *approved person* or the impact of a disciplinary prohibition or restriction on an individual:

...

...

6A.3.3 G The *FCA* may delay the commencement of the period of suspension, restriction or disciplinary prohibition. In deciding whether this is

appropriate, the *FCA* will take into account all the circumstances of a case. Considerations that may be relevant in respect of an *authorised person, sponsor, ~~or primary information provider~~ or non-authorised parent undertaking* include:

...

- (2) any practical measures the *authorised person, sponsor, ~~or primary information provider~~ or non-authorised parent undertaking* needs to take before the period of suspension or restriction begins, for example, changes to its systems and controls to enable it to stop or limit the activity in question;
- (3) the impact of the suspension or restriction on other costs incurred by the *authorised person, sponsor ~~or primary information provider~~ or non-authorised parent undertaking*, for example, cancelling suppliers or suspending employees.

...

Sch 3 Fees and other required payments

...

| | | |
|-----|---|---|
| 3.2 | G | The <i>FCA</i> 's power to impose financial penalties is contained in: |
| | | ... |
| | | section 131G (Power to impose penalty or issue censure) of the <i>Act</i> |
| | | <u>Section 143W (Disciplinary powers for non-authorised parent undertakings) of the <i>Act</i>.</u> |
| | | ... |

...

Sch 4 Powers Exercised

| | | |
|-----|---|--|
| 4.1 | G | The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FCA</i> to make the statements of policy in <i>DEPP</i> : |
| | | ... |
| | | Section 139A (Power of the <i>FCA</i> to give guidance) |
| | | <u>Section 143Y (Statement of policy for penalties under section 143W)</u> |
| | | ... |

...

Annex F

Amendments to the Enforcement Guide (EG)

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

7 Financial penalties and other disciplinary sanctions

...

7.1 The FCA's use of sanctions

...

7.1.2 The *FCA* has the following powers to impose sanctions.

(1) ...

...

(3) It may impose a suspension, *limitation* or other restriction:

...

(c) on a primary information provider under section 89Q of the *Act*;
~~and~~

(d) on an *authorised person* under sections 123B or 206A of the *Act*;
and

(e) on a non-authorised parent undertaking under section 143W of the *Act*.

...

...