

**INVESTMENT FIRMS PRUDENTIAL REGIME (AMENDMENT) INSTRUMENT
2022**

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 139A (Power of the FCA to give guidance);
 - (4) section 143D (Duty to make rules applying to parent undertakings); and
 - (5) section 143E (Powers to make rules applying to parent undertakings).
- 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 28 May 2022.

Amendments to the Handbook

- D. The Prudential sourcebook for MiFID Investment Firms (MIFIDPRU) is amended in accordance with the Annex to this instrument.
- E. The FCA confirms and remakes in the Glossary of definitions any defined expressions used in MIFIDPRU where the defined expressions relate to UK legislation that has been amended since those defined expressions were last made.

Citation

- F. This instrument may be cited as the Investment Firms Prudential Regime (Amendment) Instrument 2022.

By order of the Board
26 May 2022

Annex

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.

3 Own funds

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3.6 General requirements for own funds instruments

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- 3.6.6 G (1) *MIFIDPRU investment firms* that were classified as *CRR firms* immediately before 1 January 2022 should refer to *MIFIDPRU TP 1* for transitional provisions relating to *own funds* permissions that were issued, and notifications that were made, before that date. Those *firms* should also refer to *MIFIDPRU TP 7*, which contains transitional provisions about capital instruments issued before 1 January 2022 and in respect of which the *firm* had not obtained *own funds* permissions or made notifications under the legal requirements in force at that time.
- (2) *MIFIDPRU investment firms* that were in existence immediately before 1 January 2022, but were not classified as *CRR firms*, should refer to *MIFIDPRU TP 7* for transitional provisions relating to *own funds* instruments issued before that date.
- (3) *Parent undertakings* should also refer to the following:
- (a) *MIFIDPRU TP 1*, where they were subject to the *UK CRR* on an individual or a consolidated basis immediately before 1 January 2022 and had obtained permissions or made notifications under the *UK CRR* relating to *own funds* instruments issued before that date; or
- (b) *MIFIDPRU TP 7* in either of the following cases:
- (i) where they were not subject to the *UK CRR* on either an individual or a consolidated basis immediately before 1 January 2022, but wish to rely on transitional provisions relating to capital instruments issued before that date; or
- (ii) where they were subject to the *UK CRR* on an individual or a consolidated basis immediately before 1 January 2022, but wish to rely on transitional provisions relating to capital instruments

issued before that date in respect of which the *parent undertaking* had not obtained *own funds* permissions or made notifications under the legal requirements in force at that time.

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TP 7 ~~Former non-CRR firms and parent undertakings: transitional~~ Transitional provision for own funds instruments without UK CRR approvals before 1 January 2022

Application

- 7.1 R (1) *MIFIDPRU* TP 7 applies to a *MIFIDPRU investment firm* that, immediately before 1 January 2022:
- ~~(1)(a)~~ was an *authorised person*; and
 - ~~(2)(b)~~ was not classified as a *CRR firm* in accordance with the *rules then in force*; either:
 - (i) was not classified as a *CRR firm* in accordance with the *rules then in force*; or
 - (ii) met all of the conditions in (2).
- (2) The conditions referred to in (1)(b)(ii) are:
- (a) the *firm* was classified as a *CRR firm* in accordance with the *rules* that applied immediately before 1 January 2022; and
 - (b) in relation to an instrument to which *MIFIDPRU* TP 7.4R(1) applies, the *firm* had not, before 1 January 2022:
 - (i) obtained *FCA* approval under article 26(3) of the *UK CRR* (in the form in which it stood immediately before 1 January 2022); or
 - (ii) notified the *FCA* of the issuance of the instrument under *IFPRU* 3.2 (as it applied immediately before 1 January 2022).
- 7.2 R (1) *MIFIDPRU* TP 7 also applies to the following if the conditions in (2) are met:
- (a) a *UK parent entity* to which *MIFIDPRU* 3 applies on a *consolidated basis* in accordance with *MIFIDPRU* 2.5.7R; and
 - (b) a *parent undertaking* to which the *group capital test* applies.

- (2) The conditions are that immediately before 1 January 2022 the *UK parent entity or parent undertaking*:
- (a) formed part of the same *investment firm group* as a *firm*, which, on 1 January 2022 became a *MIFIDPRU investment firm*; and
 - (b) ~~was not required to hold *own funds* on either an individual or a consolidated basis in accordance with the *UK CRR*; either:~~
 - (i) was not required to hold *own funds* on an individual or a consolidated basis in accordance with the *UK CRR*; or
 - (ii) met all of the conditions in (3).
- (3) The conditions referred to in (2)(b)(ii) are:
- (a) the *UK parent entity or parent undertaking* was required to hold *own funds* on an individual or a consolidated basis in accordance with the *UK CRR* (in the form in which it stood immediately before 1 January 2022); and
 - (b) the *UK parent entity or parent undertaking* has issued an instrument to which *MIFIDPRU TP 7.4R(1)* applies;
 - (c) in relation to the instrument in (b), the *UK parent entity or parent undertaking* had not, before 1 January 2022:
 - (i) obtained *FCA* approval under article 26(3) of the *UK CRR* (in the form in which it stood immediately before 1 January 2022); or
 - (ii) notified the *FCA* of the issuance of the instrument under *IFPRU 3.2* (as it applied immediately before 1 January 2022).
- (4) A reference in (3)(c) to a notification or approval includes a notification or approval that was granted to another member of the *UK parent entity or parent undertaking's group* in relation to an instrument issued by the *UK parent entity or parent undertaking*.

Purpose

- 7.3 G (1) Before *MIFIDPRU* applied, certain *firms* that subsequently became *MIFIDPRU investment firms* determined their available capital resources according to various provisions in *GENPRU* or *IPRU-INV*. In addition, certain other *firms* were not subject to a dedicated prudential sourcebook in the *FCA Handbook* that

contained a detailed regime for recognising the eligibility of capital resources.

- (2) The *rules on own funds* in *MIFIDPRU 3* broadly replicate the approach to recognising capital resources under the *UK CRR*. The purpose of *MIFIDPRU TP 7* is to permit *firms* that were not *CRR firms* immediately before *MIFIDPRU* began to apply to recognise instruments as *own funds* under *MIFIDPRU* without requiring separate permission from, or notification to, the *FCA* if those instruments:
- (a) were issued before *MIFIDPRU* began to apply; and
 - (b) meet the conditions to be classified as *own funds* under *MIFIDPRU 3* (other than the conditions relating to the requirements to seek prior *FCA* consent or to notify the *FCA*).
- (3) Under *MIFIDPRU TP 1*, a permission recognising the issuance of capital instruments as *common equity tier 1 capital* under the *UK CRR* is deemed to be an equivalent permission under *MIFIDPRU*. ~~Therefore, a~~ A notification made before *MIFIDPRU* began to apply by a former *CRR firm* in relation to the issuance of *additional tier 1 instruments* and *tier 2 instruments* will also continue to be valid under *MIFIDPRU TP 1*.
- (3A) Where a former *CRR firm* did not obtain permission for an existing instrument under the *UK CRR* or make a notification under *IFPRU 3.2* in relation to an instrument, there will be no existing permission or notification to carry forward under *MIFIDPRU TP 1*. In that case, the former *CRR firm* may make a notification under *MIFIDPRU TP 7* in relation to any outstanding capital instruments issued before 1 January 2022, provided that those instruments meet the conditions to be recognised as the relevant type of *own funds* under *MIFIDPRU 3*.
- (4) *MIFIDPRU TP 7* also applies to *UK parent entities* to which *MIFIDPRU 3* applies on a *consolidated basis* and *parent undertakings* to which the *group capital test* applies, where those entities were not required to hold *own funds* on an individual or consolidated basis under the *UK CRR* immediately before *MIFIDPRU* began to apply. This means that provided that the existing instruments issued by these entities meet the relevant conditions in *MIFIDPRU 3*, they can be treated as *own funds* for the purposes of the application of *MIFIDPRU 3* on a *consolidated basis* or the *group capital test* as long as the entity complies with *MIFIDPRU TP 7*.
- (5) *MIFIDPRU TP 7* also applies to a *UK parent entity* or other *parent undertaking* that was required to hold *own funds* under the *UK*

CRR (whether on an individual or consolidated basis) immediately before MIFIDPRU began to apply but did not:

- (a) obtain permission for an existing common equity tier 1 instrument under the UK CRR; or
 - (b) make a notification in accordance with IFPRU 3.2 in relation to an existing additional tier 1 instrument or a tier 2 instrument.
- (6) Where (5) applies, the UK parent entity or other parent undertaking may make a notification under MIFIDPRU TP 7 in relation to any outstanding capital instruments issued before 1 January 2022, provided that those instruments meet the conditions to be recognised as the relevant type of own funds under MIFIDPRU 3.
- (7) In some cases, the FCA may have granted permission to, or accepted a notification from, another member of the UK parent entity or other parent undertaking's group in relation to an instrument issued by the UK parent entity or other parent undertaking that counted towards the consolidated situation. This is because the UK CRR previously applied only indirectly to unregulated parent undertakings. In that case, the existing UK CRR permission or notification will be treated as a permission or notification of the UK parent entity or parent undertaking. This means that it will convert into an equivalent deemed MIFIDPRU 3 permission or notification of the UK parent entity or parent undertaking under MIFIDPRU TP 1. A notification under MIFIDPRU TP 7 is not required in this situation.

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

- 7.4 R (1) This rule applies to any capital instrument that:
- (a) was issued by a firm, UK parent entity or parent undertaking before 1 January 2022; and
 - (b) was still in issue on 1 January 2022.
- (2) The firm, UK parent entity or parent undertaking in (1)(a) is deemed to have been granted the permission, or to have complied with the notification obligation, in column (A) of the table in MIFIDPRU TP 7.5R in relation to a capital instrument where the following conditions are met:
- (a) the conditions in column (B) of the same row of the table in MIFIDPRU TP 7.5R are met in relation to that instrument; and

- (b) the *firm* has submitted the notification in *MIFIDPRU* TP 7 Annex 1R using the *online notification and application system* by no later than ~~1 January~~ 29 June 2022.
- (3) A deemed permission or notification under (2) ceases to apply in relation to a capital instrument if the terms of the instrument are varied on or after 1 January 2022 and the instrument ceases to meet:
- (a) in relation to an instrument being treated as *common equity tier 1 capital*, the conditions in *MIFIDPRU* 3.3 (other than the condition for prior *FCA* permission to classify the instrument as *common equity tier 1 capital*);
- (b) in relation to an instrument being treated as *additional tier 1 capital*, the conditions in *MIFIDPRU* 3.4; and
- (c) in relation to an instrument being treated as *tier 2 capital*, the conditions in *MIFIDPRU* 3.5.

7.5 R This table belongs to *MIFIDPRU* TP 7.4R.

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

<p><i>MIFIDPRU 3.6.5R(1)(b):</i></p> <p>Requirement to notify the <i>FCA</i> of the intention to issue <i>tier 2 instruments</i></p>	<p>Immediately before <i>MIFIDPRU</i> began to apply <u>or, if later, on the date on which the notification in <i>MIFIDPRU TP 7.4R(2)(b)</i> was made</u>, the capital instruments met the conditions to be classified as <i>tier 2 capital</i> in <i>MIFIDPRU 3.5</i></p>
<p><i>UK parent entities</i> to which consolidation under <i>MIFIDPRU 2.5.7R</i> applies</p>	
<p>Article 26(3) <i>UK CRR</i> (as applied and modified by <i>MIFIDPRU 3.3.1R</i>) and <i>MIFIDPRU 3.3.3R</i>, as they apply on a <i>consolidated basis</i> under <i>MIFIDPRU 2.5.7R(1)</i>:</p> <p>Requirement for prior <i>FCA</i> permission to classify an issuance of capital instruments by a <i>UK parent entity</i> as <i>common equity tier 1 capital</i></p>	<p>Immediately before <i>MIFIDPRU</i> began to apply <u>or, if later, on the date on which the notification in <i>MIFIDPRU TP 7.4R(2)(b)</i> was made</u>, the capital instruments met the conditions to be classified as <i>common equity tier 1 capital</i> in <i>MIFIDPRU 3.3</i> (as it applies on a <i>consolidated basis</i>), except for the requirement for prior <i>FCA</i> permission under article 26(3) of the <i>UK CRR</i> and <i>MIFIDPRU 3.3.3R</i></p>
<p><i>MIFIDPRU 3.6.5R(1)(a)</i>, as modified by <i>MIFIDPRU 3.6.8R</i>:</p> <p>Requirement to notify the <i>FCA</i> of the intention to issue <i>additional tier 1 instruments</i></p>	<p>Immediately before <i>MIFIDPRU</i> began to apply <u>or, if later, on the date on which the notification in <i>MIFIDPRU TP 7.4R(2)(b)</i> was made</u>, the capital instruments met the conditions to be classified as <i>additional tier 1 capital</i> in <i>MIFIDPRU 3.4</i> (as it applies on a <i>consolidated basis</i>)</p>
<p><i>MIFIDPRU 3.6.5R(1)(b)</i>, as modified by <i>MIFIDPRU 3.6.8R</i>:</p> <p>Requirement to notify the <i>FCA</i> of the intention to issue <i>tier 2 instruments</i></p>	<p>Immediately before <i>MIFIDPRU</i> began to apply <u>or, if later, on the date on which the notification in <i>MIFIDPRU TP 7.4R(2)(b)</i> was made</u>, the capital instruments met the conditions to be classified as <i>tier 2 capital</i> in <i>MIFIDPRU 3.5</i> (as it applies on a <i>consolidated basis</i>)</p>
<p><i>Parent undertakings</i> to which the <i>group capital test</i> applies</p>	
<p>Article 26(3) <i>UK CRR</i> (as applied and modified by <i>MIFIDPRU 3.3.1R</i>) and <i>MIFIDPRU 3.3.3R</i>, as they apply to a <i>parent undertaking</i> under <i>MIFIDPRU 3.7.4R(1)(a)</i>:</p> <p>Requirement for prior <i>FCA</i> permission to classify an issuance of capital instruments by a <i>parent</i></p>	<p>Immediately before <i>MIFIDPRU</i> began to apply <u>or, if later, on the date on which the notification in <i>MIFIDPRU TP 7.4R(2)(b)</i> was made</u>, the capital instruments met the conditions to be classified as <i>common equity tier 1 capital</i> in <i>MIFIDPRU 3.3</i>, except for the requirement for prior <i>FCA</i></p>

<i>undertaking as common equity tier 1 capital</i>	permission under article 26(3) of the <i>UK CRR</i> and <i>MIFIDPRU</i> 3.3.3R
<i>MIFIDPRU</i> 3.6.5R(1)(a), as modified by <i>MIFIDPRU</i> 3.7.4R(1)(b): Requirement to notify the <i>FCA</i> of the intention to issue <i>additional tier 1 instruments</i>	Immediately before <i>MIFIDPRU</i> began to apply <u>or, if later, on the date on which the notification in <i>MIFIDPRU</i> TP 7.4R(2)(b) was made</u> , the capital instruments met the conditions to be classified as <i>additional tier 1 capital</i> in <i>MIFIDPRU</i> 3.4
<i>MIFIDPRU</i> 3.6.5R(1)(b), as modified by <i>MIFIDPRU</i> 3.7.4R(1)(b): Requirement to notify the <i>FCA</i> of the intention to issue <i>tier 2 instruments</i>	Immediately before <i>MIFIDPRU</i> began to apply <u>or, if later, on the date on which the notification in <i>MIFIDPRU</i> TP 7.4R(2)(b) was made</u> , the capital instruments met the conditions to be classified as <i>tier 2 capital</i> in <i>MIFIDPRU</i> 3.5

- 7.6 G Where a *firm*, *UK parent entity* or *parent undertaking* is deemed under *MIFIDPRU* TP 7.3R and 7.4R to have notified the *FCA* of its intention to issue *additional tier 1 instruments* or *tier 2 instruments*, *MIFIDPRU* 3.6.5R(2)(a) will apply to a subsequent issuance of the same class of instruments. In practice, this means that provided that the subsequent issuance of the same class is on terms that are identical in all material respects to the existing class of those instruments, a notification to the *FCA* under *MIFIDPRU* 3.6.5R(1) is not required.