



Consultation Paper | CP15/21

Designating investment firms

July 2021





BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

Consultation Paper | CP15/21

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Responses are requested by Tuesday 5 October 2021.

In light of current measures to help prevent the spread of COVID-19, please address any comments or enquiries by email to: CP15_21@bankofengland.co.uk.

Alternatively, please address any comments or enquiries to:

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1 Overview

1.1 This Consultation Paper (CP) sets out the Prudential Regulation Authority's (PRA) proposals to make minor changes to its policy on designating investment firms. This includes a proposal to increase the base capital resources requirement for PRA-designated investment firms, thereby aligning it with changes to the same requirement for firms undertaking the same type of business that are only regulated by the Financial Conduct Authority (FCA) and not by the PRA – 'solo-regulated' firms.

1.2 The proposals in this CP would result in amendments to:

- the Statement of Policy (SoP) 'Designation of investment firms for prudential supervision by the PRA' (Appendix 1);¹ and
- the Definition of Capital Part of the PRA Rulebook (Appendix 2).

1.3 The CP is relevant to all PRA-designated UK investment firms.

1.4 These proposals would ensure that the PRA's policy reflects the impact of the new Investment Firms Prudential Regime (IFPR) proposed by the FCA.² They also reflect HM Treasury's proposals to revise the PRA Regulated Activities Order (PRA RAO).³ The PRA does not expect that firms would incur significant additional costs as a direct result of the proposals.

1.5 The PRA considered the interaction between its primary and secondary objectives and the 'have regards'. Overall, the PRA considers it necessary to ensure that the considerations it takes into account in designating investment firms are clear, in advancing firms' safety and soundness. This would be in line with the PRA's primary objective, and ensure that its approach is both transparent and proportionate.

1.6 The PRA considers that the costs to firms of these proposals are likely to be minor. The amendments to its SoP would ensure that the policy is transparent and proportionate. They would not change the PRA's approach of considering any designation on a case-by-case basis against the range of factors set out in its SoP. The small increase in the base capital resources requirement would not affect designated investment firms, as they currently hold capital well in excess of the proposed amount.

¹ March 2013: <https://www.bankofengland.co.uk/prudential-regulation/publication/2013/designation-of-investment-firms-for-prudential-supervision-by-the-pra>.

² HM Treasury announced the creation of the IFPR in its Policy Statement 'Prudential standards in the Financial Services Bill: June update', June 2020: <https://www.gov.uk/government/publications/prudential-standards-in-the-financial-services-bill-june-update>. The FCA has subsequently issued consultation papers setting out the details of the new regime.

³ 'The Financial Services and Markets Act 2000 (PRA-regulated Activities) (Amendment) Order 2021, published in draft by HM Treasury' (PRA RAO amendment), June 2021: <https://www.gov.uk/government/publications/draft-financial-services-and-markets-act-2000-pra-regulated-activities-amendment-order-2021/the-financial-services-and-markets-act-2000-pra-regulated-activities-amendment-order-2021-explanatory-information>.

Background

1.7 The IFPR will create a new prudential regime for UK firms authorised under the Markets in Financial Instruments Directive (MiFID) that are solo-regulated by the FCA (known as FCA ‘investment firms’).⁴ As stated by the FCA in its recent consultation,⁵ the IFPR aims to:

- streamline and simplify the prudential requirements for MiFID investment firms that are prudentially regulated in the UK by the FCA; and
- achieve the same overall outcomes as the EU’s regime for investment firms, as set out by the EU Investment Firms Directive and Investment Firms Regulation, on which the FCA was heavily involved in policy discussions when the UK was a member of the EU.

1.8 The IFPR has been tailored to take account of the UK market and the FCA’s duties to ‘have regard’ to certain factors, including those set out in the Financial Services Act 2021 (FS Act 2021). The FS Act 2021 – and amendments to FCA rules made under it – will bring the IFPR into force on Saturday 1 January 2022.

1.9 The overall prudential framework for PRA-designated investment firms will not be changing. PRA-designated investment firms will remain subject to the requirements set out in the Capital Requirements Regulation (‘CRR’) and the PRA Rulebook.⁶ However, following various changes resulting directly or indirectly from the implementation of the IFPR, the PRA considers that a number of minor amendments are needed to its SoP on the designation of investment firms, and to the PRA Rulebook.

Summary of proposals

1.10 This CP proposes to amend the SoP on the designation of investment firms to:

- (i) reflect HM Treasury’s proposed amendments to the PRA RAO, including the change in the scope of the firms that can be designated;
- (ii) explain that there will usually be six months, rather than three months, between the Prudential Regulation Committee designating an investment firm and it becoming PRA-regulated;
- (iii) note that the PRA will take into account whether or not an investment firm is a clearing member of a central counterparty offering clearing services to other financial institutions (that are not clearing members themselves) when making a designation decision; and
- (iv) delete any obsolete text and make other minor textual amendments.

1.11 This CP also proposes to change the Definition of Capital Part to increase the base capital resources requirement for designated investment firms from €730,000 to £750,000 and to denominate it in Sterling.

⁴ References to MiFID refer to the parts of UK law that transpose the requirements in MiFID and which form part of retained EU law.

⁵ FCA CP20/24 ‘A new UK prudential regime for MiFID investment firms’, December 2020:

<https://www.fca.org.uk/publications/consultation-papers/cp20-24-new-uk-prudential-regime-mifid-investment-firms/>.

⁶ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 as it forms part of Retained EU law and as subsequently amended by the FS Act 2021 is referred to as the ‘CRR’ in this CP.

Implementation

1.12 The PRA proposes that the changes resulting from this CP would take effect on Saturday 1 January 2022.

Responses and next steps

1.13 This consultation closes on Tuesday 5 October 2021. The PRA invites feedback on the proposals set out in this consultation. Please address any comments or enquiries to CP15_21@bankofengland.co.uk.

1.14 The proposals set out in this CP have been designed in the context of the UK having left the European Union and the transition period having come to an end. Unless otherwise stated, any references to EU or EU-derived legislation refer to the version of that legislation which forms part of retained EU law.⁷

⁷ For further information please see <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>.

2 Proposals

2.1 This chapter sets out the PRA's proposals to amend its SoP relating to the designation of investment firms by the PRA. It also sets out a proposal to increase the base capital requirement for designated investment firms.

Designation of investment firms

2.2 The PRA considers that the SoP requires updating due to the introduction of the IFPR, and to amend or delete obsolete text. The proposals would advance the PRA's primary objective by ensuring that the considerations it takes account of in designating investment firms are clear. They would also ensure that its approach to designation is both transparent and proportionate. The PRA does not expect that these proposals would involve significant additional costs for firms. The PRA will continue to designate investment firms on a case-by-case basis following a holistic assessment of the considerations set out in its SoP.

2.3 The PRA RAO currently provides the PRA with a power to designate investment firms that deal in investments as principal, with a base capital resources requirement of €730,000 for prudential regulation under the CRR. HM Treasury is proposing to remove the reference to the €730,000 requirement in draft revisions to the PRA RAO that it has recently published.⁸ The FCA is proposing that those firms that are authorised to deal in investments as principal⁹ should be subject to the same permanent minimum capital requirement (PMCR) of £750,000 under the IFPR.¹⁰ HM Treasury's proposed amendment reflects the fact that the reference to the €730,000 initial capital requirement will become obsolete (this currently applies only to a subset of those firms that are authorised to deal in investments as principal, known as IFPRU 730k firms in the FCA Handbook).

2.4 The PRA therefore proposes to update the legal framework section of its SoP to reflect this change to the investment firms that are within the scope of its designation powers. The proposed update would mean that certain additional firms (including 'local' firms and exempt matched principal firms) that are currently classed as 'limited licence' or 'limited activity' by the FCA will in due course be able to, in principle, be designated for prudential supervision by the PRA.¹¹ Therefore, all investment firms that deal in investments as principal, which are not specifically exempt, would become eligible for potential designation by the PRA.¹²

2.5 However, such firms, along with those firms that can currently be designated by the PRA, would only be designated if the PRA were to consider that it was desirable to do so based on the considerations set out in the SoP. These include an indicative threshold of £15 billion of total assets, and the business model criteria set out in the SoP, including the firm's level of risk-taking and whether it poses risks to other PRA-authorised persons in the group.

2.6 The introduction of the IFPR creates a new set of prudential rules for FCA solo-regulated investment firms. This means that, if such firms are designated for prudential supervision by the PRA

⁸ PRA RAO amendment, available at: <https://www.gov.uk/government/publications/draft-financial-services-and-markets-act-2000-pra-regulated-activities-amendment-order-2021/the-financial-services-and-markets-act-2000-pra-regulated-activities-amendment-order-2021-explanatory-information>.

⁹ These firms are referred to as IFPRU 730k, 'matched principal' and 'local' firms in the FCA's current prudential regime.

¹⁰ Please see paragraphs 6.14 to 6.22 of FCA CP20/24 for further details: <https://www.fca.org.uk/publications/consultation-papers/cp20-24-new-uk-prudential-regime-mifid-investment-firms/>.

¹¹ See the FCA Handbook Glossary for the terms IFPRU limited-activity firm and IFPRU limited-licence firm.

¹² This would increase the number of firms eligible for PRA designation from about 220 to around 500.

in the future, they will have to undertake the necessary work to be able to comply with the prudential rules that apply to PRA-designated investment firms (ie the CRR and PRA Rulebook). Discussions with firms have indicated that the transition from operating under the IFPR to the CRR may require significant investment and material changes to reporting systems in particular. In addition, firms will also be required to comply with the UK resolution regime.¹³ The PRA therefore proposes to amend its SoP to indicate that the usual length of time between the PRA taking a decision to designate an investment firm, and it being formally designated, will increase from three months to six months. The PRA notes, however, that it makes designation decisions on a case-by-case basis. The timeframe for such decisions would therefore also be likely to vary on a case-by-case basis.

2.7 The PRA is also proposing to note in its SoP that it would consider whether a firm undertakes clearing activities as part of its designation decision. This would apply to an investment firm that is a clearing member of a central counterparty, offering clearing services to other financial services firms that are not clearing members themselves. The PRA considers that such a firm providing services to other financial institutions is likely to be more interconnected to the financial system. Therefore, a specific reference to this type of firm is appropriate within the SoP to reflect this increased interconnectedness. The PRA notes, however, that this consideration will not in itself be a determining factor as to whether or not a firm is designated for PRA supervision.

2.8 The PRA further proposes to make some minor amendments and drafting changes, to bring the text of the SoP up-to-date. For example, the references to 'PRA Board' will be updated to read 'Prudential Regulation Committee', while the obsolete material referring to designation at 'legal cutover' will be deleted.

Base capital resources requirement for PRA-designated investment firms

2.9 The PRA proposes to increase the base capital resources requirement for PRA-designated investment firms from €730,000 to £750,000.¹⁴ This requirement has not been revised since 1993, despite inflation. Therefore, it is appropriate to increase it now and to denominate it in Sterling following the UK's exit from the EU. This proposal would also align the base capital resources requirement for PRA-designated investment firms with the FCA's minimum requirement for firms doing the same type of business. The PRA considers that the proposed increase is proportionate and would not have an impact on existing PRA-designated investment firms, as their size means that they will already be holding capital well in excess of that amount.

Question

Q1: Do respondents think that six months would usually be an appropriate time period for a newly-designated firm to transition from FCA to PRA regulation? If not, what would be an appropriate time period?

¹³ HM Treasury recently announced that it has decided to remove FCA-regulated firms with an initial capital requirement of €730,000 from the scope of the UK resolution regime, but it confirmed that it would continue to apply to PRA-designated investment firms. Please see Chapter 8 of 'Implementation of the Investment Firms Prudential Regime and Basel 3 standards: Consultation Response', HM Treasury, June 2021 - <https://www.gov.uk/government/consultations/implementation-of-the-investment-firms-prudential-regime-and-basel-3-standards-consultation>.

¹⁴ See Rule 12.1 in the Definition of Capital Part of the PRA Rulebook.

3 The PRA's statutory obligations

3.1 In carrying out its policy-making functions, the PRA is required to comply with several legal obligations. The PRA has a statutory duty to consult when changing rules (Financial Services and Markets Act 2000 (FSMA), s138J). In addition, the PRA has a public law duty to consult widely where it would be fair to do so.

3.2 The PRA fulfils its statutory obligations and public law duties by providing the following in relation to the proposed policy:¹⁵

- (i) **a cost benefit analysis;**
- (i) **compatibility with the PRA's objectives:** an explanation of the PRA's reasons for believing that making the proposed rules is compatible with the PRA's duty to act in a way that advances its general objective,¹⁶ and secondary competition objective;¹⁷
- (ii) **FSMA regulatory principles:** an explanation of the ways in which having regard to the regulatory principles has affected the proposed rules;¹⁸
- (iii) **impact on mutuals:** a statement as to whether the impact of the proposed rules will be significantly different to mutuals than to other persons;¹⁹
- (iv) **HM Treasury recommendation letter:** the Prudential Regulation Committee (PRC) should have regard to aspects of the Government's economic policy as recommended by HM Treasury;²⁰ and
- (v) **equality and diversity:** the PRA is also required by the Equality Act 2010²¹ to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out its policies, services and functions.

3.3 Appendix 3 lists the statutory obligations applicable to the PRA's policy development process. The analysis in this chapter explains how the proposals have had regard to the most relevant matters listed in paragraph 3.2, including an explanation of the ways in which having regard to these matters has affected the proposals.

3.4 The PRA is also required to follow the relevant consultation procedures set out in Articles 8 and 9 of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013²² in relation to its SoP. The PRA has discharged the relevant obligations under these provisions by consulting the FCA and the Bank of England. In addition, it has also made the Financial Policy Committee of the Bank of England aware of the proposed amendments to the SoP. The PRA notes that a number of the proposed amendments to its SoP in this consultation are subject to the PRA-regulated Activities

¹⁵ The proposed rule change will be made in exercise of the powers in sections 137G, 137T and related provisions of FSMA.

¹⁶ Section 2B of FSMA.

¹⁷ Section 2H(1) of FSMA.

¹⁸ Sections 2H(2) and 3B of FSMA.

¹⁹ Section 138K of FSMA.

²⁰ Section 30B of the Bank of England Act 1998.

²¹ Section 149.

²² <https://www.legislation.gov.uk/uksi/2013/556/contents/made>.

Order 2021,²³ which has recently been published by HM Treasury (28 June 2021) , being enacted as drafted and without material amendment.

UK IFPR, PRA RAO, and base capital requirements

3.5 The PRA is proposing to make some minor amendments to its SoP on the designation of investment firms to reflect the impact of the introduction of the UK IFPR and HM Treasury’s proposed amendments to the PRA RAO. It is also proposing to increase the base capital resources requirement for PRA-designated investment firms from €730,000 to £750,000.

3.6 The PRA considers that its proposed amendments to its designation policy, and the base capital resources requirement, would ensure that the considerations it takes into account in designating investment firms and the amount of their base capital resources requirement are clear. This would advance the PRA’s primary objective and ensure that its approach is both transparent and proportionate.

Cost benefit analysis

3.7 Under section 138J of FSMA, before making any new rules the PRA must publish a cost benefit analysis (CBA) along with the proposed rules. This is an estimate of the costs and benefits that would result from the rule being made. The PRA’s obligations to prepare a CBA do not apply to SoPs. However, the PRA has considered it a matter of good practice to provide this.

Amendments to the SoP on the designation of investment firms

3.8 The proposed amendments update the SoP to reflect the changes that have been brought about as a result of the introduction of the IFPR, and to clarify that the PRA considers whether a firm offers clearing services, as one factor, in its designation approach. The PRA will continue to make decisions about designating investment firms on a case-by-case basis based on a holistic assessment of the factors set out in the SoP.

3.9 The benefits to firms of the amendments are that they would ensure consistency with the IFPR, and reduce any uncertainty that firms may have about PRA designation. There are no direct cost implications for firms as a result of these amendments, as these amendments would not change the PRA’s current approach to designation, and hence also not change the likelihood that any firm in future might be PRA-designated. Firms will face additional costs if they are subsequently designated for prudential supervision by the PRA, although this reflects the introduction of the IFPR rather than any change to PRA policy. Any such costs would be reduced by the additional time allowed to transition from the IFPR. As such, the benefits are expected to be proportionate to the costs of the proposals.

Amendment to the base capital requirement for designated investment firms

3.10 The increase in the base capital requirement from €730,000 to £750,000 will not impact PRA-designated investment firms, as they currently hold capital well in excess of the proposed amount and are not expected as a result to make any consequential changes to their current capital resources.

²³ PRA RAO amendment, available at: <https://www.gov.uk/government/publications/draft-financial-services-and-markets-act-2000-pra-regulated-activities-amendment-order-2021/the-financial-services-and-markets-act-2000-pra-regulated-activities-amendment-order-2021-explanatory-information>.

Compatibility with the PRA's objectives

3.11 The PRA considers that the proposals in this CP advance its general objective to promote the safety and soundness of PRA-authorized firms. In particular, they seek to ensure that the approach that the PRA takes to designating investment firms for prudential supervision is clear.

3.12 The PRA has a secondary objective to facilitate effective competition. The PRA does not expect the proposals to have a material impact on competition. The PRA has not identified any impacts on firms that are likely to: (i) materially affect the operating costs of any cohort of affected firms that compete in the relevant markets; or (ii) materially change the behaviour of any particular firm.

FSMA regulatory principles

3.13 In developing the proposals in this CP, the PRA has had regard to the regulatory principles. The following principles are of particular relevance:

- (i) **The principle that the PRA should exercise its functions transparently:** The proposals aid transparency by providing clarity to firms on the PRA's proposed approach to designating investment firms for prudential supervision. In particular, the proposal to note explicitly that clearing is one of the factors that the PRA considers in taking a designation decision would improve the transparency of the PRA's approach.
- (ii) **The principle that a burden or restriction which is imposed on a person should be proportionate to the benefits which are expected to result from the imposition of that burden:** The PRA will aim to take a proportionate approach to the implementation of any designation decision, as investment firms will be likely to need more time to transition from FCA to PRA supervision once the IFPR is implemented.

3.14 In developing the proposals in this CP, the PRA has considered the statutory requirements referred to in Appendix 3 and those in the PRA RAO. The proposed rule change in this CP amends Rule 12.1 of the Definition of Capital Part, to reflect the proposed change to the base capital resources requirement for a designated investment firm. A draft of the proposed instrument is included in the appendices to this CP.

Impact on mutuals

3.15 The PRA considers that the impact of the proposed rule change on mutuals would not differ from the impact on other firms.

HM Treasury recommendation letter

3.16 HM Treasury has made recommendations to the PRC about aspects of the Government's economic policy to which the PRC should have regard when considering how to advance the PRA's objectives and apply the regulatory principles.²⁴

3.17 The PRA has considered these aspects of government economic policy as laid out in the HM Treasury recommendation letter (see references in Appendix 3) in relation to the proposals. It considers competition to be relevant, but not material, as considered above in relation to the

²⁴ Information about the PRC and the recommendations from HM Treasury are available on the Bank's website at: <https://www.bankofengland.co.uk/about/people/prudential-regulation-committee>.

compatibility of the proposals with the secondary competition objective. It does not consider the other aspects of the recommendation letter to be of particular relevance to the minor amendments proposed in this CP.

Equality and diversity

3.18 The PRA considers that the proposals do not give rise to equality and diversity implications.

Appendices

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1 Draft amendments to the Statement of Policy ‘Designation of investment firms for prudential supervision by the Prudential Regulation Authority’

This appendix outlines proposed amendments to the SoP ‘Designation of investment firms for prudential supervision by the Prudential Regulation Authority’. Underlined text indicates new text, and the striking through of text indicates deleted text.

...

Legal context

...

1. This statement of policy is issued under article 8 of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 as amended²⁵ (the PRA-regulated Activities Order).

2. Under the PRA-regulated Activities Order, the Prudential Regulation Authority (PRA) ~~is able to~~ may designate certain persons for prudential supervision by the PRA under CRR (other than those in article 4(1)(2AA) (a), (b) and (c) CRR). Before the PRA ~~may do~~ does so, the conditions set out in article 3(2) ~~and (3)~~ of the PRA-regulated Activities Order must be satisfied. ~~These are~~ This is, broadly speaking, that the person:

~~(a) has, or has applied for, permission to deal in investments as principal. and~~

~~(b) has, or would have if it were authorised, a minimum capital of €730,000, or is a broadly analogous European Economic Area (EEA) passporting firm or non-EEA firm.~~

In this statement of policy, a person meeting the conditions in article 3(2) ~~and (3)~~ is referred to as an ‘Eligible Investment Firm’, i.e. an investment firm that is in scope for designation by the PRA.

3. Provided these conditions are met, the PRA may designate an Eligible Investment Firm if the PRA ‘considers that it is desirable that the activity of dealing in investments as principal, when carried on by [the Eligible Investment Firm], should be a PRA-regulated activity’ (article 3(1)(c)), so that upon designation taking effect the Eligible Investment Firm becomes a ‘designated investment firm’. A designated investment firm is a PRA-~~authorised~~ person and is subject to CRR. In taking designation decisions the PRA ~~is to have~~ has regard to its statutory objectives and the matters set out in article 3(4) of the PRA-regulated Activities Order, which are:

- (a) the assets of the Eligible Investment Firm; and
- (b) where the Eligible Investment Firm is a member of a group:
 - (i) the assets of other Eligible Investment Firms within the group;
 - (ii) whether any other members of the Eligible Investment Firm’s group have been designated; and

²⁵ The Financial Services and Markets Act 2000 (PRA-regulated Activities) (Amendment) Order 2021 has been made by HM Treasury in exercise of the powers conferred by sections 22A and 428(3) of the Financial Services and Markets Act 2000. In accordance with section 22B(2)(a) and (3)(a) FSMA a draft of this Order was laid before Parliament and approved by a resolution of each House.

(iii) whether the Eligible Investment Firm's activities have, or might have, a material impact on the ability of the PRA to advance any of its objectives in relation to PRA-authorized persons in its group.

6. In principle HM Treasury may add other PRA-regulated activities to the PRA-regulated Activities Order or make other changes to it ~~in due course~~ under sections 22A and 428(3) of the Financial Services and Markets Act 2000 (FSMA).

7. Under the Bank of England Act 1998 (as amended by the Financial Services Act 2012), the Financial Policy Committee (FPC) ~~will be able to~~ can make recommendations to HM Treasury regarding the boundary between regulated and non-regulated sectors of the UK financial system — the regulatory perimeter. Such recommendations may concern what is a regulated activity under ~~the Financial Services and Markets Act (FSMA)~~ and also which particular activities are prudentially regulated by the PRA. The regime for designating investment firms for regulation by the PRA provides that the PRA may consult the FPC on any proposed revisions to this Statement of Policy. ~~also requires the PRA to consult the Bank of England and the FPC on this policy statement. This has been done and they are content with the proposals set out in this statement.~~

...

Designation Policy

...

8. The PRA ~~will have~~ has regard to each of the following factors in determining whether an Eligible Investment Firm should be designated:

10. When considering a firm's gross assets, analysing its balance sheet over four quarters prevents any large temporary movements in the balance sheet from distorting the view of a firm's likely importance. In addition to looking at balance sheet size, the PRA will also consider a firm's business model, including whether it is a clearing member of a central counterparty providing clearing services to other financial institutions who are not clearing members themselves, and its booking practices to ensure that assets booked to the firm do not give a distorted view of the firm's business and risk profile. Other assessments of asset values beyond those regularly submitted on a firm's regulatory returns (both end-of-day and intraday) may also be considered in order to identify whether a firm's assets, as disclosed in regulatory returns, provide an accurate representation of its risk-taking.

...

Periodic review of firms subject to designation

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15. The PRA-regulated Activities Order requires the PRA to keep all designations under review. In ~~establishing the arrangements to review~~ reviewing designations, it ~~will be~~ is important to guard against volatility in designation. That is why the value of total assets is averaged over four quarters. PRA staff ~~will~~ review the eligible population of firms against the designation criteria on a periodic basis to consider whether any additional firms should be designated, or their designation withdrawn. The PRA ~~will~~ also discusses individual firms with the FCA as they approach the relevant designation

thresholds. A summary of this analysis, plus any designation recommendations, ~~will be~~ is, where relevant, put to the PRA Board Prudential Regulation Committee for decision.

...

Procedural arrangements for designation decisions

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17. If the PRA decides to designate an investment firm, it will issue the firm with a notice stating the reasons for designation. The PRA will normally give the firm 28 days to make representations. The notice will also make clear the firm's right to refer matters to the Upper Tribunal. The notice will state the date that the designation decision would take effect which will usually be ~~three~~ six months from the date of the notice being issued. The PRA-regulated Activities Order does provide for designation decisions to take immediate effect, in appropriate circumstances, but this will not normally be the case.

...

~~Designation decisions taking effect from legal cutover~~

...

~~19. The procedural arrangements will be modified for the first designation decisions which will take effect at legal cutover (the point at which the PRA assumes its responsibilities for prudential regulation). The PRA will still give firms the opportunity to make representations on proposed designation decisions; this will, however, be subject to an accelerated timetable.~~

...

2 Draft CRR Firms: Investment Firms Prudential Regime Instrument 2021

PRA RULEBOOK: CRR FIRMS: INVESTMENT FIRMS PRUDENTIAL REGIME INSTRUMENT 2021

Powers exercised

- A. The Prudential Regulation Authority (“PRA”) 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 137G (The PRA’s general rules); and
 - (2) section 137T (General supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

Pre-conditions to making

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

PRA Rulebook: CRR Firms: Investment Firms Prudential Regime Instrument 2021

- D. The PRA makes the rules in the Annex.

Commencement

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

Citation

- F. This instrument may be cited as the PRA Rulebook: CRR Firms: Investment Firms Prudential Regime Instrument 2021.

By order of the Prudential Regulation Committee

[DATE]

Annex

Amendments to the Definition of Capital Part

In this Annex, new text is underlined and deleted text is struck through.

...

12 BASE CAPITAL RESOURCES REQUIREMENT

12.1 A *CRR firm* must maintain at all times capital resources equal to or in excess of the base capital resources requirement set out in the table below:

Firm category	Amount: Currency equivalent
<i>bank</i>	€5 million
<i>small specialist bank</i>	The higher of €1 million and £1 million
<i>building society</i>	The higher of €1 million and £1 million
<i>designated investment firm</i>	€730,000 <u>£750,000</u>

3 PRA statutory obligations

The statutory obligations applicable to the PRA's policy development process are set out below. This CP explains the policy assessment of relevant considerations.

- Purpose of the policy proposals (FSMA s138J(2)(b)).
- Cost benefit analysis (FSMA s138J(2)(a) and (7)(a)); and an estimate of those costs and benefits (if reasonable) (FSMA s138J(8)).
- Analysis of whether the impact on mutuals is significantly different to the impact on other authorised firms (FSMA s138J(2)(c) and 138K).
- Compatibility with the PRA's primary objectives (FSMA s138J(2)(d)(i), 2B and 2C).
- Compatibility with the PRA's secondary competition objective (FSMA s138J(2)(d)(ii) and 2H(1)).
- Compatibility with the regulatory principles (FSMA s138J(2)(d)(ii), 2H(2) and 3B).
- Have regard to the HMT recommendation letter (BoE Act s30B).
- Have due regard to the public sector equality duty (Equality Act s149).
- Have regard, subject to any other requirement affecting the exercise of the regulatory function, to the principles of good regulation and when determining general policy or principles to the Regulators Code (Legislative and Regulatory Reform Act 2006 s21 & 22)
- Have regard, so far as consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat (Natural Environment and Rural Communities Act 2006, s40).
- Consultation of the FCA (FSMA s138J(1)(a)).