CP2/22 Appendix 1: Proposed rule instrument

PRA RULEBOOK: CRR FIRMS OWN FUNDS AND ELIGIBLE LIABILITIES INSTRUMENT 2022

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);
(2) section 137T (General supplementary powers);
(3) section 144G(1) (Disapplication or modification of CRR rules);
(4) section 144H(1) and (2) (Relationship with the CRR);
(5) section 192XA (Rules applying to holding companies); and
(6) section 192XC (Disapplication or modification of rules in individual cases).

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 so far as these rules are CRR rules within the meaning of section 144A (CRR rules) of the Act, the PRA, when making these rules, had regard to and considered the matters specified in section 144C(1), (2) and (3) of the Act insofar as those sub-sections are applicable to these rules.[1]
D. In accordance with sections 144C(3) and 144E of the Act the PRA consulted Treasury about the likely effect of the rules on relevant equivalence decisions within the meaning of section 144C(4) of the Act.
E. In accordance with section 138J(1)(a) of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority.[2]
F. The PRA published a draft of the proposed rules in accordance with section 138(J)(1)(b) of the Act, accompanied by the information listed in section 138J(2) and the explanation referred to in section 144D[3] of the Act insofar as that section is applicable to the rules.
G. The PRA had regard to representations made.

PRA Rulebook: CRR Firms: Own Funds and Eligible Liabilities Instrument 2022

H. The PRA makes the rules in the Annex to this instrument.

Notes

I. In the Annex to this instrument, the "notes" (indicated by "[Note:]") are included for the convenience of readers but do not form part of the legislative text.

Commencement

J. This instrument comes into force on [DATE].

Citation

K. This instrument may be cited as the PRA Rulebook: CRR Firms: Own Funds and Eligible Liabilities Instrument 2022.

By order of the Prudential Regulation Committee

[DATE]

[1] Section 144D of the Act, section 144E(1) of the Act and section 144E(4-7) Act are applied by virtue of section 192XB of the Act.
[2] Section 144D of the Act, section 144E(1) of the Act and section 144E(4-7) of the Act are applied by virtue of section 192XB of the Act.
[3] Save where section 144E of the Act applies.

Annex

Amendments to the Own Funds and Eligible Liabilities (CRR) Part

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

1 APPLICATION AND DEFINITIONS

…

1.2 In this Part, the following definitions shall apply:

UK-adopted international accounting standards

has the same meaning it has in section 474(1) of the Companies Act 2006.

…

4 RULES SUPPLEMENTING THE CRR WITH REGARDS TO OWN FUNDS REQUIREMENTS (PREVIOUSLY REGULATION (EU) NO 241/2014)

~~[Note: Articles A1 and B1 of Part 2 of Regulation (EU) No 241/2014 remain in that regulation]~~

ARTICLE 1 Subject Matter [deleted]

~~This Chapter 4 of the Own Funds and Eligible Liabilities (CRR) Part of the *PRA* Rulebook lays down rules concerning the application of the deductions from Common Equity Tier 1 items and other deductions for Common Equity Tier 1, Additional Tier 1 and Tier 2 items.~~

~~[Note: this rule corresponds to Article 1(f) of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *Treasury*. Article 1(a) to (e) and (h) to (p) of Part 2 of Regulation (EU) No 241/2014 remain in that regulation]~~

~~[Note: Articles 2 to 12 of Part 2 of Regulation (EU) No 241/2014 remain in that regulation]~~

CHAPTER II ELEMENTS OF OWN FUNDS

SECTION 1 COMMON EQUITY TIER 1 CAPITAL AND INSTRUMENTS

SUBSECTION 1 FORESEEABLE DIVIDENDS AND CHARGES

ARTICLE 2 MEANING OF 'FORESEEABLE' IN FORESEEABLE DIVIDEND FOR THE PURPOSES OF ARTICLE 26(2)(B) OF THE CRR

1. The amount of foreseeable dividends to be deducted by institutions from the interim or year-end profits as provided in Article 26(2)(b) of the *CRR* , shall be determined in accordance with paragraphs 2 to 4.

2. Where an institution's management body has formally taken a decision or proposed a decision to the institution's relevant body regarding the amount of dividends to be distributed, this amount shall be deducted from the corresponding interim or year-end profits.

3. Where interim dividends are paid, the residual amount of interim profit resulting from the calculation laid down in paragraph 2 which is to be added to Common Equity Tier 1 items

shall be reduced, taking into account the rules laid down in paragraphs 2 and 4, 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.

4. Before the management body has formally taken a decision or proposed a decision to the relevant body on the distribution of dividends, the amount of foreseeable dividends to be deducted by institutions from the interim or year-end profits shall equal the amount of interim or year-end profits multiplied by the dividend payout ratio.

5. The dividend pay-out ratio shall be determined on the basis of the dividend policy approved for the relevant period by the management body or other relevant body.

6. Where the dividend policy contains a pay-out range instead of a fixed value, the upper end of the range is to be used for the purpose of paragraph 2.

7. In the absence of an approved dividend policy, or when it is likely that the institution will not apply its dividend policy or this policy is not a prudent basis upon which to determine the amount of deduction, the dividend pay-out ratio shall be based on the highest of the following:

   (a) the average dividend pay-out ratio over the three years prior to the year under consideration; or

   (b) the dividend pay-out ratio of the year preceding the year under consideration.

8. Institutions may seek permission from the *PRA* to adjust the calculation of the dividend pay-out ratio as described in points (a) and (b) of paragraph 7 to exclude exceptional dividends paid during the period.

[Note: This is a permission created under sections 144G and 192XC of *FSMA* to which Part 8 of the *Capital Requirements Regulations* applies.]

9. The amount of foreseeable dividends to be deducted shall be determined taking into account any regulatory restrictions on distributions, in particular restrictions determined in accordance with the Capital Buffers Part of the *PRA* Rulebook. The amount of profit after deduction of foreseeable charges subject to such restrictions may be included fully in Common Equity Tier 1 items where the condition of point (a) of paragraph 2 of Article 26 of the *CRR* is met. When such restrictions are applicable, the foreseeable dividends to be deducted shall be based on the capital conservation plan which has been notified to the *PRA* in accordance with Chapter 4 of the Capital Buffers Part of the *PRA* Rulebook and which the institution is implementing.

10. The amount of foreseeable dividends to be paid in a form that does not reduce the amount of Common Equity Tier 1 items, such as dividends in the form of shares, known as scrip-dividends, shall not be deducted from interim or year-end profits to be included in Common Equity Tier 1 items.

11. All necessary deductions to the interim or year-end profits and all those related to foreseeable dividends shall be made, either under the applicable accounting framework or under any other adjustments, before including the interim or year-end profits in Common Equity Tier 1 items.

[Note: This rule corresponds to Article 2 of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

ARTICLE 3 MEANING OF 'FORESEEABLE' IN FORESEEABLE CHARGE FOR THE PURPOSES OF ARTICLE 26(2)(B) OF THE CRR

1. The amount of foreseeable charges to be taken into account shall comprise the following:

(a) the amount of taxes;

(b) the amount of any obligations or circumstances arising during the related reporting period which are likely to reduce the profits of the institution and for which the *PRA* is not satisfied that all necessary value adjustments, such as additional value adjustments according to Article 34 of the *CRR* or provisions have been made.

2. Foreseeable charges that have not already been taken into account in the profit and loss account shall be assigned to the interim period during which they have incurred so that each interim period bears a reasonable amount of these charges. Material or non-recurrent events shall be considered in full and without delay in the interim period during which they arise.

3. All necessary deductions to the interim or year-end profits and all those related to foreseeable charges shall be made, either under the applicable accounting framework or under any other adjustments, before including the interim or year-end profits in Common Equity Tier 1 items.

[Note: This rule corresponds to Article 3 of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

SUBSECTION 2 CO-OPERATIVE SOCIETIES, SAVINGS INSTITUTIONS, MUTUALS AND SIMILAR INSTITUTIONS

ARTICLE 4 TYPE OF UNDERTAKING RECOGNISED UNDER THE APPLICABLE LAW OF THE UNITED KINGDOM (OR ANY PART OF IT) AS A CO-OPERATIVE SOCIETY FOR THE PURPOSES OF ARTICLE 27(1)(A)(II) OF THE CRR

1. An undertaking recognised under the applicable law of the *United Kingdom* (or any part of it) qualifies as a co-operative society for the purpose of Part Two of the *CRR* and this Part, where all of the conditions in paragraphs 2, 3 and 4 are met.

2. To qualify as a co-operative society for the purposes of paragraph 1, an institution must be 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.

3. With respect to Common Equity Tier 1 capital, to qualify as a co-operative society for the purposes of paragraph 1, the institution shall be able to issue, under the applicable law of the *United Kingdom* (or any part of it) or the society's statutes, at the level of the legal entity, only capital instruments referred to in Article 29 of the *CRR*.

4. To qualify as a co-operative society for the purposes of paragraph 1, when under the applicable law of the *United Kingdom* (or any part of it), the holders of the Common Equity Tier 1 instruments referred to in paragraph (3) which may be members or non-members of the institution, have the ability to resign, they may also have the right to put the capital instrument back to the institution, but only subject to the restrictions of the applicable law of the *United Kingdom* (or any part of it), the statutes of the institution, the *CRR* and of this Part. This does not prevent the institution from issuing, under the applicable law of the *United Kingdom* (or any part of it), or of a *third country*, Common Equity Tier 1 instruments complying with Article 29 of the *CRR* to members and non-members that do not grant a right to put the capital instrument back to the institution.

[Note: This rule corresponds to Article 4 of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

ARTICLE 5 TYPE OF UNDERTAKING RECOGNISED UNDER THE APPLICABLE LAW OF THE UNITED KINGDOM (OR ANY PART OF IT) AS A SAVINGS INSTITUTION FOR THE PURPOSE OF ARTICLE (27(1)(A)(III) OF THE CRR

1. An undertaking recognised under the applicable law of the *United Kingdom* (or any part of it) qualifies as a savings institution for the purpose of Part Two of the *CRR* and this Part, where all the conditions in paragraphs 3 and 4 are met.

2. [Note: Provision left blank]

3. With respect to Common Equity Tier 1 capital, to qualify as a savings institution for the purposes of paragraph 1, the institution has to be able to issue, under the applicable law of the *United Kingdom* (or any part of it) or the statutes of the institution, at the level of the legal entity, only capital instruments referred to in Article 29 of the *CRR*.

4. To qualify as a savings institution for the purposes of paragraph 1, the sum of capital, reserves and interim or year-end profits, shall not be allowed, under the applicable law of the *United Kingdom* (or any part of it, to be distributed to holders of Common Equity Tier 1 instruments. Such condition is deemed to be fulfilled even where the institution issues Common Equity Tier 1 instruments that grant the holders, on a going concern basis, a right to a part of the profits and reserves, where allowed by such law, provided that this part is proportionate to their contribution to the capital and reserves or, where permitted by such law, in accordance with an alternative arrangement. The institution may issue Common Equity Tier 1 instruments that grant the holders, in the case of insolvency or liquidation of the institution, the right to reserves which do not need to be proportionate to the contribution to capital and reserves provided that the conditions of paragraphs 4 and 5 of Article 29 of the *CRR* are met.

[Note: This rule corresponds to Article 5 of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

ARTICLE 6 TYPE OF UNDERTAKING RECOGNISED UNDER THE APPLICABLE LAW OF THE UNITED KINGDOM (OR ANY PART OF IT) AS A MUTUAL FOR THE PURPOSES OF ARTICLE 27(1)(A)(I) OF THE CRR

1. An undertaking recognised under the applicable law of the *United Kingdom* (or any part of it) qualifies as a mutual for the purpose of Part Two of the *CRR* and this Part, where all of the conditions in paragraphs 2, 3 and 4 are met.

2. To qualify as a mutual for the purposes of paragraph 1, the institution must be incorporated (or deemed to be incorporated) under the Building Societies Act 1986 or registered as a savings bank within the meaning of the Savings Bank (Scotland) Act 1819

3. With respect to Common Equity Tier 1 capital, to qualify as a mutual for the purposes of paragraph 1, the institution is only allowed to issue, under the applicable law of the *United Kingdom* (or any part of it) or the statutes of the institution, at the level of the legal entity, capital instruments referred to in Article 29 of the *CRR*.

4. To qualify as a mutual for the purposes of paragraph 1, the total amount or a partial amount of the sum of capital and reserves shall be owned by members of the institution, who do not, in the ordinary course of business, benefit from direct distribution of the reserves, in

particular through the payment of dividends. Such conditions are deemed to be fulfilled even where the institution issues Common Equity Tier 1 instruments that grant a right on the profits and reserves, where allowed by the applicable law of the *United Kingdom* (or any part of it).

[Note: This rule corresponds to Article 6 of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

ARTICLE 7 TYPE OF UNDERTAKING RECOGNISED UNDER THE APPLICABLE LAW OF THE *UNITED KINGDOM* (OR ANY PART OF IT) AS A SIMILAR INSTITUTION FOR THE PURPOSES OF ARTICLE 27(1)(A)(IV) OF THE CRR

1. An undertaking recognised under the applicable law of the *United Kingdom* (or any part of it) qualifies as a similar institution to co-operatives, mutuals and savings institutions for the purpose of Part Two of the *CRR* and this Part, where all of the conditions in paragraphs 3 and 4 are met.

2. [Note: Provision left blank]

3. With respect to Common Equity Tier 1 capital, to qualify as a similar institution to co-operatives, mutuals and savings institutions for the purposes of paragraph 1, the institution shall be only able to issue, under the applicable law of the *United Kingdom* (or any part of it) or the statutes of the institution, at the level of the legal entity, capital instruments referred to in Article 29 of the *CRR*.

4. To qualify as a similar institution to co-operatives, mutuals and savings institutions for the purposes of paragraph 1, one or more of the following conditions shall also be met:

   (a) where the holders, which may be members or non-members of the institution, of the Common Equity Tier 1 instruments referred to in paragraph 3 have the ability to resign under the applicable law of the *United Kingdom* (or any part of it), they may also have the right to put the capital instrument back to the institution, but only subject to the restrictions of that law, the statutes of the institution, the *CRR* and this Part. That does not prevent the institution from issuing, under the applicable law of the *United Kingdom* (or any part of it) or of a *third country*, Common Equity Tier 1 instruments complying with Article 29 of the *CRR* to members and non-members that do not grant a right to put the capital instrument back to the institution;

   (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 Common Equity Tier 1 instruments. That condition is deemed to be fulfilled even where the institution issues Common Equity Tier 1 instruments that grant the holders, on a going concern basis, a right to a part of the profits and reserves, where allowed by such law, provided that that part is proportionate to their contribution to the capital and reserves or, where permitted by law, in accordance with an alternative arrangement. The institution may issue Common Equity Tier 1 instruments that grant the holders, in the case of insolvency or liquidation of the institution, the right to reserves which do not need to be proportionate to the contribution to capital and reserves provided that the conditions of Article 29(4) and (5) of the *CRR* are met;

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

[Note: This rule corresponds to Article 7 of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

ARTICLE 7A MULTIPLE DISTRIBUTIONS CONSTITUTING A DISPROPORTIONATE DRAG ON OWN FUNDS

1. Distributions on Common Equity Tier 1 instruments referred to in Article 28 of the *CRR* shall be deemed not to constitute a disproportionate drag on capital where all of the following conditions are met:

   (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 institution;

   (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.

   In formulaic form this shall be expressed as:

   $$l \leq 1.25 \times k$$

   where:

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

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

   (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.

   In formulaic form this shall be expressed as:

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

   where:

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

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

   X shall represent the number of voting instruments;

   Y shall represent the number of non-voting instruments.

   The formula shall be applied on a one-year basis.

2. Where the condition of point (f) of paragraph 1 is not met, only the amount of the instruments with a dividend multiple that exceeds the threshold defined therein shall be deemed to cause a disproportionate drag on capital.

3. Where any of the conditions of points (a) to (e) of paragraph 1 are not met, all outstanding instruments with a dividend multiple shall be deemed to cause a disproportionate drag on capital.

[Note: This rule corresponds to Article 7a of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

ARTICLE 7B PREFERENTIAL DISTRIBUTIONS REGARDING PREFERENTIAL RIGHTS TO PAYMENTS OF DISTRIBUTIONS

1. For Common Equity Tier 1 instruments referred to in Article 28 of the *CRR*, a distribution on a Common Equity Tier 1 instrument shall be deemed to be preferential relative to other Common Equity Tier 1 instruments where there are differentiated levels of distributions, unless the conditions of Article 7a of this Part are met.

2. For Common Equity Tier 1 instruments with fewer or no voting rights issued by institutions referred to in Article 27 of the *CRR*, where distribution is a multiple of the distribution on the voting instruments and that multiple distribution is set contractually or statutorily, distributions shall be deemed not to be preferential where all of the following conditions are met:

   (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 institution;

   (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.

   In formulaic form this shall be expressed as:

   $$l \leq 1.25 \times k$$

   where:

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

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

   (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.

   In formulaic form this shall be expressed as:

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

   where:

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

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

   X shall represent the number of voting instruments;

   Y shall represent the number of non-voting instruments;

   The formula shall be applied on a one-year basis.

3. Where the condition of paragraph 2 point (f) is not met, only the amount of the instruments with a dividend multiple that exceeds the threshold defined therein shall be disqualified from Common Equity Tier 1.

4. Where any of the conditions of points (a) to (e) of paragraph 2 are not met, all outstanding instruments with a dividend multiple shall be disqualified from Common Equity Tier 1 capital.

5. For the purposes of paragraph 2, where the distributions of Common Equity Tier 1 instruments are expressed, for the voting or the non-voting instruments, with reference to the purchase price at issuance of the instrument, the formulas shall be adapted as follows, for the instrument or instruments that are expressed with reference to the purchase price at issuance:

   (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;

   (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.

6. For Common Equity Tier 1 instruments with fewer or no voting rights issued by institutions referred to in Article 27 of the *CRR*, where the distribution is not a multiple of the distribution on the voting instruments, distributions shall be deemed not to be preferential where either of the conditions referred to in paragraph 7 and both conditions referred to in paragraph 8 are met.

7. For the purposes of paragraph 6, either of the following conditions (a) or (b) shall apply:

   (a) both of the following points (i) and (ii) are met:

      (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;

   (b) the distributions on the voting instruments issued by the institutions 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*.

8. For the purposes of paragraph 6 both of the following conditions shall apply:

   (a) the institution demonstrates that the average of the distributions on voting instruments during the preceding five years, is low in relation to other comparable instruments;

   (b) the institution demonstrates that the payout ratio is low, where a payout ratio is calculated in accordance with Article 7c. A payout ratio under 30% shall be deemed to be low.

9. For the purposes of point (a) of paragraph 7, 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 number of voting instruments held by any holder;

   (c) where the number of voting instruments any holder may hold is limited under the statutes of the institution or under the applicable law of the *United Kingdom* (or any part of it), or of a *third country*.

10. For the purposes of this Article, the one year period shall be deemed to end on the date of the last financial statements of the institution.

11. Institutions shall assess compliance with the conditions referred to in paragraphs 7 and 8, and shall inform the *PRA* about the result of their assessment, at least in the following situations:

    (a) every time a decision on the amount of distributions on Common Equity Tier 1 instruments is taken;

    (b) every time a new class of Common Equity Tier 1 instruments with fewer or no voting rights is issued.

12. Where the condition of point (b) of paragraph 8 is not met, only the amount of the non-voting instruments for which distributions exceed the threshold defined therein shall be deemed to entail preferential distributions.

13. Where the condition of point (a) of paragraph 8 is not met, the distributions on all outstanding non-voting instruments shall be deemed to be preferential unless they meet the conditions of paragraph 2.

14. Where neither of the conditions of paragraph 7 are met, the distributions on all outstanding non-voting instruments shall be deemed to be preferential unless they meet the conditions of paragraph 2.

15. The requirement referred to in point (i) of paragraph 7(a), or the requirement referred to in point (b) of paragraph 8, or both requirements may be waived, as appropriate, where both of the following conditions are met:

    (a) an institution is in breach of or, due, inter alia, to a rapidly deteriorating financial condition, is likely in the near future to be in breach of any of the requirements of the *CRR*;

    (b) the *PRA* has required the institution to urgently increase its Common Equity Tier 1 capital within a specified period and has assessed that the institution is not able to rectify or avoid the breach referred to in point (a) within that specified period, without resorting to the waiver referred to in this paragraph.

[Note: This is a permission created under sections 144G and 192XC of *FSMA* to which Part 8 of the *Capital Requirements Regulations* applies.]

[Note: This rule corresponds to Article 7b of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

ARTICLE 7C CALCULATION OF THE PAYOUT RATIO FOR THE PURPOSE OF POINT (B) OF ARTICLE 7B(8)

1. For the purposes of point (b) of Article 7b(8), institutions shall calculate the payout ratio as the sum of distributions related to total Common Equity Tier 1 instruments over the previous five year periods, divided by the sum of profits related to the previous five year periods.

[Note: This rule corresponds to Article 7c(1)(a) of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

2. For the purposes of paragraph 1, profits shall mean the amount reported in row 0670 of template F 02.00 of Part 1 of Annex III of the Reporting (CRR) Part of the *PRA* Rulebook, or, where applicable, the amount reported in row 0670 of template F 02.00 of Part 1 of Annex IV

of the Reporting (CRR) Part of the *PRA* Rulebook, with regard to supervisory reporting of institutions according to the *CRR*.

[Note: This rule corresponds to Article 7c(2) of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

ARTICLE 7D PREFERENTIAL DISTRIBUTIONS REGARDING THE ORDER OF DISTRIBUTION PAYMENTS

1. For the purposes of Article 28 of the *CRR*, a distribution on a Common Equity Tier 1 instrument shall be deemed to be preferential relative to other Common Equity Tier 1 instruments and regarding the order of distribution payments where at least one of the following conditions is met:

   (a) distributions are decided at different times;

   (b) distributions are paid at different times;

   (c) there is an obligation on the issuer 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;

   (d) a distribution is paid on some Common Equity Tier 1 instruments but not on others, unless the condition of point (a) of Article 7b(7) is met.

[Note: This rule corresponds to Article 7d of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

SUBSECTION 3 INDIRECT FUNDING

ARTICLE 8 INDIRECT FUNDING OF CAPITAL INSTRUMENTS FOR THE PURPOSES OF ARTICLE 28(1)(B), ARTICLE 52(1)(C) AND ARTICLE 63(C) OF THE CRR

1. Indirect funding of capital instruments under Article 28(1)(b), Article 52(1)(c) and Article 63(c) of the *CRR* shall be deemed funding that is not direct.

2. For the purposes of paragraph 1, direct funding shall refer to situations where an institution has granted a loan or other funding in any form to an investor that is used for the acquisition of ownership of its capital instruments.

3. Direct funding shall also include funding granted for other purposes than acquisition of ownership of an institution's capital instruments, to any *person* who has a qualifying holding in the credit institution, as referred to in Article 4(36) of the *CRR*, or who 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 under *UK-adopted international accounting standards*, taking into account any additional guidance issued by the *PRA*, if the institution is not able to demonstrate all of the following:

   (a) the transaction is realised at similar conditions as other transactions with third parties;

   (b) the *person* or the related party does not have to rely on the distributions or on the sale of the capital instruments held to support the payment of interest and the repayment of the funding.

[Note: This rule corresponds to Article 8 of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

ARTICLE 9 APPLICABLE FORMS AND NATURE OF INDIRECT FUNDING OF CAPITAL INSTRUMENTS FOR THE PURPOSES OF ARTICLE 28(1)(B) AND 52(1)(C) AND 63(C) OF THE CRR

1. The applicable forms and nature of indirect funding of the acquisition of ownership of an institution's capital instruments shall include the following:

   (a) funding of an investor's purchase, at issuance or thereafter, of an institution's capital instruments by any entities on which the institution has a direct or indirect control or by entities included in any of the following:

      (i) the scope of accounting or prudential consolidation of the institution;

      (ii) [Note: Provision left blank]

      (iii) the scope of supplementary supervision of the institution in accordance with provisions implementing Directive 2002/87/EC;

   (b) funding of an investor's acquisition of ownership, at issuance or thereafter, of an institution'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 institution or to any entities on which the institution 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 institution;

      (ii) [Note: Provision left blank]

      (iii) the scope of supplementary supervision of the institution in accordance with provisions implementing Directive 2002/87/EC.

   (c) funding of a borrower that passes the funding on to the ultimate investor for the acquisition of ownership, at issuance or thereafter, of an institution's capital instruments.

2. In order to be considered as indirect funding for the purposes of paragraph 1, the following conditions shall also be met, where applicable:

   (a) the investor is not included in any of the following:

      (i) the scope of accounting or prudential consolidation of the institution;

      (ii) [Note: Provision deleted]

      (iii) the scope of the supplementary supervision of the institution in accordance with provisions implementing Directive 2002/87/EC;

   (b) the external entity is not included in any of the following:

      (i) the scope of accounting or prudential consolidation of the institution;

      (ii) [Note: Provision left blank]

      (iii) the scope of the supplementary supervision of the institution in accordance with provisions implementing Directive 2002/87/EC.

3. When establishing whether the acquisition of ownership of a capital instrument involves direct or indirect funding in accordance with Article 8, the amount to be considered shall be net of any individually assessed impairment allowance made.

4. In order to avoid a qualification of direct or indirect funding in accordance with Article 8 and where the loan or other form of funding or guarantees is granted to any person who has a qualifying holding in the institution or who is deemed to be a related party as referred to in paragraph 3 of Article 8, the institution shall ensure on an on-going basis that it has not provided the loan or other form of funding or guarantees for the purpose of acquiring ownership directly or indirectly of capital instruments of the institution. Where the loan or other form of funding or guarantees is granted to other types of parties, the institution shall make this control on a best effort basis.

5. With regard to mutuals, co-operative societies and similar institutions, where there is an obligation under the law of the *United Kingdom* (or any part of it) or the statutes of the institution for a customer to acquire ownership of capital instruments in order to receive a loan, that loan shall not be considered to be a direct or indirect funding where all of the following conditions are met:

   (a) the amount of the subscription is considered immaterial by the *PRA*;

   (b) the purpose of the loan is not the acquisition of ownership of capital instruments of the institution providing the loan;

   (c) the subscription of one or more capital instruments of the institution is necessary in order for the beneficiary of the loan to become a member of the mutual, co-operative society or similar institution.

[Note: This rule corresponds to Article 9 of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

SUBSECTION 4 LIMITATIONS ON REDEMPTION OF CAPITAL INSTRUMENTS

ARTICLE 10 LIMITATIONS ON REDEMPTION OF CAPITAL INSTRUMENTS ISSUED BY MUTUALS, SAVINGS INSTITUTIONS, CO-OPERATIVES SOCIETIES AND SIMILAR INSTITUTIONS FOR THE PURPOSE OF ARTICLE 29(2)(B) AND ARTICLE 78(3) OF THE CRR

1. An institution may issue Common Equity Tier 1 instruments with a possibility to redeem only where such redemption is permitted under the applicable law of the *United Kingdom* (or any part of it), or of a *third country*.

2. The ability of the institution to limit the redemption under the provisions governing capital instruments as referred to in Article 29(2)(b) and 78(3) of the *CRR*, shall encompass both the right to defer the redemption and the right to limit the amount to be redeemed. The institution shall be able to defer the redemption or limit the amount to be redeemed for an unlimited period of time pursuant to paragraph 3.

3. The extent of the limitations on redemption included in the provisions governing the instruments shall be determined by the institution on the basis of the prudential situation of the institution at any time, having regard to in particular, but not limited to:

   (a) the overall financial, liquidity and solvency situation of the institution;

(b) the amount of Common Equity Tier 1 capital, Tier 1 and total capital compared to the total risk exposure amount calculated in accordance with the requirements laid down in point (a) of Article 92(1) of the *CRR*, the specific own funds requirements referred to in regulation 34 of the *Capital Requirement Regulations* and the combined buffer requirement as defined in regulation 2(1) of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014.

[Note: This rule corresponds to Article 10 of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

ARTICLE 11 LIMITATIONS ON REDEMPTION OF CAPITAL INSTRUMENTS ISSUED BY MUTUALS, SAVINGS INSTITUTIONS, CO-OPERATIVE SOCIETIES AND SIMILAR INSTITUTIONS FOR THE PURPOSES OF ARTICLE 29(2)(B) AND ARTICLE 78(3) OF THE CRR

1. [Note: Provision deleted]

2. Where the instruments are governed by the applicable law of the *United Kingdom* (or any part of it) or of a *third country* in the absence of contractual provisions, the institution shall ensure that the legislation allows the institution to limit redemption as referred to in paragraphs 1 to 3 of Article 10 in order for the instruments to qualify as Common Equity Tier 1.

3. Any decision to limit redemption shall be documented internally and reported in writing by the institution to the *PRA*, including the reasons why, in view of the criteria set out in paragraph 3, a redemption has been partially or fully refused or deferred.

4. Where several decisions to limit redemption are taking place in the same period of time, institutions may document these decisions in a single set of documents.

[Note: This rule corresponds to Article 11(2) to (4) of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

SECTION 2 PRUDENTIAL FILTERS

ARTICLE 12 THE CONCEPT OF GAIN ON SALE FOR THE PURPOSES OF ARTICLES 32(1)(A) OF THE CRR

1. The concept of gain on sale referred to in point (a) paragraph 1 of Article 32 of the *CRR* shall mean any recognised gain on sale for the institution that is recorded as an increase in any element of own funds and is associated with future margin income arising from a sale of securitised assets when they are removed from the institution's balance sheet in the context of a securitisation transaction.

2. The recognised gain on sale shall be determined as the difference between the following points (a) and (b) 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;

   (b) and the carrying amount of the securitised assets or of the part derecognised.

3. The recognised gain on sale which is associated with the future margin income, shall refer, in this context, to the expected future 'excess spread' as defined in Article 242 of the *CRR*.

[Note: This rule corresponds to Article 12 of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

…

Article 15c CALCULATION OF INDIRECT HOLDINGS FOR THE PURPOSES OF POINTS (F), (H) AND (I) OF ARTICLE 36(1) OF THE CRR

…

(b) with the permission of the ~~competent authority~~*PRA*, and subject to the institution demonstrating that the approach used in Article 15d is excessively burdensome, according to the structure-based approach described in Article 15e. The structure-based approach described in Article 15e shall not be used by institutions for calculating the amount of those deductions in relation to investments in intermediate entities referred to in Article 15a(1)(d) and (e).

…

Article 19 CAPITAL INSTRUMENTS OF UNDERTAKINGS EXCLUDED FROM THE SCOPE OF DIRECTIVE 2009/138/EC FOR THE PURPOSES OF ARTICLE 36(3) OF THE CRR

…

~~[Note: Articles 20 to 37 of Part 2 of Regulation (EU) No 241/2014 remain in that regulation]~~

CHAPTER 3 ADDITIONAL TIER 1 AND TIER 2 CAPITAL

SECTION 1 FORM AND NATURE OF INCENTIVES TO REDEEM

ARTICLE 20 FORM AND NATURE OF INCENTIVES TO REDEEM FOR THE PURPOSES OF ARTICLE 52(1)(G) AND 63(H) OF THE CRR

1. Incentives to redeem shall mean all features that provide, at the date of issuance, an expectation that the capital instrument is likely to be redeemed.

2. The incentives referred to in paragraph 1 shall include the following forms:

   (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;

(f) a marketing of the instrument in a way which suggests to investors that the instrument will be called.

[Note: This rule corresponds to Article 20 of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

SECTION 2 CONVERSION OR WRITE-DOWN OF THE PRINCIPAL AMOUNT

ARTICLE 21 NATURE IF THE WRITE-UP OF THE PRINCIPAL AMOUNT FOLLOWING A WRITE-DOWN FOR THE PURPOSES OF ARTICLE 52(1)(N) AND ARTICLE 52(2)(C)(II) OF THE CRR

1. The write-down of the principal amount shall 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.

2. For the write-down to be considered temporary, all of the following conditions shall be met:

(a) any distributions payable after a write-down shall be based on the reduced amount of the principal;

(b) write-ups shall be based on profits after the institution 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 shall be operated at the full discretion of the institution subject to the constraints arising from points (d) to (f) and there shall be no obligation for the institution to operate or accelerate a write-up under specific circumstances;

(d) a write-up shall be operated on a pro rata basis among similar Additional Tier 1 instruments that have been subject to a write- down;

(e) the maximum amount to be attributed to the sum of the write-up of the instrument together with the payment of coupons on the reduced amount of the principal shall be equal to the profit of the institution multiplied by the amount obtained by dividing the amount determined in point (1) by the amount determined in point (2):

(i) the sum of the nominal amount of all Additional Tier 1 instruments of the institution before write-down that have been subject to a write-down;

(ii) the total Tier 1 capital of the institution; and

(f) the sum of any write-up amounts and payments of coupons on the reduced amount of the principal shall be treated as a payment that results in a reduction of Common Equity Tier 1 and shall be subject, together with other distributions on Common Equity Tier 1 instruments, to the restrictions relating to the Maximum

Distributable Amount as referred to in provisions implementing Article 141(2) of the *CRD*.

3. For the purposes of point (e) of paragraph 2, the calculation shall be made at the moment when the write-up is operated.

[Note: This rule corresponds to Article 21 of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the PRA.]

ARTICLE 22 PROCEDURES AND TIMING FOR DETERMINING THAT A TRIGGER EVENT HAS OCCURRED FOR THE PURPOSES OF ARTICLE 52(1)(N) OF THE CRR

1. Where the institution has established that the Common Equity Tier 1 ratio has fallen below the level that activates conversion or write-down of the instrument at the level of application of the requirements provided in Title II of Part One of the *CRR*, the management body or any other relevant body of the institution shall without delay determine that a trigger event has occurred and there shall be an irrevocable obligation to write-down or convert the instrument.

2. The amount to be written-down or converted shall be determined as soon as possible and within a maximum period of one month from the time it is determined that the trigger event has occurred pursuant to paragraph 1.

3. [Note: Provision left blank]

4. Where an independent review of the amount to be written down or converted is required according to the provisions governing the Additional Tier 1 instrument, or where the *PRA* requires an independent review for the determination of the amount to be written down or converted, the management body or any other relevant body of the institution shall see that this is done immediately. That independent review shall be completed as soon as possible and shall not create impediments for the institution to write-down or convert the Additional Tier 1 instrument and to meet the requirements of paragraphs 2 and 3.

[Note: This rule corresponds to Article 22(1), (2) and (4) of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

SECTION 3 FEATURES OF INSTRUMENTS THAT COULD HINDER RECAPITALISATION

ARTICLE 23 FEATURES OF INSTRUMENTS THAT COULD HINDER RECAPITALISATION FOR THE PURPOSES OF ARTICLES 52(1)(O) OF THE CRR

1. Features that could hinder the recapitalisation of an institution shall include provisions that require the institution to compensate existing holders of capital instruments where a new capital instrument is issued.

[Note: This rule corresponds to Article 23 of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

SECTION 4 USE OF SPECIAL PURPOSES ENTITIES FOR INDIRECT ISSUANCE OF OWN FUNDS INSTRUMENTS

ARTICLE 24 USE OF SPECIAL PURPOSE ENTITIES FOR INDIRECT ISSUANCE OF OWN FUNDS INSTRUMENTS FOR THE PURPOSES OF ARTICLE 52(1)(P) AND ARTICLE 63(N) OF T H E CRR

1. Where the institution or an entity within the consolidation pursuant to Chapter 2 of Title II of Part One of the *CRR* issues a capital instrument that is subscribed by a special purpose entity, this capital instrument shall not, at the level of the institution or of the above-mentioned entity, receive recognition as capital of a higher quality than the lowest quality of the capital issued to the special purpose entity and the capital issued to third parties by the special purpose entity. That requirement shall apply at the consolidated, sub- consolidated and individual levels of application of prudential requirements.

2. The rights of the holders of the instruments issued by a special purpose entity shall be no more favourable than if the instrument was issued directly by the institution or an entity within the consolidation pursuant to Chapter 2 of Title II of Part One of the *CRR* .

[Note: This rule corresponds to Article 24 of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

ARTICLE 24A DISTRIBUTION ON OWN FUNDS INSTRUMENTS - BROAD MARKET INDICES

1. An interest rate index shall be deemed to be 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 institution in the same currency, where applicable;

   (c) it is calculated as an average rate by a body independent of the institutions that are contributing to the index ('panel');

   (d) each of the rates set under the index is based on quotes submitted by a panel of institutions active in that interbank market;

   (e) the composition of the panel referred to in point (c) ensures a sufficient level of representativeness of institutions present in the *United Kingdom*.

2. For the purposes of point (e) of paragraph 1, a sufficient level of representativeness shall be deemed to be achieved in either of the following cases:

   (a) where the panel referred to in point (c) of paragraph 1 includes at least 6 different contributors before any discount of quotes is applied for the purposes of setting the rate;

   (b) where all of the following conditions are met:

      (i) the panel referred to in point (c) of paragraph 1 includes at least 4 different contributors before any discount of quotes is applied for the purposes of setting the rate;

      (ii) the contributors to the panel referred to in point (c) of paragraph 1 represent at least 60% of the related market.

3. The related market referred to in point (b)(ii) of paragraph 2 shall be the sum of assets and liabilities of the effective contributors to the panel in the domestic currency divided by 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*.

4. A stock index shall be deemed to be a broad market index where it is appropriately diversified in accordance with Article 344 of the *CRR*.

[Note: This rule corresponds to Article 24a of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

CHAPTER IV GENERAL REQUIREMENTS

SECTION 1 INDIRECT HOLDINGS ARISING FROM INDEX HOLDINGS

ARTICLE 25 EXTENT OF CONSERVATISM REQUIRED IN ESTIMATES FOR CALCULATING EXPOSURES USED AS AN ALTERNATIVE TO THE UNDERLYING EXPOSURES FOR THE PURPOSES OF ARTICLE 76(2) OF T H E CRR

1. An estimate is sufficiently conservative when either of the following conditions is met:

   (a) where the investment mandate of the index specifies that an own funds instrument of a financial sector entity which is part of the index cannot exceed a maximum percentage of the index, the institution uses that percentage as an estimate for the value of the holdings that is deducted from its Common Equity Tier 1, Additional Tier 1 or Tier 2 items, as applicable in accordance with paragraph 2 of Article 17 of this Part or from Common Equity Tier 1 items in situations where the institution cannot determine the precise nature of the holding;

   (b) where the institution is unable to determine the maximum percentage referred to in point (a) and where the index, as evidenced by its investment mandate or other relevant information, includes own funds instruments of financial sector entities, the institution deducts the full amount of the index holdings from its Common Equity Tier 1, Additional Tier 1 or Tier 2 items, as applicable in accordance with paragraph 2 of Article 17 of this Part or from Common Equity Tier 1 items in situations where the institution cannot determine the precise nature of the holding.

2. For the purposes of paragraph 1, the following shall apply:

   (a) an indirect holding arising from an index holding comprises the proportion of the index invested in the Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments of financial sector entities included in the index;

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

[Note: This rule corresponds to Article 25 of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

ARTICLE 26 MEANING OF OPERATIONALLY BURDENSOME IN ARTICLE 76(3) OF THE CRR

1. For the purpose of Article 76(3) of the *CRR*, operationally burdensome shall mean situations under which look- through approaches to capital instruments holdings in financial sector entities on an ongoing basis are unjustified. In its assessment of the nature of operationally burdensome situations, the institution shall take into account the low materiality and short holding period of such positions. A holding period of short duration shall require the strong liquidity of the index to be evidenced by the institution.

2. For the purpose of paragraph 1, a position shall be deemed to be of low materiality where all of the following conditions are met:

   (a) the individual net exposure arising from index holdings measured before any look-through is performed does not exceed 2% of Common Equity Tier 1 items as calculated in point (a) of Article 46(1) of the *CRR*;

   (b) the aggregated net exposure arising from index holdings measured before any look-through is performed does not exceed 5% of Common Equity Tier 1 items as calculated in point (a) of Article 46(1) of the *CRR*;

   (c) the sum of the aggregated net exposure arising from index holdings measured before any look-through is performed and of any other holdings that shall be deducted pursuant to Article 36(1)(h) of the *CRR* does not exceed 10% of Common Equity Tier 1 items as calculated in point (a) of Article 46(1) of the *CRR*.

[Note: This rule corresponds to Article 26 of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

SECTION 2 SUPERVISORY PERMISSION FOR REDUCTION OF OWN FUNDS

ARTICLE 27 MEANING OF SUSTAINABLE FOR THE INCOME CAPACITY OF THE INSTITUTION FOR THE PURPOSES OF ARTICLES 78(1) AND 78(4)(D) OF THE CRR

1. Sustainable for the income capacity of the institution under point (a) of Article 78(1) and under point (d) of Article 78(4) of the *CRR* shall mean that the profitability of the institution, continues to be sound or does not see any negative change after the replacement of the instruments or the related share premium accounts referred to in Article 77(1) of the *CRR* with own funds instruments of equal or higher quality, at that date and for the foreseeable future. In this, the institution shall take into account its institution's profitability in stress situations.

[Note: This rule corresponds to Article 27 of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

ARTICLE 28 PROCESS REQUIREMENTS INCLUDING LIMITS AND PROCEDURES FOR AN APPLICATION BY AN INSTITUTION TO REDUCE OWN FUNDS PURSUANT TO ARTICLE 77 OF THE CRR

1. Redemptions, reductions and repurchases of own funds instruments shall not be announced to holders of the instruments before the institution has obtained the prior permission of the *PRA*.

2. Where the actions listed in Article 77(1) of the *CRR* are expected to take place with sufficient certainty, and once the prior permission of the *PRA* has been obtained, the institution shall deduct the corresponding amounts to be redeemed, reduced or repurchased or the amounts of the related share premium accounts to be reduced or distributed, as applicable, from corresponding elements of its own funds before the effective redemptions, reductions, repurchases or distributions occur. Sufficient certainty is deemed to exist in particular when the institution has publicly announced its intention to redeem, reduce or repurchase an own funds instrument.

3. In the case of a general prior permission referred to in the second subparagraph of Article 78(1) of the *CRR*, the predetermined amount for which the *PRA* has given its permission shall be deducted from the moment the authorisation is granted.

4. When applying for a general prior permission for actions listed in Article 77(1) of the *CRR*, institutions shall inform the *PRA* where the related own funds instruments are purchased for the purposes of being passed on to employees of the institution as part of their remuneration and deduct these instruments from own funds on a corresponding deduction approach for the time they are held by the institution. A deduction on a corresponding basis is no longer required, where the expenses related to any action according to this paragraph are already included in own funds as a result of an interim or a year-end financial report.

5. [Note: Provision left blank]

[Note: This rule corresponds to Article 28(1) to (4) of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

ARTICLE 29 SUBMISSION OF APPLICATION BY THE INSTITUTION TO REDUCE OWN FUNDS PURSUANT TO ARTICLE 77(1) OF THE CRR

1. An institution shall submit an application for prior permission, including general prior permission, to the *PRA* before taking an action referred to in Article 77(1) of the *CRR*.

[Note: This rule corresponds to Article 29(1) of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

ARTICLE 30 CONTENT OF THE APPLICATION TO BE SUBMITTED BY THE INSTITUTION FOR THE PURPOSES OF ARTICLE 77(1) OF THE CRR

1. The application referred to in Article 29 shall be accompanied by the following information:

   (a) a well-founded explanation of the rationale for performing any of the actions referred to in Article 77(1) of the *CRR*;

(b) whether the permission sought is based on point (a) or (b) of the first subparagraph of Article 78(1) of the *CRR* or whether it is a general prior permission pursuant to the second subparagraph of Article 78(1) of the *CRR*;

(c) where the institution seeks to call, redeem or repurchase Additional Tier 1 or Tier 2 instruments or related share premium accounts during the five years following their date of issuance pursuant to Article 78(4) of the *CRR*, how the conditions of that article are met;

(d) present and forward-looking information, that shall cover at least a three year period, on the amounts and percentages corresponding to the following requirements for own funds and eligible liabilities, including the level and composition of own funds before and after the performing of the action and the impact on regulatory requirements:

(i) the Common Equity Tier 1 capital requirement laid down in Article 92(1)(a) of the *CRR*, the Tier 1 capital requirement laid down in Article 92(1)(b) of the *CRR*, and the own funds requirement laid down in Article 92(1)(c) of the *CRR*;

(ii) the additional Common Equity Tier 1 capital, the additional Tier 1 capital, and the additional own funds that the institution is required to hold by the *PRA* pursuant to Regulation 34 of the *Capital Requirements Regulations*, where applicable;

(iii) the combined buffer requirement referred to in regulation 2(1) of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014;

(iv) the minimum *leverage ratio* requirement laid down in Chapter 3 of the Leverage Ratio – Capital Requirements and Buffers Part of the *PRA* Rulebook, where applicable;

(v) the *countercyclical leverage ratio buffer* laid down in Chapter 4 of the Leverage Ratio – Capital Requirements and Buffers Part of the *PRA* Rulebook, where applicable;

(vi) any additional leverage ratio buffer requirements implemented under sections 55M and 192C of *FSMA*, where applicable;

(vii) the risk-based requirement for own funds and eligible liabilities under Articles 92a(1)(a), or Article 92b of the *CRR*, where applicable, as well as the non-risk based requirement for own funds and eligible liabilities under Articles 92a(1)(b), or Article 92b of the *CRR*, where applicable;

(viii) the minimum requirement for own funds and eligible that the institution is required to hold by the *Bank of England* pursuant to directions made under sub-sections 3A(4) and (4B) of the Banking Act 2009, as applicable, calculated as the amount of own funds and eligible liabilities, and expressed as percentages of:

(1) the total risk exposure amount of the institution, calculated in accordance with Article 92(3) of the *CRR*; and

(2) the amount of own funds and eligible liabilities expressed as percentages of the *total exposure measure* of the relevant entity;

(e) present and forward-looking information on the level and composition of own funds and the level and composition of own funds and eligible liabilities held to ensure compliance, respectively, with the requirements referred to in point (d)(i) to (viii) above

before and after performing any of the actions listed in Article 77(1) of the *CRR*. The information shall cover at least a three year period;

(f) the institution's summary assessment on the impact of the action that the institution has planned to take in accordance with Article 77(1) of the *CRR*, and any such action that the institution additionally envisages to undertake within a three year period, on compliance with the requirements referred to in point (d)(i) to (viii) above;

(g) where the institution seeks to replace own funds instruments or the related share premium accounts pursuant to point (a) of Article 78(1) or point (d) of Article 78(4) of the *CRR*:

(i) information on the residual maturity of the replaced own funds instruments, if any, and the maturity of the own funds instruments replacing them;

(ii) the ranking in insolvency hierarchy of the replaced own funds instruments and of the own funds instruments replacing them;

(iii) the cost of the own funds instruments replacing the instruments or the shared premium accounts referred to in Article 77(1) of the *CRR*;

(iv) the planned timing of the issuance of the own funds instruments replacing the instruments or share premium accounts referred to in Article 77(1) of the *CRR*;

(v) the impact on the profitability of the institution of a replacement of a capital instrument as specified in pursuant to point (a) of Article 78(1) or point (d) of Article 78(4) of the *CRR*;

(h) an evaluation of the risks to which the institution is or might be exposed and whether the level of own funds and eligible liabilities ensures an appropriate coverage of such risks, including outcomes of stress tests on main risks evidencing potential losses;

(i) coverage in terms of own funds of the level and composition of any additional own funds that the institution is expected to hold by the *PRA*, in excess of the requirements set out in point (d)(i) to (viii) above, before and after performing any of the actions listed in Article 77(1) of the *CRR*, covering a three year period;

(j) any other information considered necessary by the *PRA* for evaluating the appropriateness of granting a permission in accordance with Article 78 of the *CRR*.

2. The *PRA* may waive the submission of some of the information listed in paragraph 1 where it is satisfied that this information is already available to it.

[Note: This is a permission created under sections 144G and 192XC of *FSMA* to which Part 8 of the *Capital Requirements Regulations* applies.]

3. [Note: Provision left blank]

[Note: This rule corresponds to Article 30(2) of Part 2 of Regulation (EU) No 241/2014 as it applied immediately before revocation by the *PRA*.]

ARTICLE 30A ADDITIONAL INFORMATION TO BE SUBMITTED WITH AN APPLICATION FOR A GENERAL PRIOR PERMISSION FOR ACTION LISTED IN ARTICLE 77(1) OF THE CRR

1. Where a general prior permission pursuant to the second subparagraph of Article 78(1) of the *CRR* for an action under Article 77(1)(a) of the *CRR* is sought, the application shall specify the amount of each relevant Common Equity Tier 1 issue subject to the request.

2. Where a general prior permission for an action under Article 77(1)(c) of the *CRR* is sought, the institution shall specify in the application:

(a) the amount of each relevant outstanding issue subject to the request; and

(b) the total carrying amount of outstanding instruments in each relevant tier of capital.

3. An application for a general prior permission for an action under Article 77(1)(a) and (c) of the *CRR* for market making purposes may include own funds instruments still to be issued, subject to specification of the information referred to in points (a) and (b) of paragraph 2, as applicable, to be provided to the *PRA* following the relevant issuance.

ARTICLE 30B INFORMATION TO BE SUBMITTED WITH AN APPLICATION FOR A RENEWAL OF A GENERAL PRIOR PERMISSION FOR ACTIONS LISTED IN ARTICLE 77(1) OF THE CRR

1. Before the expiry of a general prior permission granted pursuant to the second subparagraph of Article 78(1) of the *CRR*, an institution may submit an application for its renewal for a period of up to one additional year each time, provided that the institution does not request an increase in the predetermined amount set when the general prior permission was granted and does not change the rationale as referred to in point (a) of Article 30(1) when the general prior permission was initially requested.

2. When applying for the renewal of a general prior permission referred to in paragraph 1, the institution shall be exempted from the obligation to provide the information referred to in points (a) to (d), (f), (g) and (i) of Article 30(1).

ARTICLE 31 TIMING OF THE APPLICATION TO BE SUBMITTED BY THE INSTITUTION AND PROCESSING OF THE APPLICATION BY THE PRA FOR THE PURPOSES OF ARTICLES 77(1) OF THE CRR

1. For a prior permission, other than a general prior permission referred to in the second subparagraph of Article 78(1) of the *CRR*, the institution shall transmit a complete application and the information referred to in Articles 30 to the *PRA* at least three months before the date when one of the actions listed in Article 77(1) of the *CRR* will be announced to the holders of the instruments.

2. For a general prior permission referred to in the second subparagraph of Article 78(1) of the *CRR*, the institution shall transmit a complete application and the information referred to in Articles 30 and 30a to the *PRA* at least three months before the date when any of the actions listed in Article 77(1) of the *CRR* will be carried out.

3. Similarly, where a renewal of a general prior permission pursuant to the second subparagraph of Article 78(1) of the *CRR* and Article 30b is sought, the institution shall transmit the application and the information required under Articles 30, 30a and 30b to the *PRA* at least three months before the expiration of the period for which the general prior permission was granted.

4. The institution may seek permission from the *PRA* under exceptional circumstances to transmit the application referred to in paragraphs 1 to 3 within a time frame shorter than the periods set out in those paragraphs.

[Note: This is a permission created under sections 144G and 192XC of *FSMA* to which Part 8 of the *Capital Requirements Regulations* applies.]

ARTICLE 32 APPLICATIONS FOR REDEMPTIONS, REDUCTIONS AND REPURCHASES BY MUTUALS, CO-OPERATIVE SOCIETIES, SAVINGS INSTITUTIONS OR SIMILAR INSTITUTIONS FOR THE PURPOSES OF ARTICLES 77(1) OF THE CRR

1. With regard to the redemption of Common Equity Tier 1 instruments of mutuals, co-operative societies, savings institutions or similar institutions, the application referred to in Article 29(1) and (2) and the information referred to in Article 30(1) shall be submitted to the *PRA* at least three months before the date when any of the actions listed in Article 77 of the *CRR* will be carried out.

2. An institution may apply for a permission in advance to an action listed in Article 77(1) of the *CRR* for a certain predetermined amount to be redeemed, net of the amount of the subscription of new paid in Common Equity Tier 1 instruments during a period up to one year. That predetermined amount may go up to 2% of Common Equity Tier 1 capital, if the institution demonstrates to the *PRA* that this action will not pose a danger to the current or future solvency situation of the institution.

[Note: This is a permission created under sections 144G and 192XC of *FSMA* to which Part 8 of the *Capital Requirements Regulations* applies.]

[Note: This rule corresponds to Article 32 of Part 2 of Regulation (EU) No 241/2014 2014 as it applied immediately before revocation by the *PRA*.]

SECTION 3 TEMPORARY WAIVER FROM DEDUCTION FROM OWN FUNDS

ARTICLE 33 TEMPORARY WAIVER FROM DEDUCTION OF OWN FUNDS FOR THE PURPOSES OF ARTICLE 79(1) OF THE CRR

1. A temporary waiver shall be of a duration that does not exceed the timeframe envisaged under the financial assistance operation plan. That waiver shall not be granted for a period longer than 5 years.

2. If granted by the *PRA*, a temporary waiver shall apply only in relation to new holdings of own funds instruments in a financial sector entity subject to the financial assistance operation.

3. For the purposes of providing a temporary waiver for deduction from own funds, the *PRA* may deem the holdings referred to in Article 79(1) of the *CRR* to be held for the purposes of a financial assistance operation designed to reorganise and save a financial sector entity where the operation is carried out under a plan and approved by the *PRA*, and where the plan clearly states phases, timing and objectives and specifies the interaction between the holdings and the financial assistance operation.

[Note: This is a permission created under sections 144G and 192XC of *FSMA* to which Part 8 of the *Capital Requirements Regulations* applies.]

[Note: This rule corresponds to Article 33 of Part 2 of Regulation (EU) No 241/2014 2014 as it applied immediately before revocation by the *PRA*.]

CHAPTER 5 MINORITY INTEREST AND ADDITIONAL TIER 1 AND TIER 2 INSTRUMENTS ISSUED BY SUBSIDIARIES

ARTICLE 34 TYPE OF ASSETS THAT CAN RELATE TO THE OPERATION OF SPECIAL PURPOSE ENTITIES AND MEANING OF MINIMAL AND INSIGNIFICANT REGARDING QUALIFYING ADDITIONAL TIER 1 AND TIER 2 CAPITAL ISSUED BY SPECIAL PURPOSE ENTITIES FOR THE PURPOSES OF ARTICLE 83(1) OF THE CRR

1. The assets of a special purpose entity shall be considered to be minimal and insignificant where both the following conditions are met:

   (a) the assets of the special purpose entity which are not constituted by the investments in the own funds of the related subsidiary are limited to cash assets dedicated to payment of coupons and redemption of the own funds instruments that are due;

   (b) the amount of assets of the special purpose entity other than the ones mentioned in point (a) are not higher than 0.5% of the average total assets of the special purpose entity over the last three years.

2. For the purpose of point (b) of paragraph 1, the institution may apply for permission from the *PRA* to use a higher percentage provided that both of the following conditions are met:

   (a) the higher percentage is necessary to enable exclusively the coverage of the running costs of the special purpose entity;

   (a) the corresponding nominal amount does not exceed £440,000.

[Note: This is a permission created under sections 144G and 192XC of *FSMA* to which Part 8 of the *Capital Requirements Regulations* applies.]

[Note: This rule corresponds to Article 34 of Part 2 of Regulation (EU) No 241/2014 2014 as it applied immediately before revocation by the *PRA*.]

ARTICLE 34A MINORITY INTERESTS INCLUDED IN CONSOLIDATED COMMON EQUITY TIER 1 CAPITAL

1. For the purpose of specifying the sub-consolidation calculation required in accordance with Articles 84(2), 85(2) and 87(2) of the *CRR*, the qualifying minority interests of a subsidiary referred to in Article 81 of the *CRR* that is itself a parent undertaking of an entity referred to in Article 81(1) of the *CRR* shall be calculated as described in paragraphs 2 to 4 of this Article.

2. Where the *PRA* has exercised the discretion referred to in Article 9(1) of the *CRR*, the calculation to be undertaken in accordance with paragraphs 3 and 4 of this Article shall be made on the basis of the situation of the institution as if the discretion had not been exercised.

3. Where the subsidiary complies with the provisions of Part Three of the *CRR* on the basis of its consolidated situation the following treatment shall apply:

   (a) the Common Equity Tier 1 capital of that subsidiary on its consolidated basis referred to in point (a) of Article 84(1) of the *CRR* shall include the eligible minority interests

that arise from its own subsidiaries calculated pursuant to Article 84 of the *CRR* and the provisions laid down in this Part;

(b) for the purpose of the sub-consolidation calculation, the amount of Common Equity Tier 1 capital required according to point (i) of Article 84(1)(a) of the *CRR* shall be the amount required to meet the Common Equity Tier 1 requirements of that subsidiary at the level of its consolidated situation calculated in accordance with point (a) of Article 84(1) of the *CRR*. The specific own funds requirements referred to shall be the ones set by the competent authority of the subsidiary under regulation 34 of the *Capital Requirements Regulations*;

(c) the amount of consolidated Common Equity Tier 1 capital required, according to point (ii) of Article 84(1)(a) of the *CRR*, shall be the contribution of the subsidiary on the basis of its consolidated situation to the Common Equity Tier 1 own funds requirements of the institution for which the eligible minority interests are calculated on a consolidated basis. For the purpose of calculating the contribution, all intra-group transactions between undertakings included in the prudential scope of consolidation of the institution shall be eliminated.

4. When performing the consolidation referred to in point (c) of paragraph 3, the subsidiary shall not include capital requirements arising from its subsidiaries which are not included in the prudential scope of consolidation of the institution for which the eligible minority interests are calculated.

5. Where the waiver referred to in Article 84(3) of the *CRR* applies to a subsidiary, any parent undertaking of the subsidiary benefiting from the waiver may include in its Common Equity Tier 1 capital minority interests arising from subsidiaries of the subsidiary itself benefiting from the waiver, provided that the calculations referred to in Article 84(1) of the *CRR* and in this Part have been made for each of those subsidiaries. The amount of Common Equity Tier 1 included in the Own Funds at the level of the parent undertaking shall not exceed the amount that would be included if no waiver had been granted to the subsidiary.

6. Where a parent institution has an intermediate subsidiary which is not referred to in Article 81(1) of the *CRR* and where this intermediate subsidiary itself has subsidiaries which are referred to in Article 81(1) of the *CRR*, the parent institution may include in its Common Equity Tier 1 capital the amount of minority interest arising from those subsidiaries calculated according to Article 84(1) of the *CRR*. The parent institution cannot, however, include in its Common Equity Tier 1 capital any minority interests arising from an intermediate subsidiary which is not referred to in Article 81(1) of the *CRR*.

7. The methodology set out in paragraphs 2, 3 and 4 shall also apply *mutatis mutandis* for the calculation of the amount of qualifying Tier 1 instruments under Article 85 of the *CRR* and the amount of qualifying own funds under Article 87 of the *CRR*, where references to Common Equity Tier 1 shall be read as references to Tier 1 or own funds.

[Note: This rule corresponds to Article 34A of Part 2 of Regulation (EU) No 241/2014 2014 as it applied immediately before revocation by the *PRA*.]