

Bank of England PRA

The PRA's approach to waivers and permissions under Own Funds (CRR) Part

Statement of policy

September 2024

Draft for consultation



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This proposed statement of policy (SoP) relies on a SoP proposed by a separate consultation ([CP3/24](#)) and may change as a result of that consultation.

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1: Introduction

1.1 This statement of policy (SoP) sets out the Prudential Regulation Authority's (PRA) approach to considering applications from PRA authorised persons not to apply rules, or to apply them with modifications, under section 138BA of the Financial Services and Markets Act 2000 (FSMA). The SoP relates to rules in the Own Funds (CRR) Part of the PRA rulebook.

1.2 This SoP is relevant to banks, building societies, PRA-designated investment firms and PRA-approved, or PRA-designated, financial or mixed financial holding companies. It is not relevant to credit unions or third-country branches.

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2: General matters

2.1 In determining whether or not to grant a regulatory permission, the PRA would be exercising its powers under section 138BA of FSMA. This allows the PRA to disapply, or modify the application of, PRA rules upon the application or with the consent of a firm. The PRA may give such permission subject to conditions. It also has power to revoke or vary a permission which has been issued.

2.2 The exercise of the PRA's permission power is discretionary. In exercising its discretion, the PRA will consider whether the conditions set out in relation to each of the permissions in PRA rules are satisfied, as well as the additional conditions relating to certain permissions which are set out in this SoP.

2.3 As set out in the (draft) SoP – The Prudential Regulation Authority's approach to rule permissions and waivers, if a firm applies for a rule permission under s138BA where the PRA has not set out specific criteria, the PRA will consider, and place significant weight upon, the statutory criteria that apply to the PRA's power under s138A, ie whether:

- compliance by a firm with the unmodified rules would be unduly burdensome or would not achieve the purpose for which the rules were made; and
- the direction would not adversely affect the advancement of any of the PRA's objectives.¹

2.4 Although s144G and s192XC of FSMA do not set out any additional general considerations for the exercise of the permission power, the PRA will consider whether granting a permission in any particular case would be consistent with advancing its statutory objectives as set out in Part 1A, chapter 2 of FSMA. The PRA will also consider whether granting the permission in a particular case may undermine any of the purposes for which the rule was made, including the matters set out in s144C of FSMA ('Matters to be considered when making CRR rules').

¹ These criteria should be interpreted in the same way as the criteria in s138A, including reading the reference to the PRA's objectives in accordance with s2F of FSMA.

3: PRA's approach to waivers and permissions under Own Funds (CRR) Part

Right to withdraw

3.1 A firm which has applied for a waiver or permission may withdraw that application by notifying the PRA in writing at any time before it reaches a decision on the application.

Factors considered in the PRA's decision

3.2 This SoP aims to increase transparency by indicating that the PRA would usually envisage using s138BA of FSMA to grant waivers and permissions only in circumstances similar to those in which the PRA could currently grant waivers and permissions under the Capital Requirements Regulation. The PRA expects to grant permissions where the relevant conditions under each of the listed Articles in the Appendices are met.

Ongoing expectation to notify the PRA of any material changes

3.3 Unless otherwise stated, the conditions set out in PRA rules and in this SoP should be thought of as continuing conditions which firms need to satisfy on an ongoing basis. After the PRA has granted a permission, it expects that the firm promptly notifies it if it does not, or expects that it soon will not, continue to meet any of those conditions for as long as the permission remains effective.

3.4 The PRA further expects that firms promptly notify it of any material change in circumstances, including anticipated changes in circumstances that might affect the PRA's continuing assessment of this permission. This includes changes to the factors reported by firms set out in this SoP that the PRA will consider when assessing permission applications.

3.5 These expectations are an elaboration of firms' obligations to inform the PRA of relevant information under the PRA Fundamental Rules.

3.6 The PRA may decide not to revoke or modify a permission that it has granted when it receives the notifications set out in paragraphs 3.3 to 3.5 above.

Appendices

1 ARTICLE 26 (3): COMMON EQUITY TIER 1 ITEMS

2 ARTICLE 41(1)(b): DEDUCTION OF DEFINED BENEFIT PENSION FUND ASSETS

3 ARTICLE 73(1): DISTRIBUTIONS ON INSTRUMENTS

4 ARTICLE 76(2): INDEX HOLDINGS OF CAPITAL INSTRUMENTS

5 ARTICLE 77/78: CONDITIONS FOR REDUCING OWN FUNDS AND ELIGIBLE LIABILITIES

6 ARTICLE 79(1): TEMPORARY WAIVER FROM DEDUCTION FROM OWN FUNDS

7 ARTICLE 84(5): MINORITY INTERESTS INCLUDED IN CONSOLIDATED COMMON EQUITY TIER 1 CAPITAL

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Appendix 1

Own Funds (CRR) Part: ARTICLE 26(3) COMMON EQUITY TIER 1 ITEMS

When considering whether to grant permission in respect of Article 26(3) to classify issuances of capital instruments as Common Equity Tier 1 instruments, the PRA will take into account whether the relevant capital instrument meets the conditions set out in Article 28 or Article 29 as applicable.

Appendix 2

Own Funds (CRR) Part: ARTICLE 41(1)(b) DEDUCTION OF DEFINED BENEFIT PENSION FUND ASSETS

When considering whether to grant permission in respect of Article 41(1)(b) to reduce the amount of defined benefit pension fund assets that are deducted, the PRA will take into account whether the conditions set out in Article 15 of the Rules Supplementing the CRR with regards to Own Funds Requirements (previously Regulation (EU) No 241/2014) in the Own Funds (CRR) Part of the PRA Rulebook are met.

Appendix 3

Own Funds (CRR) Part: ARTICLE 73(1) DISTRIBUTIONS ON INSTRUMENTS

When considering whether to grant permission in respect of Article 73(1) to classify as own funds instruments any capital instruments for which an institution has sole discretion to decide to pay distributions in a form other than cash or own funds instruments, the PRA will take into account whether the following conditions are met:

- (a) the ability of the institution to cancel payments under the instrument would not be adversely affected by the discretion referred to in paragraph 1 of Article 73, or by the form in which distributions could be made;
- (b) the ability of the capital instrument or of the liability to absorb losses would not be adversely affected by the discretion referred to in paragraph 1 of Article 73, or by the form in which distributions could be made;
- (c) the quality of the capital instrument or liability would not otherwise be reduced by the discretion referred to in paragraph 1 of Article 73, or by the form in which distributions could be made.

Appendix 4

Own Funds (CRR) Part: ARTICLE 76 (2) INDEX HOLDINGS OF CAPITAL INSTRUMENTS

When considering whether to grant permission in respect of Article 76(2) for an institution to use a conservative estimate of the underlying exposure of the institution to instruments included in indices, the PRA will take into account whether the institution has demonstrated to the PRA's satisfaction that it would be operationally burdensome for the institution to

monitor its underlying exposure to the items referred to in one or more of the points in Article 76(2), as applicable.

Appendix 5

Own Funds (CRR) Part: ARTICLE 77 CONDITIONS FOR REDUCING OWN FUNDS AND ELIGIBLE LIABILITIES

1. When considering whether to grant permission in respect of Article 77 to in any way reduce own funds instruments, or to reduce, distribute or reclassify as another own funds item the share premium accounts related to own funds instruments, the PRA will take into account whether either of the following conditions are met:

(a) before or at the same time as any of the actions referred to in Article 77, the institution replaces the instruments or the related share premium accounts referred to in Article 77 with own funds instruments of equal or higher quality at terms that are sustainable for the income capacity of the institution;

(b) the institution has demonstrated to the satisfaction of the PRA that the own funds and eligible liabilities of the institution would, following the action referred to in Article 77, exceed the requirements to which it is subject by a margin that the PRA considers necessary.

For the purposes of paragraph (a), 'sustainable for the income capacity of the institution' means that the profitability of the institution continues to be sound or is not reduced after the replacement of the instruments or the related share premium accounts with own funds instruments of equal or higher quality, at that date and for the foreseeable future. The PRA expects the institution to take into account its profitability in stress situations.

2. Where an institution provides sufficient safeguards as to its capacity to operate with own funds in excess of the requirements to which it is subject, the PRA may grant that institution a general prior permission to take any of the actions set out in Article 77, subject to criteria that ensure that any such future action will be in accordance with the conditions set out in Article 77.

That general prior permission is expected to be granted only for a specified period, which will not exceed one year, after which it may be renewed. The general prior permission is expected to be granted for a certain predetermined amount, which will be set by the PRA. In the case of Common Equity Tier 1 instruments, that predetermined amount will not exceed 3% of the relevant issue, and will not exceed 10% of the amount by which Common Equity Tier 1 capital exceeds the sum of the Common Equity Tier 1 capital requirements by a margin that the PRA considers necessary. In the case of Additional Tier 1 or Tier 2 instruments, that predetermined amount will not exceed 10% of the relevant issue and shall not exceed 3% of the total amount of outstanding Additional Tier 1 or Tier 2 instruments, as applicable.

The PRA expects to withdraw general prior permission where an institution breaches any of the criteria provided for the purposes of that permission.

3. When assessing the sustainability of the replacement instruments for the income capacity of the institution referred to in point 1(a), the PRA will consider the extent to which those

replacement capital instruments would be more costly for the institution than those capital instruments or share premium accounts they would replace.

4. Where an institution takes an action referred to in point 1 (a) and the refusal of redemption of Common Equity Tier 1 instruments referred to in Article 27(1) of the Own Funds (CRR) Part is prohibited by applicable national law of the United Kingdom, or any part of it, or of a third country, the PRA expects to waive the conditions set out in paragraphs 1, but may require the institution to limit the redemption of such instruments on an appropriate basis (as set out in Article 10 and Article 11 of the Rules Supplementing the CRR with regards to Own Funds Requirements (previously Regulation (EU) No 241/2014) in the Own Funds (CRR) Part).

5. When considering whether to permit institutions to call, redeem, repay or repurchase Additional Tier 1 or Tier 2 instruments or related share premium accounts during the five years following their date of issuance, the PRA will take into account whether the conditions set out in paragraph 1 and one of the following conditions are met:

(a) there is a change in the regulatory classification of those instruments that would be likely to result in their exclusion from own funds or reclassification as own funds of lower quality, and both the following conditions are met:

(i) the PRA considers such a change to be sufficiently certain;

(ii) the institution demonstrates to the satisfaction of the PRA that the regulatory reclassification of those instruments was not reasonably foreseeable at the time of their issuance;

(b) there is a change in the applicable tax treatment of those instruments which the institution demonstrates to the satisfaction of the PRA is material and was not reasonably foreseeable at the time of their issuance;

(c) the instruments and related share premium accounts are grandfathered under Article 494b;

(d) before or at the same time as the action referred to in Article 77(1), the institution replaces the instruments or related share premium accounts referred to in Article 77(1) with own funds instruments of equal or higher quality at terms that are sustainable for the income capacity of the institution and the PRA has permitted that action on the basis of the determination that it would be beneficial from a prudential point of view;

(e) the Additional Tier 1 or Tier 2 instruments are repurchased for market making purposes;

(f) in exceptional circumstances, where none of the conditions in paragraphs (a) – (e) are met, but the PRA considers that the repurchase of Additional Tier 1 or Tier 2 instruments would materially enhance the safety and soundness of the firm.

Appendix 6

Own Funds (CRR) Part: ARTICLE 79(1): TEMPORARY WAIVER FROM DEDUCTION FROM OWN FUNDS

When considering whether to grant permission in respect of Article 79(1) to temporarily waive a deduction from own funds, the PRA will take into account whether the conditions set out in Article 33 of the Rules Supplementing the CRR with regards to Own Funds Requirements (previously Regulation (EU) No 241/2014) in the Own Funds (CRR) Part of the PRA Rulebook are met.

Appendix 7

Own Funds (CRR) Part: ARTICLE 84(5) MINORITY INTERESTS INCLUDED IN CONSOLIDATED COMMON EQUITY TIER 1 CAPITAL

When considering whether to grant permission to a parent financial holding company in respect of Article 84(5) to not subtract from its consolidated Common Equity Tier 1 capital the amount of minority interests of a subsidiary, the PRA will consider whether the following conditions are met:

- (a) its principal activity is to acquire holdings;
- (b) it is subject to prudential supervision on a consolidated basis;
- (c) it consolidates a subsidiary institution in which it has only a minority holding and which is a subsidiary because of section 1162 of the Companies Act 2006;
- (d) more than 90 % of the consolidated required Common Equity Tier 1 capital arises from the subsidiary institution referred to in point c) calculated on a sub-consolidated basis.

Where, after 28 June 2013, a parent financial holding company that meets the conditions laid down above becomes a parent mixed financial holding company, the PRA expects to grant the permission referred to above to that parent mixed financial holding company provided that it meets conditions (a) to (d) above.