BANK OF ENGLAND
PRUDENTIAL REGULATION AUTHORITY

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Dear CFO

Action request: Remediation of prudential treatment of legacy instruments before Capital Requirements Regulation I (CRR I) transition period ends

In light of the European Banking Authority (EBA) Opinion[1] published on Wednesday 21 October 2020 on the prudential treatment of legacy instruments (EBA/Op/2020/17), we would like to communicate our position and request that you take actions to address issues arising from the planned treatment of your firm's affected legacy instruments.

The EBA Opinion highlights the risks from certain features in legacy instruments to the eligibility of other capital and eligible liabilities instruments, and advises firms to take appropriate remedial actions before the CRR I transitional period comes to an end on Friday 31 December 2021.

The PRA shares the concerns raised by the EBA on the two main issues, namely subordination provisions and flexibility of distribution payments, creating risks to the eligibility of firms' own funds and eligible liabilities instruments. As explained in Supervisory Statement 7/13,[2] the PRA expects firms to avoid complex features and capital structures that may complicate prudential assessment and may also undermine capital instruments' loss-absorbing properties and CRR compliance. The PRA notes that firms are responsible for compliance with applicable regulations, such as the CRR and binding technical standards, taking into account relevant guidance.

The PRA also refers firms to the Bank of England's minimum requirement for own funds and eligible liabilities (MREL) Statement of Policy (SoP).[3] Paragraph 5.10 of the MREL SoP sets out the Bank's view that firms should consider whether having non-Common Equity Tier 1 (CET1) own funds instruments that do not meet the relevant eligibility criteria for MREL resources could create difficulties for resolution. The Bank may consider the challenges to resolvability presented by such instruments as part of assessing firms' resolvability.

In light of this established policy, the PRA expects affected firms to undertake a risk-based approach and assess appropriate remedial actions before the end of the CRR I transition period. A firm's choice of remedial action may depend on a number of factors, including call options, governing law, issuing entity, and market conditions. Firms are requested to share an action plan with their usual supervisory contact by Wednesday 31 March 2021. If a firm intends to keep affected legacy instruments as non-regulatory

1 https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Opinions/2020/934160/EBA-Op-2020-17%20Opinion%20on%20legacy%20instruments.pdf.
2 December 2013: https://www.bankofengland.co.uk/prudential-regulation/publication/2013/crdiv-and-capital-ss.
3 June 2018: https://www.bankofengland.co.uk/paper/2018/boes-approach-to-setting-mrel-2018.

capital, and non-eligible liability instruments beyond the end of the CRR I transition period, the action plan should include a reasoned analysis of any prudential risks, including concerns for resolvability or insolvency, and potential actions to mitigate those risks.

Yours faithfully

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