

Supervisory Statement | SS15/13

Groups

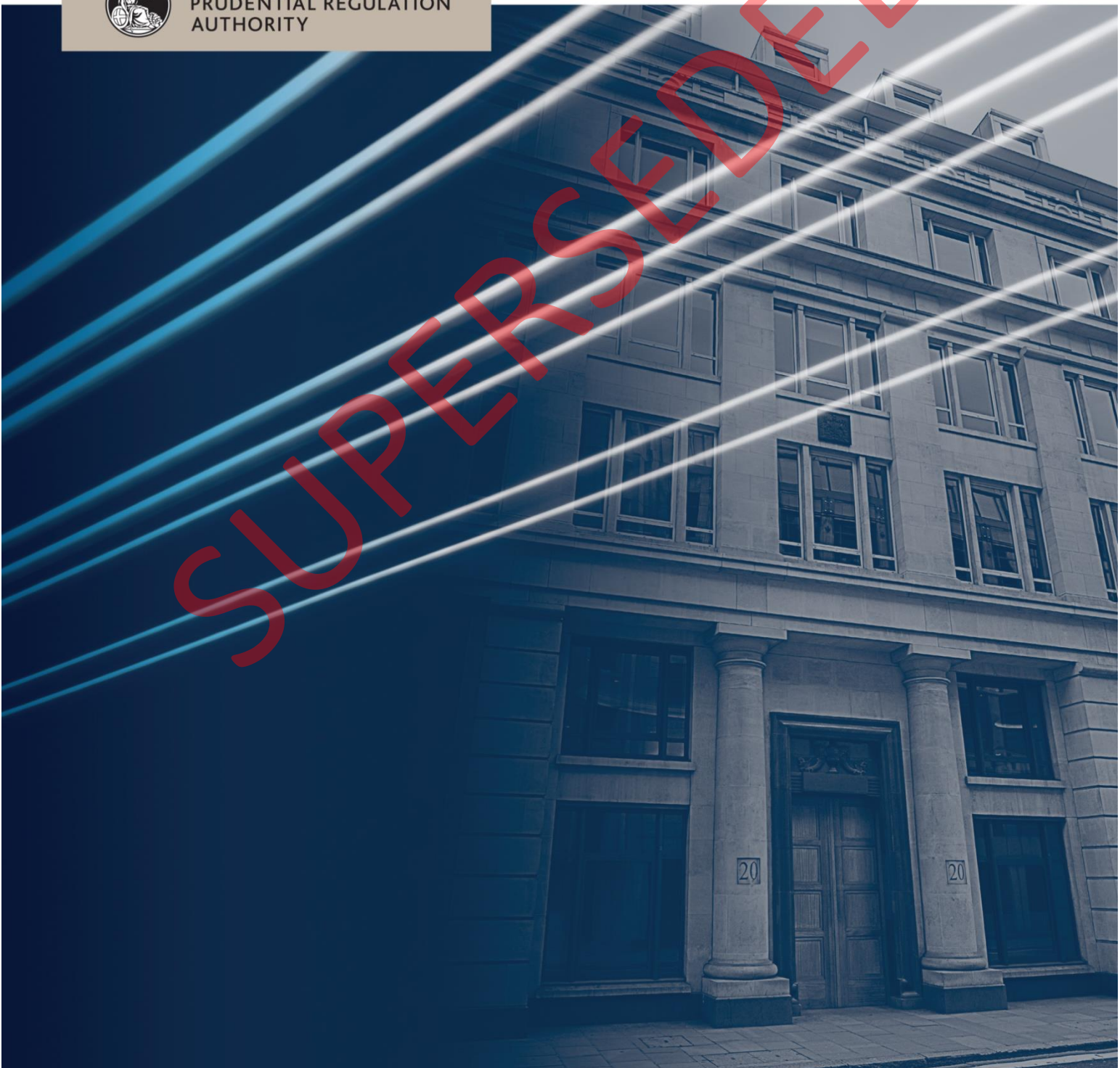
December 2013

(Updated July 2016)



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

SUPERSEDED



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1 Introduction

Update: On 7 July 2016, this supervisory statement (SS) was updated following publication of Policy Statement (PS) 20/16 'The implementation of ring-fencing: prudential requirements, intragroup arrangements and use of financial market infrastructures' which included final ring-fencing rules and Supervisory Statement 8/16 'Ring-fenced bodies (RFBs)'. Specifically, paragraph 1.3 has been updated to take into account SS8/16 and paragraph 2.2A has been added to set out expectations of the PRA's approach to applications by an RFB, or any other person that is a member of a group containing an RFB, for permission to use individual consolidation.

1.1 This supervisory statement is aimed at firms to which CRD IV applies at a consolidated level and who are part of a group.

1.2 This statement sets out the Prudential Regulation Authority's (PRA's) expectations about applications relating to:

- (a) its approach to consolidation, in particular individual consolidation (CRR Article 9) and the method of consolidation for entities falling within CRR Article 18(5); and
- (b) excluding certain entities from consolidation (CRR Article 19(2)).

1.3 This statement should be read in conjunction with the CRR articles listed, the requirements in the Groups Part of the PRA Rulebook and the high-level expectations outlined in The PRA's approach to banking supervision.¹ For RFBs, as defined in the Financial Services and Markets Act (FSMA), section 142A, or any other PRA-authorized person that is a member of a group containing an RFB, this statement should be read alongside the PRA's Supervisory Statement 8/16 'Ring-fenced bodies (RFBs)'.²

2 Approach to consolidation

Application process

2.1 Where a parent institution wishes to apply for individual consolidation, it will be expected to make a formal application to the PRA. The PRA expects the application to demonstrate how the conditions set out in CRR Article 9 and 396(2) are met.

2.2 The PRA will assess individual consolidation applications against CRR Article 9 and 396(2) on a case by case basis. Where the conditions in CRR Article 9 and 396(2) are met, the PRA will assess whether it is still appropriate to permit the treatment, if doing so risks conflict with its statutory objectives. The PRA will apply a high level of scrutiny to applications under CRR Article 9 as per the PRA's previous solo consolidation regime.

2.2A An RFB, or any other PRA-authorized person that is a member of a group containing an RFB, should note that the PRA will assess whether it remains appropriate to permit the treatment where the conditions set out in CRR Article 9 and 396(2) are met, including an assessment of the impact of the proposed treatment on the ability of the RFB and any other

1 www.bankofengland.co.uk/publications/Pages/other/prasupervisoryapproach.aspx.
2 PRA Supervisory Statement 8/16 'Ring-fenced bodies', July 2016, available at:
www.bankofengland.co.uk/prasupervisory/Pages/publications/ss2016/ss816.aspx.

members of its group to fulfil their ring-fencing obligations, and on the PRA's general safety and soundness objective in relation to ring-fencing.¹

2.3 Where a parent institution does not wish to fully consolidate its undertakings subject to CRR Article 18(5), it will be expected to make a formal application to the PRA. The application should seek to demonstrate how fully consolidating those undertakings is disproportionate to the risk carried by the firm.

Application of criteria

2.4 CRR Article 9(2) requires parent institutions to demonstrate fully to the PRA, as competent authority, that there are no material practical or legal impediments to the prompt transfer of own funds or repayment of liabilities when due by the subsidiary to its parent undertaking.

2.5 When making this assessment, the PRA will consider whether any minority interest may represent an impediment of any kind to the prompt transfer of own funds or repayment of liabilities from subsidiary undertaking to parent. The PRA expects that the parent institution should demonstrate that any minority interest in a subsidiary institution will not result in the potential blocking or delay of prompt transfer of own funds or repayment of liabilities.

2.6 It is possible for a firm to meet the condition in CRR Article 7(1)(d) but not meet the condition in CRR Article 9(2).

2.7 The PRA will consider the non-exhaustive list below when determining whether the conditions in CRR Article 9(2) are met:

- (a) the speed with which funds can be transferred or liabilities repaid to the firm and the simplicity of the method for the transfer or repayment;
- (b) whether there are any interests other than those of the firm in the subsidiary undertaking and what impact those other interests may have on the firm's control over the subsidiary undertaking and on the ability of the firm to require a transfer of funds or repayment of liabilities. As part of the PRA's overall assessment, it would consider one of the indicators to achieving prompt transfer as being ownership of 75% or more of the subsidiary undertaking;²
- (c) whether the prompt transfer of funds or repayment of liabilities to the firm might harm the reputation of the firm or its subsidiary undertakings;
- (d) whether there are any tax disadvantages for the firm or the subsidiary undertaking as a result of the transfer of funds or repayment of liabilities;
- (e) whether there are any exchange controls that may have an impact on the transfer of funds or repayment of liabilities;
- (f) whether there are assets in the subsidiary undertaking available either to be transferred or liquidated for the purposes of the transfer of funds or repayment of liabilities;
- (g) whether any regulatory requirements affect the ability of the subsidiary undertaking to transfer funds or repay liabilities promptly;

¹ See section 2B of FSMA.

² 75% or more shareholders can pass a special resolution.

- (h) whether the purpose of the subsidiary undertaking prejudices the prompt transfer of funds or repayment of liabilities;
- (i) whether the legal structure of the subsidiary undertaking prejudices the prompt transfer of funds or repayment of liabilities;
- (j) whether the contractual relationships of the subsidiary undertaking with the firm and other third parties prejudices the prompt transfer of funds or repayment of liabilities;
- (k) whether past and proposed flows of funds between the subsidiary undertaking and the firm demonstrate the ability to make prompt transfer of funds or repayment of liabilities; and
- (l) whether the degree of solo consolidation by the firm undermines the PRA's ability to assess the soundness of the firm as a legal entity.

3 CRR Article 19(2) — entities excluded from the scope of prudential consolidation

Application process

3.1 Where a firm wishes to exclude entities from the scope of prudential consolidation, it will be expected to make a formal application to the PRA. This application should seek to articulate how one of the conditions set out in CRR Article 19(2) (a), (b) or (c) is met.

3.2 The PRA will assess applications to exclude entities from the scope of prudential consolidation under CRR Article 19(2) on a case by case basis. The PRA will only grant this treatment with respect to undertakings where one of the conditions in CRR Article 19(2) is met. Even where a CRR Article 19(2) condition is met, the PRA will make its own judgment whether to permit this treatment.

Application of criteria

3.3 CRR Article 19(2) allows the consolidating supervisor to decide that an institution, financial institution or ancillary services undertaking, which is a subsidiary or in which a participation is held, need not be included in the consolidation in the following cases:

- (a) where the undertaking concerned is situated in a third country where there are legal impediments to the transfer of necessary information; or
- (b) where the undertaking concerned is of negligible interest only with respect to the objectives of monitoring credit institutions.

3.4 If several undertakings meet the criterion in (b) above, and are collectively of non-negligible interest with respect of the specified objectives, the PRA may not agree to exclude them all from the consolidation.

3.5 The PRA may ask a firm to provide information about the undertakings excluded from consolidation.