

**PRA RULEBOOK: CRR FIRMS: DEFINITION OF CAPITAL AMENDMENT INSTRUMENT
2020**

Powers exercised

- A. The PRA makes this instrument also 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); and
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Pre-conditions to making

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

PRA Rulebook: CRR Firms: Definition of Capital Instrument 2020

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

Commencement of this instrument

- E. This instrument comes into force on 1 April 2020.

Citation

- F. This instrument may be cited as PRA Rulebook: CRR Firms: Definition of Capital Instrument 2020.

By order of the Prudential Regulation Committee

24 February 2020

Annex

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

Part

DEFINITION OF CAPITAL

1 APPLICATION AND DEFINITIONS

...

1.2 In this Part the following definitions shall apply:

...

Side agreement means any document containing an agreement or other arrangement, including a proposed agreement or other arrangement, related to the capital instrument (whether or not explicitly referred to in the instrument) which could affect the assessment of compliance of the instrument with Part Two of CRR.

...

2 HOLDINGS OF OWN FUNDS INSTRUMENTS ISSUED BY FINANCIAL SECTOR ENTITIES INCLUDED IN THE SCOPE OF CONSOLIDATED SUPERVISION

2.1 For the purposes of calculating *own funds* on an individual basis and a *sub-consolidated basis*, *firms* subject to supervision on a *consolidated basis* must deduct at least the relevant percentage of holdings of *own funds instruments* issued by *financial sector entities* included in the scope of consolidated supervision in accordance with Part Two of the *CRR*, except where the exception in 2.3 or 2.7 applies.

2.2 For the purposes of 2.1 the relevant percentage is as follows:

(1) ~~50% for the period from 1 January 2014 to 31 December 2014;~~

(2) ~~60% for the period from 1 January 2015 to 31 December 2015;~~

(3) ~~70% for the period from 1 January 2016 to 31 December 2016;~~

(4) ~~80% for the period from 1 January 2017 to 31 December 2017;~~

(5) ~~90% for the period from 1 January 2018 to 31 December 2018; and~~

(6) ~~100% for the period after 31 December 2018. [Deleted.]~~

...

4 CONNECTED FUNDING OF A CAPITAL NATURE

...

- 4.5 A firm must report to the *PRA* all connected funding of a capital nature at least ~~30 days~~ one month in advance of entry into the relevant funding transaction and identify each relevant transaction with sufficient detail to allow the *PRA* to evaluate it.

...

- 4.11 For the purposes of 4.9(2), a person is an associate of a *firm* if it is:

...

- (2) an appointed representative (in the sense of section 39 of *FSMA*) or tied agent (as described in Article 4(1)(~~25~~ 29) of MiFID) of the *firm* or a member of the *firm's* group; or

...

5 CONNECTED TRANSACTIONS [DELETED]

- 5.1 ~~In determining whether an item of capital qualifies as a *Common Equity Tier 1 item*, an *additional Tier 1 item* or a *Tier 2 item* a firm must take into account any connected transaction which, when taken together with the item of capital, would cause it not to display the characteristics of a *Common Equity Tier 1 item*, an *Additional Tier 1 item* or a *Tier 2 item*. [Deleted]~~

- 5.2 ~~A firm must report to the *PRA* all connected transactions described in 5.1 at least 30 days in advance of entry into the relevant transaction and identify each relevant transaction with sufficient detail to allow the *PRA* to evaluate it. [Deleted]~~

5A SIDE AGREEMENTS

- 5A.1 ~~A firm must send to the *PRA* any *side agreement* not previously sent to the *PRA* and must do so at least one month in advance of entry into the *side agreement* together with sufficiently detailed information to allow the *PRA* to evaluate it.~~

...

7 NOTIFICATION REGIME – ISSUANCE [DELETED]

- 7.1 ~~A firm must notify the *PRA* in writing of its intention, or the intention of another member of its *group* that is not a *firm* but is included in the supervision on a consolidated basis of the *firm*, to issue a capital instrument that it considers will qualify under the *CRR* as an *own funds instrument*, including a situation where the issuer intends to issue the instrument pursuant to a note issuance programme (NIP). This rule does not apply in the situation described in 7.5 below. [Deleted]~~

- 7.2 ~~A firm must give the notice required by 7.1 at least one month before the intended date of issuance unless there are exceptional circumstances which make it impracticable to give such a period of notice, in which event the *firm* must give as much notice as is reasonably practicable in those circumstances. [Deleted]~~

- 7.3 ~~When giving notice under 7.1, the firm must:~~

- (1) ~~complete and submit the form referred to in 7.9(1) (Pre-Issuance Notification (PIN) Form);~~
- (2) ~~provide a copy of the draft terms and conditions of the capital instrument;~~

- (3)- subject to 7.4, provide a properly reasoned independent draft legal opinion from an appropriately qualified individual confirming that the capital instrument meets the conditions for qualification as the relevant type of own funds instrument; and
- (4)- where it considers that the capital instrument in 7.1 will qualify as an Additional Tier 1 instrument, provide a properly reasoned draft opinion by its auditors as to that capital instrument's treatment under the applicable accounting framework. [Deleted]
- 7.4 Where a firm considers that the capital instrument notified in accordance with 7.1 will qualify as a Common Equity Tier 1 instrument, the rule in 7.3(3) does not apply. In this case, a firm must instead complete and submit the form referred to in 7.9(2) (CET1 Compliance Template). [Deleted]
- 7.5 Where:
- (1) a firm has, within the 12 months prior to submission of a notified issuance, previously issued an own funds instrument and has complied with 7.1 in respect of that previous issuance;
- (2) that firm intends the notified issuance in (1) to be in the same tier of capital as those previously issued own funds instruments and to be issued on identical terms to them, excluding (i) the issue date, (ii) the maturity date, (iii) the amount of the issuance, (iv) the currency of the issuance, or (v) the rate of interest payable by the issuer; and
- (3) the notified issuance in (1) is designed so that it will constitute a compliant own funds instrument, as evidenced either by the legal opinion referred to in 7.3(3) or, in the case of a Common Equity Tier 1 instrument, by the form referred to in 7.9(2) (CET1 Compliance Template);
- that firm must notify the PRA in writing, no later than the date of issue, of its intention or the intention of another member of its group that is not a firm but is included in the supervision on a consolidated basis to issue a capital instrument. [Deleted]
- 7.6 The rule in 7.5 applies whether or not the notified issuance is pursuant to a NIP. [Deleted]
- 7.7 The firm shall notify the PRA in writing of any change to the intended date of issue,, type of investors, type of own funds instrument or any other feature of the capital instrument to that previously notified to the PRA under 7.1. [Deleted]
- 7.8 A firm shall provide the PRA with a copy of the final terms and conditions as referred to in 7.3(2), a copy of the final legal opinion referred to in 7.3(3) and, if applicable, a copy of the final accounting opinion referred to in 7.3(4) without delay after the capital instrument is issued. [Deleted]
- 7.9
- (1) The Pre-Issuance Notification (PIN) Form can be found here: [Deleted]
- (2) The CET1 Compliance Template can be found here: [Deleted]

7A PRE-ISSUANCE NOTIFICATION (PIN) REGIME FOR COMMON EQUITY TIER 1 INSTRUMENT

7A.1 Where a firm, or another member of its group that is not a firm but is included in the supervision on a consolidated basis of the firm, intends to:

- (1) issue a capital instrument that it considers will qualify under Part Two of CRR as a Common Equity Tier 1 instrument, or
- (2) amend or otherwise vary the terms of such an instrument included in its own funds or the own funds of its consolidation group;

the firm shall, at least one month before the intended date of issuance or intended date of amendment or variation, as applicable, notify the PRA of that intention, except that where there are exceptional circumstances which make it impracticable to give such a period of notice, the firm must give as much notice as is reasonably practicable in those circumstances.

7A.2 When notifying PRA under 7A.1 the firm must:

- (1) complete and submit the form referred to in 7D.3(1) (Pre/Post-Issuance Notification (PIN) Form);
- (2) provide a copy of the draft terms and conditions of the capital instrument together with any side agreement;
- (3) provide a properly reasoned draft independent legal opinion from an appropriately qualified individual confirming that the capital instrument qualifies as a Common Equity Tier 1 instrument under Part Two of CRR; and
- (4) complete and submit the form referred to in 7D.3(2) (CET1 Compliance Template).

7A.3 Where a firm intends to make use of the derogation in the second subparagraph of Article 26(3) of the CRR, 7A.1 shall not apply. The firm must instead send to the PRA at the same time as it sends the notification under point (b) of the second paragraph of Article 26(3):

- (1) written confirmation that the capital instrument:
 - (a) meets the condition in point (a) of the second subparagraph of Article 26(3) of CRR; and
 - (b) qualifies as a Common Equity Tier 1 instrument under Part Two of CRR;
- (2) a completed form referred to in 7D.3 (1) (Pre/Post-Issuance Notification (PIN) Form); and
- (3) a copy of the terms and conditions of the instrument together with any side agreement.

7B PRE-ISSUANCE NOTIFICATION (PIN) REGIME FOR ADDITIONAL TIER 1 INSTRUMENT

7B.1 Where a firm, or another member of its group that is not a firm but is included in the supervision on a consolidated basis of the firm, intends to:

- (1) issue a capital instrument that it considers will qualify under Part Two of CRR as an Additional Tier 1 instrument, or

- (2) amend or otherwise vary the terms of such an instrument included in its own funds or the own funds of its consolidation group;

the firm shall, at least one month before the intended date of issuance or intended date of amendment or variation, as applicable, notify the PRA of that intention, except that where there are exceptional circumstances which make it impracticable to give such a period of notice, the firm must give as much notice as is reasonably practicable in those circumstances.

7B.2 When notifying the PRA under 7B.1 the firm must:

- (1) complete and submit the form referred to in 7D.3(1) (Pre/Post-Issuance Notification (PIN) Form);
- (2) provide a copy of the draft terms and conditions of the capital instrument together with any side agreement;
- (3) provide a properly reasoned draft independent legal opinion from an appropriately qualified individual confirming that the capital instrument qualifies as an Additional Tier 1 instrument under Part Two of CRR; and
- (4) provide a properly reasoned draft opinion by its auditors as to the capital instrument's treatment under the applicable accounting framework.

7B.3 Where a firm has previously complied with these rules in respect of the issuance of an Additional Tier 1 instrument and that firm or another member of its group that is not a firm but is included in the supervision on a consolidated basis of the firm, intends to:

- (1) issue a capital instrument on substantially the same terms as the previously notified issuance; or
- (2) amend or otherwise vary the previously notified issuance in a way which will result in the instrument taking effect on substantially the same terms as that issuance;

7B.1 and 7B.2 shall not apply.

7B.4 Where 7B.1 and 7B.2 does not apply by virtue of 7B.3 the firm shall:

- (1) give the notice of the issuance to the PRA sufficiently in advance of the capital instrument's classification as an Additional Tier 1 instrument or, in the case of an amendment or variation, sufficiently in advance of that amendment or variation taking effect;
- (2) send to the PRA written confirmation that the capital instrument will:
- (a) be issued on substantially the same terms as the previously notified issuance or in the case of an amendment or variation, the instrument as so amended or varied, will take effect on substantially the same terms as the previously notified issuance; and
- (b) qualify as an Additional Tier 1 instrument under Part Two of CRR;
- (3) complete and submit the form referred to in 7D.3(1) (Pre/Post-Issuance Notification (PIN) Form); and
- (4) send to the PRA a copy of the terms and conditions of the instrument or, in the case of an amendment or variation, the instrument as it is proposed to be amended or varied, together with any side agreement.

7C POST ISSUANCE NOTIFICATION (PIN) REGIME FOR TIER 2 INSTRUMENT

7C.1 Where a *firm*, or another member of its *group* that is not a *firm* but is included in the supervision on a *consolidated basis* of the *firm*:

- (1) has issued a capital instrument that it considers will qualify under *CRR* as a Tier 2 instrument; or
- (2) has amended or otherwise varied the terms of a Tier 2 instrument included in its *own funds* or the *own funds* of its *consolidation group*;

the *firm* shall on or immediately after the date of issuance or the date of amendment or other variation, as applicable, notify the *PRA* of that issuance, amendment or variation.

7C.2 When giving notice under 7C.1 the *firm* must:

- (1) complete and submit the form referred to in 7D.3(1) (Pre/Post Issuance Notification (PIN) Form);
- (2) provide a copy of the terms and conditions of the capital instrument together with any *side agreement*; and
- (3) provide a properly reasoned independent legal opinion from an appropriately qualified individual confirming that the capital instrument qualifies as a Tier 2 instrument under Part Two of *CRR*.

7C.3 The requirement in 7C.2(3) for the provision of a legal opinion shall not apply where the issuance of the instrument is on substantially the same terms as a previously issued instrument notified under these rules.

7D FURTHER NOTIFICATIONS ETC.

7D.1 The *firm* shall immediately notify the *PRA* in writing of any change to the intended date of issue, type of investors, type of *own funds* instrument or any other feature of the capital instrument to that previously notified to the *PRA* under 7A to 7B.

7D.2 The *firm* shall on, or immediately after, the date of issuance or the date of amendment or other variation, as applicable provide the *PRA* with a copy of the final terms and conditions, a copy of the final legal opinion referred to in 7A.2(3) and 7B.2(3) and if applicable the final accounting opinion referred to in 7B.2(4).

7D.3

- (1) The Pre/Post Issuance Notification (PIN) Form can be found [here](#).
- (2) The CET1 Compliance Template can be found [here](#).

8 NOTIFICATION REGIME – AMENDMENT [DELETED]

8.1 A *firm* shall notify the *PRA* in writing of its intention, or the intention of another member of its *group* that is not a *firm* but is included in the supervision on a consolidated basis of the *firm*, to amend or otherwise vary the terms of any *own funds instrument* included in its *own funds* or the *own funds* of its consolidated group at least thirty days before the intended date of such amendment or other variation. [Deleted]

9 NOTIFICATION REGIME – REDUCTION OF OWN FUNDS ~~[DELETED]~~

- 9.1 ~~A firm shall notify the PRA of its intention, or the intention of another member of its group that is not a firm but is included in the supervision on a consolidated basis of the firm, to carry out in respect of an own funds instrument any of the actions described in Article 77 of the CRR. [Deleted]~~

...

11 TRANSITIONAL PROVISIONS FOR OWN FUNDS

- 11.1 ~~The Common Equity Tier 1 capital ratio which firms must under Article 465(1)(a) of the CRR meet or exceed for the period from 1 January 2014 until 31 December 2014 shall be 4.0%.~~

~~**[Note: Art 465(1)(a) of the CRR]** [Deleted]~~

- 11.2 ~~The Tier 1 capital ratio which firms must under Article 465(1)(b) of the CRR meet or exceed for the period from 1 January 2014 until 31 December 2014 shall be 5.5%.~~

~~**[Note: Art 465(1)(b) of the CRR]** [Deleted]~~

- 11.3 ~~The applicable percentage for the purposes of Article 467(1) of the CRR shall be:~~

~~(1) 100% during the period from 1 January 2014 to 31 December 2014;~~

~~(2) 100% during the period from 1 January 2015 to 31 December 2015;~~

~~(3) 100% during the period from 1 January 2016 to 31 December 2016; and~~

~~(4) 100% for the period from 1 January 2017 to 31 December 2017.~~

~~**[Note: Art 467 of the CRR]** [Deleted]~~

- 11.4 ~~The applicable percentage for the purposes of Article 468(1) of the CRR shall be:~~

~~(1) 0% during the period from 1 January 2015 to 31 December 2015;~~

~~(2) 0% during the period from 1 January 2016 to 31 December 2016; and~~

~~(3) 0% for the period from 1 January 2017 to 31 December 2017.~~

~~**[Note: Art 468(1)-(3) of the CRR]** [Deleted]~~

- 11.5 ~~The applicable percentage for the purposes of Article 468(4) of the CRR shall be:~~

~~(1) 100% for the period from 1 January 2014 to 31 December 2014;~~

~~(2) 100% for the period from 1 January 2015 to 31 December 2015;~~

~~(3) 100% for the period from 1 January 2016 to 31 December 2016; and~~

~~(4) 100% for the period from 1 January 2017 to 31 December 2017.~~

~~**[Note: Art 468(4), 478(1) of the CRR]** [Deleted]~~

- 11.6 ~~The applicable percentage for the purposes of Article 469(1)(a) of the CRR as it applies to the items referred to in points (a)-(b) and (d)-(h) of Article 36(1) shall be:~~

- (1) 100% during the period from 1 January 2014 to 31 December 2014;
- (2) 100% during the period from 1 January 2015 to 31 December 2015;
- (3) 100% during the period from 1 January 2016 to 31 December 2016; and
- (4) 100% for the period from 1 January 2017 to 31 December 2017.

[Note: Art 469(1)(a), 478(1) of the CRR] [Deleted]

...

- 11.8 The applicable percentage for the purposes of Article 469(1)(c) of the CRR as it applies to the items referred to in point (c) of Article 36(1) that did not exist prior to 1 January 2014 and the items referred to in point (i) of Article 36(1) shall be:

- (1) 100% during the period from 1 January 2014 to 31 December 2014;
- (2) 100% during the period from 1 January 2015 to 31 December 2015;
- (3) 100% during the period from 1 January 2016 to 31 December 2016; and
- (4) 100% for the period from 1 January 2017 to 31 December 2017.

[Note: Art 469(1)(c), 478(1) of the CRR] [Deleted]

- 11.9 The applicable percentage for the purposes of Article 474(a) of the CRR shall be:

- (1) 20% during the period from 1 January 2014 to 31 December 2014;
- (2) 40% during the period from 1 January 2015 to 31 December 2015;
- (3) 60% during the period from 1 January 2016 to 31 December 2016; and
- (4) 80% for the period from 1 January 2017 to 31 December 2017.

[Note: Art 474(a), 478(1) of the CRR] [Deleted]

- 11.10 The applicable percentage for the purposes of Article 476(a) of the CRR shall be:

- (1) 20% during the period from 1 January 2014 to 31 December 2014;
- (2) 40% during the period from 1 January 2015 to 31 December 2015;
- (3) 60% during the period from 1 January 2016 to 31 December 2016; and
- (4) 80% for the period from 1 January 2017 to 31 December 2017.

[Note: Art 476(a), 478(1) of the CRR] [Deleted]

- 11.11 The applicable percentage for the purposes of Article 479(2) of the CRR shall be:

- (1) 0% for the period from 1 January 2014 to 31 December 2014;
- (2) 0% for the period from 1 January 2015 to 31 December 2015;
- (3) 0% for the period from 1 January 2016 to 31 December 2016; and

~~(4) 0% for the period from 1 January 2017 to 31 December 2017.~~

~~**[Note: Art 479 of the CRR]** [Deleted]~~

11.12 ~~The applicable factor for the purposes of Article 480(1) of the CRR as it applies to point (b) of Article 84(1) shall be:~~

~~(1) 1 in the period from 1 January 2014 to 31 December 2014;~~

~~(2) 1 in the period from 1 January 2015 to 31 December 2015;~~

~~(3) 1 in the period from 1 January 2016 to 31 December 2016; and~~

~~(4) 1 in the period from 1 January 2017 to 31 December 2017.~~

~~**[Note: Art 480 of the CRR]** [Deleted]~~

11.13 ~~The applicable factor for the purposes of Article 480(1) of the CRR as it applies to point (b) of Article 85(1) and point (b) of Article 87(1) shall be:~~

~~(1) 0.2 in the period from 1 January 2014 to 31 December 2014;~~

~~(2) 0.4 in the period from 1 January 2015 to 31 December 2015;~~

~~(3) 0.6 in the period from 1 January 2016 to 31 December 2016; and~~

~~(4) 0.8 in the period from 1 January 2017 to 31 December 2017.~~

~~**[Note: Art 480 of the CRR]** [Deleted]~~

11.14 ~~The applicable percentage for the purposes of Article 481(1) of the CRR shall be:~~

~~(1) 0% for the period from 1 January 2014 to 31 December 2014;~~

~~(2) 0% for the period from 1 January 2015 to 31 December 2015;~~

~~(3) 0% for the period from 1 January 2016 to 31 December 2016; and~~

~~(4) 0% for the period from 1 January 2017 to 31 December 2017.~~

~~**[Note: Art 481 of the CRR]** [Deleted]~~

...