

PRA STANDARDS INSTRUMENT: THE TECHNICAL STANDARDS (INVESTMENT FIRMS PRUDENTIAL REGIME CONSEQUENTIAL AMENDMENTS) INSTRUMENT 2022

Powers exercised

- A. The PRA makes this instrument in the exercise of powers under section 138P (Technical Standards) of the Act.
- B. For the purposes of section 138P of the Act, the powers to make technical standards which the PRA relies on are conferred on the PRA by:
 - (a) Article 312(4) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (Text with EEA relevance);
 - (b) Regulation 7(6) of the Financial Conglomerates and Other Financial Groups (Amendment etc.) (EU Exit) Regulations 2019; and
 - (c) Articles 83(2A) and 98A of the Bank Recovery and Resolution (No.2) Order 2014.
- C. Pursuant to section 138P(2)(b) of the Act, the power to make technical standards includes the power to modify, amend or revoke any EU tertiary legislation made by an EU entity under the original EU power which forms part of retained EU law. The regulations set out in paragraph J below constitute EU tertiary legislation (as defined in section 20 of the EUWA) for these purposes.
- D. The powers referred to above are specified for the purpose of section 138Q(2) (Standards instruments) of the Act.

Pre-conditions to making

- E. The FCA have been consulted on the changes made by this instrument pursuant to sections 138P(4) of the Act.
- F. In accordance with section 138J of the Act, the PRA published a draft of the proposed instrument and had regard to representations made.
- G. A draft of this instrument has been approved by the Treasury, as required by section 138R of the Act.

Interpretation

- H. In this instrument, any reference to any provision of direct EU legislation is a reference to it as it forms part of retained EU law.
- I. In this instrument:-
 - “EUWA” means the European Union (Withdrawal) Act 2018.
 - “PRA” means the Prudential Regulation Authority;
 - “retained EU law” has the meaning given it in section 6 of the EUWA; and
 - “the Act” means the Financial Services and Markets Act 2000.

Modifications

J. The PRA makes the modifications in the Annex listed in column (2) below to the corresponding regulation (or part thereof) listed in column (1) below.

(1)	(2)
Part 2 (PRA) of Commission Delegated Regulation (EU) 2018/959	Annex A
Part 2 (PRA) of Commission Delegated Regulation (EU) 342/2014	Annex B
Part 2 (PRA) of Commission Delegated Regulation (EU) 2016/911	Annex C

Commencement

K. This instrument comes into force on 1 August 2022.

Citation

L. This instrument may be cited as PRA Standards Instrument: The Technical Standards (Investment Firms Prudential Regime Consequential Amendments) Instrument 2022.

By order of the Prudential Regulation Committee

[Date]

Annex A

Modifications to Part 2 (PRA) of Commission Delegated Regulation (EU) 2018/959

- 1.1 In this Annex new text is underlined and deleted text is struck through.
- 1.2 Part 2 (PRA) of Commission Delegated Regulation (EU) 2018/959 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards of the specification of the assessment methodology under which competent authorities permit institutions to use Advanced Measurement Approaches for operational risk, is modified as follows:

Article 11

Use of the AMA

...

(c) that the operational risk measurement system is used also for the purposes of the institution's internal capital adequacy assessment process referred to in rules 3.1(1) and 3.4 of the Internal Capital Adequacy Assessment Part of the PRA Rulebook ~~and rules 2.2.7R, 2.2.12R and 2.2.13R of the Prudential sourcebook for Investment Firms.~~

Annex B

Modifications to Part 2 (PRA) of Commission Delegated Regulation (EU) 342/2014

- 1.1 In this Annex new text is underlined and deleted text is struck through.
- 1.2 Part 2 (PRA) of Commission Delegated Regulation (EU) 342/2014 of 21 January 2014 supplementing Directive 2002/87/EC of the European Parliament and of the Council and Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the application of the calculation methods of capital adequacy requirements for financial conglomerates, is modified as follows:

Article 2

Definitions

In this Regulation:

...

- (1A) “competent authority” means the PRA or the FCA;
- (1B) “institution” means a credit institution or an investment firm;
- (1C) “investment firm” means a person as defined in paragraph 1A of Article 2 of Regulation (EU) No 600/2014, as that Article has effect subject to the requirements imposed by the United Kingdom legislation that implemented Directive 2014/65/EU, other than a credit institution;
- (1D) “MIFIDPRU” means the Prudential sourcebook for MiFID Investment Firms module of the FCA Handbook;
- (1E) references to “Regulation (EU) No 575/2013” mean:
- (a) except in the circumstances in (b), Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, read together with CRR rules as defined in section 144A of the Financial Services and Markets Act 2000; and
- (b) insofar as provisions are relevant to the assessment of own funds in accordance with MIFIDPRU, the Regulation in (a) as applied and modified by MIFIDPRU 3.

...

- ~~(6) under FSMA as amended by rule-making instruments made before exit day under FSMA or EU Exit Instruments made at any time under the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018;~~
- ~~(7) a reference to an FCA sourcebook or manual is to the rules and guidance made by the FCA under FSMA as amended by rule-making instruments made before exit day~~

~~under FSMA or EU Exit Instruments made at any time under the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018;~~

~~(8) a reference to the Solvency 2 Regulations 2015 is to The Solvency 2 Regulations 2015, SI /575 as amended by regulations made under section 8 of the European Union (Withdrawal) Act 2018.~~

...

Article 6

Deficit of own funds at the financial conglomerate level

(1) Where there is a deficit of own funds at the financial conglomerate level, only own fund items that are eligible under the sectoral rules for both the banking and investment sector (taken together), and the insurance sector shall be used to meet that deficit.

(2) The own funds referred to in paragraph 1 are the following:

...

(b) basic own-fund items where those items may be included in Tier 1 own funds in accordance with Rule 3.1 of the Own Funds Part of the PRA Rulebook or MIFIDPRU 3 (as applicable), and the inclusion of those items is not limited by Article 82 of Regulation (EU) 2015/35;

...

(d) basic own-fund items where those items may be included in Tier 1 own funds in accordance Rule 3.1 of the Own Funds Part of the PRA Rulebook or MIFIDPRU 3 (as applicable), and the inclusion of those items is limited by Article 82 of Regulation (EU) 2015/35;

...

(f) basic own-fund items where those items may be included in Tier 2 in accordance with Rule 3.2 of the Own Funds Part of the PRA Rulebook or MIFIDPRU 3 (as applicable).

...

...

Article 9

Solvency requirement

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- (2) Where the rules for the banking or investment services sector are to be applied,
- (a) own funds requirements as laid down in Chapter 1 of Title I of Part Three of Regulation (EU) No 575/2013 or MIFIDPRU 4 (as applicable), and
 - (b) requirements pursuant to that Regulation or to Directive 2013/36/EU UK law, or to MIFIDPRU (as applicable) to hold own funds in excess of those requirements, including
 - (i) a requirement arising from the internal capital adequacy assessment process in the Internal Capital Adequacy Assessment Part of the PRA Rulebook ~~and section 2.2 of the FCA Prudential sourcebook for Investment Firms,~~ or from compliance with the requirements of MIFIDPRU 7 (as applicable),

...

...

...

Article 14

Specification of technical calculation under method 1 pursuant to Annex 2 (Table 1) of the Financial Conglomerates Part of the PRA Rulebook and Annex 1R (Table 1) of Chapter 3 of the FCA General Prudential sourcebook

...

- (8) For the purposes of calculating thresholds or limits, regulated entities in a financial conglomerate which fall within the scope of an institution's consolidated situation pursuant to Section 1 of Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013, or to MIFIDPRU 2 (as applicable) shall be considered together.

...

Annex C

Modifications to Part 2 (PRA) of Commission Delegated Regulation (EU) 2016/911

- 1.1 In this Annex new text is underlined and deleted text is struck through.
- 1.2 Part 2 (PRA) of Commission Delegated Regulation (EU) 2016/911 laying down implementing technical standards with regard to the form and the content of the description of group financial support agreements in accordance with Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms, is modified as follows:

...

Article 2

Terms to be disclosed

...

2. The disclosure shall be accompanied by a statement that the provision of the financial support is subject to the conditions set out in Chapter 4 of the Group Financial Support Part of the PRA Rulebook ~~or in rule IFPRU 11.5.14R of the Recovery and Resolution Part of the FCA Handbook~~ and to the right of the competent authority to prohibit or restrict the provision.