

**PRA RULEBOOK: SOLVENCY II FIRMS: OWN FUNDS (NOTIFICATION OF ISSUANCE - AMENDMENTS) INSTRUMENT 2016**

**Powers exercised**

- A. The Prudential Regulation Authority (“PRA”) makes this instrument 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); and
  - (2) section 137T (General supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

**Pre-conditions to making**

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

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- D. The PRA makes the rules in the Annex to this instrument.

**Commencement**

- E. This instrument comes into force on 1 March 2016.

**Citation**

- F. This instrument may be cited as the PRA Rulebook: Solvency II Firms: Own Funds (Notification of issuance - amendments) instrument 2016.

**By order of the Board of the Prudential Regulation Authority**

14 January 2016

## Annex

## Amendments to the Own Funds Part

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

## 1 APPLICATION AND DEFINITION

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1.2 In this Part, the following definition shall apply:

delegated act

means Commission Delegated Regulation (EU) 2015/35 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

## 5 NOTIFICATION OF ISSUANCE OF OWN FUNDS ITEMS

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5.1 ~~5.2 to 5.6 de~~ This Chapter does not apply in respect of the following:

- (1) any item which a *firm* intends to include within its *basic own funds* that is not covered by the lists of *own funds* items set out in the *Solvency II Regulations*, but which may be included in its *basic own funds* only if the *firm* has received the *PRA*'s approval; and;
- (2) any item which a *firm* intends to include within its *ancillary own funds*.

5.2

- (1) A Subject to 5.5, a *firm* must notify the *PRA* in writing of its intention to issue an item which it intends to include within its *basic own funds* at least one *month* before the intended date of issue, unless there are exceptional circumstances which make it impracticable to give such a period of notice, ~~in which event~~. In such circumstances, the *firm* must give the *PRA* as much notice as is practicable in those circumstances and explain to the *PRA* why the circumstances are considered exceptional.
- (2) When giving notice, a *firm* must:
  - (a) provide details of the amount of *basic own funds* the *firm* is seeking to raise through the intended issue and whether the ~~own funds item~~ is intended to be issued to external investors or within its *group*;
  - (b) identify the classification of *basic own funds* the item is intended to fall within;
  - ~~(c) include confirmation from the governing body of the firm that the item complies with the rules applicable to items of basic own funds included in the classification of the item identified in (b); and~~
  - (dc) provide a copy of the ~~term sheet and details of any features of the item it intends to include within its basic own funds which are novel, unusual or~~

~~different from an item of *basic own funds* of a similar nature previously issued by the *firm* or widely available in the market or not specifically contemplated by the Solvency II Firms Sector of the *PRA Rulebook* or the *Solvency II Regulations*. draft terms and conditions;~~

- ~~(d) provide a draft of a properly reasoned independent legal opinion from an appropriately qualified individual confirming that the item complies with the rules applicable to items of *basic own funds* included in the classification of the item identified in (b);~~
- ~~(e) for any item referred to in Article 82(3) of the *delegated act*, provide a draft of a properly reasoned independent accounting opinion from an appropriately qualified individual as to the item's treatment in the *firm's* financial statements;~~
- ~~(f) include confirmation from the *governing body* of the *firm* that the item complies with the rules applicable to items of *basic own funds* included in the classification of the item identified in (b); and~~
- ~~(g) state whether the item is encumbered or whether there are any connected transactions in respect of the item and, if so, provide details.~~

5.3 ~~A *firm* must provide a further written notification to the *PRA* including all the information required in 5.2(2) as soon as it proposes any change to the intended date of issue, amount of issue, type of investors, classification of a particular tier of *basic own funds* or any other feature of the item intended to be included as *basic own funds* to that previously notified to the *PRA*. If after an initial notification under 5.2, but prior to an item's issuance, a *firm* proposes to change the information previously submitted, it must provide a further written notification of that change without delay.~~

5.4 If a *firm* proposes to establish or amend a debt securities programme for the issue of an item for inclusion within its *basic own funds*, it must:

- (1) notify the *PRA* of the establishment of the programme or of the proposed amendment to the programme; and
- (2) provide the information required by 5.2(2)

at least one *month* before the first proposed drawdown. The *PRA* must be notified of any changes in accordance with 5.3.

5.5 ~~The items of *basic own funds* to which 5.2 does not apply are to:~~

- (1) ordinary *shares* which:
  - (a) meet the classification criteria for ordinary share capital in *Tier 1 own funds*; and
  - (b) are the same as ordinary *shares* previously issued by the *firm*.
- (2) debt instruments issued from a debt securities programme, provided that ~~program~~ was notified to the *PRA* prior to its first drawdown, in accordance with 5.4; and;
  - (a) the establishment of (and any subsequent amendment to) the programme was notified to the *PRA* in accordance with 5.4 and the last such notification

was given to the PRA no more than twelve months prior to the date of the proposed drawdown;

(b) the programme complies with, and the information previously notified to the PRA in accordance with 5.4 in relation to the programme is unaffected by, any changes in law or regulation, or the interpretation or application of either, coming into effect since the last notification in accordance with 5.4; and

(c) any instrument issued pursuant to the programme must, under the terms of the programme, constitute *basic own funds*; and

(3) any item which is to be issued on identical terms to one or more items included in *basic own funds* issued by the *firm* within the previous twelve months and notified to the PRA in accordance with 5.2, excluding (1) the issue date, (2) the maturity date, (3) the amount of the issuance, (4) the currency of the issuance, and (5) the rate of interest payable by the issuer.

5.6 A *firm* must notify the PRA in writing, no later than the date of issue, of its intention to issue an item listed in 5.5 which it intends to include within its *basic own funds*. When giving notice, a *firm* must:

(1) provide the information set out at 5.2(2)(a), (b) and (c) in 5.2 other than 5.2(2)(c) (draft terms and conditions), 5.2(2)(d) (draft legal opinion) and 5.2(2)(e) (draft accounting opinion); and

(2) confirm that the terms of the item have not changed since the previous issue by the *firm* of that type of item of *basic own funds*.

5.7 A *firm* must notify the PRA in writing of its intention to amend or otherwise vary the terms of any item included within its *basic own funds* at least one *month* before the intended date of such amendment or other variation.

5.8 A *firm* must provide to the PRA as soon as practicable after the issuance of an item of *basic own funds* to which 5.2 or 5.4 applies:

(1) a finalised copy of the draft legal opinion referred to in 5.2(2)(d);

(2) a finalised copy of the draft accounting opinion referred to in 5.2(2)(e) if applicable;

(3) a copy of the instrument's final terms and conditions; and

(4) a reasoned basis for the choice of coupon structure and any other provision that might suggest an incentive to redeem.