

# Bank of England PRA

## Appendices to consultation paper on solvent exit planning for non- systemic banks and building societies

Consultation paper | CP10/23

June 2023

Draft for consultation



# Contents

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Draft for consultation

# 1: Draft Rulebook instrument

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## **PRA RULEBOOK: CRR FIRMS: NON-AUTHORISED PERSONS: RECOVERY PLANS: PREPARATIONS FOR SOLVENT EXIT INSTRUMENT 202[3]**

### **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);
  - (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. The PRA published a draft of the proposed rules in accordance with section 138J(1)(b) of the Act, accompanied by the information listed in section 138J(2). After consulting, the PRA published a draft of the proposed rules and had regard to representations made.

### **PRA Rulebook: CRR Firms: Non-authorized Firms: Recovery Plans: Preparations for Solvent Exit Instrument 202[3]**

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

### **Commencement**

- E. This instrument comes into force on [dd/mm/25].

### **Citation**

- F. This instrument may be cited as the PRA Rulebook: CRR Firms: Non-authorized persons: Recovery Plans: Preparations for Solvent Exit Instrument 202[3].

### **By order of the Prudential Regulation Committee**

[DATE]

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### Annex

#### Amendments to the Recovery Plans Part

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

#### Part

### RECOVERY PLANS

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#### Chapter content

1. APPLICATION AND DEFINITIONS
2. RECOVERY PLANS
3. GROUP RECOVERY PLANS
4. REVIEW OF RECOVERY PLAN AND GROUP RECOVERY PLAN
5. GOVERNANCE ARRANGEMENTS
6. RECOVERY PLAN AND GROUP RECOVERY PLAN INDICATORS
7. PREPARATION FOR SOLVENT EXIT – NON-SYSTEMIC BANKS AND BUILDING SOCIETIES

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### 1. APPLICATION AND DEFINITIONS

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1.2. In this Part, the following definitions shall apply:

...

#### *solvent exit*

means the process through which a *firm* ceases to carry on its *PRA regulated activities* while remaining solvent.

#### *solvent exit analysis*

means a document setting out a *firm's* preparations for *solvent exit*.

...

### **7. PREPARATIONS FOR SOLVENT EXIT – NON-SYSTEMIC BANKS AND BUILDING SOCIETIES**

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7.1 This Chapter applies to every *firm* that is a *UK bank* or *building society* but is not:

- (1) itself, or part of a group that is, a *G-SII*, a *non-UK G-SII* or an *O-SII*; or
- (2) a *firm* to which the Operational Continuity Part applies.

7.2 A *firm* must prepare for *solvent exit* so that, if the need arises, it can effect a *solvent exit* in an orderly manner.

7.3 A *firm* must produce a *solvent exit analysis* and update it whenever a material change has taken place that may affect its preparations for a *solvent exit*, and at least once every three years.

7.4 A *firm* must be able to provide to the *PRA* on request the current version of its *solvent exit analysis*.

## 2: Draft Supervisory statement: Solvent exit planning for non-systemic banks and building societies

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Solvent exit planning for non-systemic banks and building societies

**Supervisory statement**

**28 June 2023**

Draft for consultation

# 1. Introduction

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- 1.1 This supervisory statement (SS) sets out the Prudential Regulation Authority's (PRA) expectations for non-systemic banks and building societies in the UK to prepare, as part of their business-as-usual (BAU) activities, for an orderly 'solvent exit'; and if needed, to be able to execute one.
- 1.2 This SS applies to a firm that is a non-systemic UK bank or building society ('firm'). For the purpose of solvent exit planning, the PRA defines this as a UK bank or building society that is: a) not subject to the Operational Continuity Part of the PRA Rulebook, or (b) not part of a global systemically important institution (G-SII) or an other systemically important institution (O-SII), according to Chapter 7 of the Recovery Plans Part of the PRA Rulebook.<sup>1</sup> Other firms that are not in scope of this SS may also find the expectations helpful in preparing themselves for the cessation of PRA-regulated activities.
- 1.3 A solvent exit means the process through which a firm ceases its PRA-regulated activities while remaining solvent.<sup>2</sup> The firm should transfer<sup>3</sup> or repay (or both) all deposits as part of its solvent exit.<sup>4</sup> Once the firm has transferred and/or repaid all deposits, a solvent exit will end with the removal of the firm's Part 4A PRA permission.<sup>5</sup>
- 1.4 This SS sets expectations for both the preparations for and execution of a solvent exit. Chapter 2 sets out the PRA's expectations for how a firm should prepare for an orderly solvent exit as part of its BAU activities. A firm should produce a 'solvent exit analysis' to meet the expectations in this chapter. Chapter 3 sets out the PRA's expectations for a firm to produce a 'solvent exit execution plan' when solvent exit becomes a reasonable prospect for a firm. It also sets out the PRA's expectations for how a firm should manage and monitor the execution of a solvent exit.

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<sup>1</sup> In the context of groups, it will fall to the firms which have the relevant Part 4A PRA permission and to which Chapter 7 of the Recovery Plans Part of the PRA Rulebook applies to comply with the expectations in this SS.

<sup>2</sup> In this SS, 'solvent' refers to a firm meeting liabilities when they fall due.

<sup>3</sup> See Part VII of the Financial Services and Markets Act 2000 (FSMA) for further details of control of business transfer.

<sup>4</sup> If the firm ceases operating as a legal entity, the PRA would also expect other creditors (as well as depositors) to be repaid in full. If the firm is a building society, the transfer of all deposits will mean it ceases to meet the principal purpose test. Therefore, a building society should also consider what steps are necessary for it to be dissolved under the Building Societies Act 1986. If the firm is a bank, a solvent exit does not require it to be liquidated, provided deposits have been repaid or appropriately transferred.

<sup>5</sup> The PRA may exercise its power to vary or cancel a firm's PRA Part 4A permission on the PRA's initiative. See section 55J of FSMA.

1.5 The expectations in this SS further the PRA's general objective to promote the safety and soundness of firms, helping to minimise the risks of a disorderly cessation of PRA-regulated activities. These expectations also support the PRA's secondary objective to facilitate effective competition, supporting a well-functioning and dynamic market in which new firms can enter and unviable firms can more easily leave with minimal disruption.

1.6 Solvent exit preparations may not be sufficient in all circumstances. Solvent exit planning is designed to complement the other ways in which a firm's failure may be managed: for example, a 'fast failure'<sup>6</sup> may necessitate the exercise of stabilisation tools by the Bank of England as resolution authority, or may lead to insolvency procedures being invoked in relation to a firm.<sup>7</sup>

1.7 In meeting the expectations in this SS, a firm may draw on and adapt its work under other existing regulatory requirements, and should ensure that its solvent exit preparations are consistent with and viewed as complementary to its work in other areas such as recovery and resolution planning.

1.8 This SS complements, and should be read in conjunction, with:

- the Recovery Plans Part of the PRA Rulebook;
- SS9/17 – 'Recovery planning';<sup>8</sup>
- the PRA's web page on 'Cancelling a firm's permissions';<sup>9</sup>
- the Financial Conduct Authority's (FCA's) Handbook SUP 6 'Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements'<sup>10</sup> which applies to firms, including dual-regulated firms; and

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<sup>6</sup> 'Prudentialist – speech by Sam Woods', September 2021:

[www.bankofengland.co.uk/speech/2021/september/sam-woods-speech-at-mansion-house](https://www.bankofengland.co.uk/speech/2021/september/sam-woods-speech-at-mansion-house).

<sup>7</sup> The UK has modified insolvency procedures for deposit-takers. See Part 2 of the Banking Act 2009 for details of the Bank Insolvency Procedure; and section 90C of the Building Societies Act 1986 for the application to building societies.

<sup>8</sup> December 2020: [www.bankofengland.co.uk/prudential-regulation/publication/2017/recovery-planning-ss](https://www.bankofengland.co.uk/prudential-regulation/publication/2017/recovery-planning-ss).

<sup>9</sup> [www.bankofengland.co.uk/prudential-regulation/authorisations/cancelling-firm-permissions](https://www.bankofengland.co.uk/prudential-regulation/authorisations/cancelling-firm-permissions).

<sup>10</sup> [www.handbook.fca.org.uk/handbook/SUP/6/1.html](https://www.handbook.fca.org.uk/handbook/SUP/6/1.html).



- the FCA's 'Wind-down Planning Guide' (WDPG)<sup>11</sup> and TR22/1: 'Observations on wind-down planning: liquidity, triggers & intragroup dependencies',<sup>12</sup> which contain content and examples of good practice which firms may find helpful.

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<sup>11</sup> [www.handbook.fca.org.uk/handbook/WDPG/1/?view=chapter](http://www.handbook.fca.org.uk/handbook/WDPG/1/?view=chapter).

<sup>12</sup> April 2022: [www.fca.org.uk/publications/thematic-reviews/tr22-1-observations-wind-down-planning-liquidity-triggers-intragroup-dependencies](http://www.fca.org.uk/publications/thematic-reviews/tr22-1-observations-wind-down-planning-liquidity-triggers-intragroup-dependencies).

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## 2. Preparing for a solvent exit in advance

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2.1 This chapter sets out the PRA's expectations for how a firm should prepare for an orderly solvent exit<sup>13</sup> as part of its BAU activities. These expectations apply regardless of how unlikely or distant a prospect solvent exit may seem to the firm. If and when the execution of a solvent exit becomes a reasonable prospect, the firm should produce a 'solvent exit execution plan' as described in Chapter 3.

2.2 A firm should produce a 'solvent exit analysis' document to demonstrate that the firm meets the expectations in this chapter. The solvent exit analysis should include, at a minimum, the below contents, which are elaborated on in the rest of this chapter:

- solvent exit actions
- solvent exit indicators
- potential barriers and risks
- resources and costs
- communication
- governance and decision-making
- assurance

2.3 The level of detail in the solvent exit analysis should be proportionate to the nature, scale, and complexity of the firm.<sup>14</sup> A firm may find it helpful to include the solvent exit analysis as a discrete section in its recovery plan, but may set out the solvent exit analysis separately if the firm finds it appropriate.

2.4 In meeting the expectations in this chapter, a firm should take account of plausible circumstances that could lead to it needing to execute a solvent exit (see Box A for illustrative examples). A firm may draw on and adapt scenarios developed under the PRA's recovery planning expectations<sup>15</sup> to inform it of such circumstances.

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<sup>13</sup> Chapter 7 of the Recovery Plans Part of the PRA Rulebook.

<sup>14</sup> For example, a smaller firm with a simple business model may produce a shorter solvent exit analysis than a larger, more complex firm, given that the smaller firm may have a smaller range of solvent exit indicators, a more limited number of solvent exit actions, and simpler governance arrangements.

<sup>15</sup> Chapter 2 in the Recovery Plans Part of the PRA Rulebook; and '(a) Design' under '(iv) Scenario testing' of SS9/17.

**Box A**

A firm may execute a solvent exit for a range of reasons. These include:

- the firm facing financial issues, such as economic, market, or idiosyncratic stress (eg difficulty in securing capital investment, an unviable business model, significant financial loss);
- the firm facing non-financial issues, such as a major governance failure, or loss of critical IT infrastructure with no signs of timely recovery;
- the firm no longer meeting the threshold conditions for authorisation under FSMA as a deposit-taker and having no viable strategy for returning to compliance within a reasonable timeframe; and/or
- the firm deciding to shift its business strategy or priorities away from deposit-taking.

Regardless of the underlying reasons, a firm should base its preparations for a solvent exit on the prospect that it may need to execute a solvent exit in either:

- stressed circumstances, eg where access to capital, funding or liquidity is difficult (firms should note that solvent exit preparations made to meet the expectations in this SS may not be sufficient for a 'fast failure'); or
- non-stressed circumstances, eg where a firm has made a strategic decision to cease deposit-taking activities due to insufficient returns, or to better enable it to develop business opportunities in other sectors.

**Solvent exit actions**

2.5 A firm should set out in its solvent exit analysis the actions that would be needed to cease its PRA-regulated activities while remaining solvent ('solvent exit actions'). These will likely comprise several of the firm's recovery options (eg selling businesses or assets, transferring liabilities),<sup>16</sup> augmented and amended to facilitate the firm to complete a solvent exit. A firm's solvent exit actions should include the transfer and/or repayment of all deposits.

2.6 A firm should set out in its solvent exit analysis the timeline over which the solvent exit actions could be executed, and the extent to which the timing is dependent on internal

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<sup>16</sup> See SS9/17 for details.

and external factors. To meet this expectation, a firm may draw on and adapt the analysis of timelines for recovery options under the PRA's recovery planning expectations.<sup>17</sup>

## Solvent exit indicators

2.7 A firm should identify and monitor indicators that would inform it about when it needs to initiate a solvent exit and whether the execution of a solvent exit is likely to be successful. A firm should set out in its solvent exit analysis these indicators. The calibration of indicators should be forward-looking and set such that they could provide sufficient warning to the firm to produce a solvent exit execution plan and to execute a solvent exit<sup>18</sup> while the firm still has the necessary financial and non-financial resources. These indicators should include financial and non-financial metrics in quantitative and/or qualitative terms.

2.8 A firm should monitor the projected and actual levels of these indicators, as well as their trend. These indicators, alongside other relevant information,<sup>19</sup> should support clear and timely decision-making regarding a solvent exit.

2.9 To meet the expectations in paragraphs 2.7 and 2.8, a firm may draw on and adapt its existing management information framework, and indicator framework developed under the PRA's recovery planning expectations,<sup>20</sup> without necessarily creating and monitoring a new set of indicators.

## Potential barriers and risks

2.10 A firm should set out in its solvent exit analysis the potential barriers and risks to the execution of a solvent exit, including those that are market-wide and firm-specific (see Box B for illustrative examples).

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<sup>17</sup> See '(d) Timelines' of SS9/17.

<sup>18</sup> See Chapter 3 for details.

<sup>19</sup> See paragraph 2.22 of this SS.

<sup>20</sup> See '(iii) Indicators' of SS9/17.

**Box B**

Examples of potential barriers and risks to a firm's execution of a solvent exit include:

- a loss of key staff that are needed to complete a solvent exit;<sup>21</sup>
- a complex legal and corporate structure which complicates the execution of solvent exit actions;
- certain off-balance sheet liabilities, which may extend beyond the anticipated timeline for executing a solvent exit. Examples include long property leases; contract termination penalties; pension fund contributions; and contingent liabilities (such as costs related to litigation or enforcement actions against the firm);
- the existence of untraceable/uncontactable customers, which may delay the completion of a solvent exit, and the potential need to set up contingency arrangements (eg establishing a trust for remaining customers) that would enable a firm to complete a solvent exit. Such arrangements may also apply to unusable accounts, such as those awaiting probate or subject to financial sanctions;
- negative reactions from stakeholders, such as a potential depositor run;<sup>22</sup>
- potential complexities arising from the use of deposit aggregators, which may complicate a firm's ability to collate information about depositors, and the arrangements in place to terminate contractual agreements with the aggregators;
- the provision of services by the firm that cannot be easily stopped or substituted by another firm. This may include services provided to vulnerable customers, or a particular community or sector, whose customers may face difficulty in switching to alternative providers, potentially delaying the completion of a solvent exit; and
- a change in market conditions which reduces the sale value of assets that the firm would need to fund a solvent exit.

2.11 A firm should assess how the identified barriers and risks could affect the outcome and effectiveness of the firm's solvent exit actions. The firm should take reasonable steps in BAU to mitigate or remove any material barriers or risks. The firm should identify whether any remaining barriers or risks could result in an unsuccessful solvent exit.

<sup>21</sup> See also the 'Communication' section in this chapter.

<sup>22</sup> See also the 'Communication' section in this chapter.

2.12 A firm should set out, in its solvent exit analysis, the potential dependencies that a decision to execute a solvent exit may rely upon. These may include, but are not limited to, securing requisite advice from external specialists, and any activities (such as producing valuations) that would have to precede such a decision. To meet this expectation, a firm may draw on and adapt the dependencies analysis conducted under the PRA's recovery planning expectations.<sup>23</sup>

2.13 A firm should set out in its solvent exit analysis the anticipated impacts of a decision to execute a solvent exit, including how depositors and the wider market may react.<sup>24</sup>

### Resources and costs

2.14 A firm should set out in its solvent exit analysis the financial resources, including capital, funding, and liquidity, needed to execute a solvent exit. This may include:

- an assessment of the minimum sale value of assets or portfolios needed to enable a successful solvent exit;
- a breakdown of the firm's assets or portfolios into those it would need to sell, transfer, or hold to maturity; and
- a breakdown of the firm's assets or portfolios into those which could be sold in a secondary market, and those for which this is unclear.

2.15 The firm should take into account that the solvent exit itself is likely to lead to additional costs. In addition to costs to cover possible losses (or 'haircuts') on the sale of assets or portfolios below book value, these costs may include fees for specialist services, redundancy and retention payments, contract termination penalties, and pension fund deficits. The firm should also identify the absolute minimum level of financial resources needed, below which there would be no reasonable prospect of successfully executing a solvent exit.<sup>25</sup>

2.16 A firm should set out in its solvent exit analysis the non-financial resources needed to execute a solvent exit, including the cost of maintaining these resources throughout the execution of a solvent exit. Non-financial resources may include: access to external specialist services or advice; a firm's key staff; operational and outsourcing

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<sup>23</sup> See '(e) Dependencies' of SS9/17.

<sup>24</sup> See also the 'Communication' section in this chapter.

<sup>25</sup> If the firm anticipates use of the Bank of England's lending facilities (eg Discount Window Facility), see more details in the 'Bank of England Market Operations Guide': [www.bankofengland.co.uk/markets/bank-of-england-market-operations-guide](https://www.bankofengland.co.uk/markets/bank-of-england-market-operations-guide).

arrangements; support from other group companies; premises; IT infrastructure; and certain data.<sup>26</sup>

2.17 In meeting the expectations in paragraphs 2.14 to 2.16, the firm should set out how it could maintain access to the resources needed throughout the execution of a solvent exit. The firm should also take account of the likely resources needed to mitigate or remove any barriers or risks, including managing any negative impacts of a decision to execute a solvent exit.<sup>27</sup>

## Communication

2.18 A firm should set out in its solvent exit analysis the internal and external stakeholders that may be impacted by a solvent exit. These may include regulators, depositors, creditors, shareholders, staff, and other market participants. To meet this expectation, a firm may draw on and adapt the communication plan developed under the PRA's recovery planning expectations.<sup>28</sup>

2.19 A firm should set out in its solvent exit analysis how and when it would communicate to stakeholders, both before and during the execution of a solvent exit. A firm should assess how different stakeholders may react to the firm's decision to initiate a solvent exit. In particular, a firm should assess how it would manage and mitigate any negative impacts of a stakeholder's reaction to the firm's solvent exit (eg potential depositor runs, resignation of key staff, demands for full and final settlement from creditors).

## Governance and decision-making

2.20 A firm should set up clear governance arrangements, with a named executive accountable, for:

- the firm's BAU preparations for a solvent exit, including the review and approval of the solvent exit analysis;
- escalation and decision-making regarding a solvent exit, including whether a solvent exit execution plan should be produced; and whether, how and when the firm would initiate a solvent exit;<sup>29</sup> and

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<sup>26</sup> Examples of data include those that would be needed to repay depositors or enable the transfer of deposits to a third party (eg the firm's single customer view (SCV) file).

<sup>27</sup> See also the 'Communication' section in this chapter.

<sup>28</sup> See '(ix) Communication plan' of SS9/17.

<sup>29</sup> See Chapter 3 for details.

- monitoring the execution of a solvent exit, including whether the firm should take further action to facilitate the completion of a solvent exit, or whether a solvent exit is no longer feasible or appropriate given the firm's circumstances.<sup>30</sup>

2.21 A firm may adopt the governance arrangements developed under the PRA's recovery planning expectations<sup>31</sup> to meet the expectations in paragraph 2.20.

2.22 A firm should ensure that it has the capabilities to produce adequate and appropriate information, within a reasonable amount of time, to inform decisions regarding a solvent exit. The firm should be able to refresh relevant data (eg balance sheet, profitability, exit valuations, anticipated costs); be able to conduct appropriate analysis; and be able to make realistic projections of the firm's capital, funding, and liquidity for the anticipated timeline over which a solvent exit would be executed.

2.23 If a firm anticipates using external specialists to meet the expectations in paragraph 2.22, the firm should be prepared to procure them within a reasonable amount of time. The firm should also ensure that the external specialists would have access to the data needed.

2.24 A firm should be able to make timely decisions, with necessary approvals,<sup>32</sup> regarding the execution of a solvent exit, including whether a solvent exit should be initiated. The firm should take account of relevant information and solvent exit indicators when it makes decisions.

## Assurance

2.25 A firm should undertake adequate assurance activities for its solvent exit preparations as described in this chapter. These assurance activities can be performed internally or externally.<sup>33</sup> The firm should review and update the solvent exit analysis whenever a material change has taken place that may affect its preparations for a solvent exit, and at least once every three years.<sup>34</sup> The accountable executive should ensure that the solvent exit analysis is approved in accordance with the firm's governance arrangements.<sup>35</sup> The accountable executive should also confirm that the firm meets the expectations in this

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<sup>30</sup> See paragraph 3.11 of this SS for details.

<sup>31</sup> See '(viii) Governance' of SS9/17.

<sup>32</sup> Examples are approvals from: the home regulator if the firm is a subsidiary of a non-UK group; its parent if the firm is a subsidiary; and its members if the firm is a building society.

<sup>33</sup> Examples of assurance activities include a review by internal or external audit, and obtaining sufficient challenge from the firm's governance body (including non-executive directors) on the solvent exit analysis.

<sup>34</sup> Chapter 7 of the Recovery Plans Part of the PRA Rulebook.

<sup>35</sup> See the 'Governance and decision-making' section in this chapter.



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SS. The firm should be able to provide to the PRA on request the current version of its solvent exit analysis.<sup>36</sup>

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<sup>36</sup> The PRA may seek its own assurance of a firm's solvent exit analysis and/or solvent exit execution plan (see Chapter 3 for details), which may be by use of reports by skilled persons under section 166 of FSMA. See also Chapter 7 of the Recovery Plans Part of the PRA Rulebook.

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## 3. Producing a solvent exit execution plan and executing a solvent exit

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- 3.1 This chapter sets out the PRA's expectations that apply when a solvent exit execution plan is needed, and during a firm's execution of a solvent exit.
- 3.2 The arrangements described in the 'Governance and decision-making' section in Chapter 2 apply when a firm produces a solvent exit execution plan and executes a solvent exit.

### Producing a solvent exit execution plan

- 3.3 The PRA expects a firm to produce a solvent exit execution plan when there is a reasonable prospect that the firm may need to execute a solvent exit (which could be informed by its solvent exit indicators<sup>37</sup> and other relevant information), or when the firm is requested by the PRA to produce a solvent exit execution plan.<sup>38</sup> The firm's board of directors, or other appropriate senior governance committee or group, should provide sufficient challenge on the firm's solvent exit execution plan, and review and approve it. The firm should meet commitments it makes to the PRA to provide its solvent exit execution plan to the PRA in an appropriate timescale.
- 3.4 The PRA expects a firm to include in its solvent exit execution plan sufficient detail to inform itself and the PRA of how it will complete the cessation of its PRA-regulated activities. Annex A provides a non-exhaustive list of contents the PRA would expect a firm to set out in its solvent exit execution plan.
- 3.5 The PRA expects a firm to ensure that its solvent exit execution plan is appropriate for its business model, structure, operations, risk strategy, and the circumstances leading to the initiation of a solvent exit. A firm should use its solvent exit analysis, prepared during BAU,<sup>39</sup> as the starting point for its solvent exit execution plan. A firm should support any assumptions underpinning its solvent exit execution plan (such as the timeline for repaying depositors) with appropriate evidence.
- 3.6 The PRA expects a firm to set out in its solvent exit execution plan how it will monitor, and respond to, any emerging barriers and risks throughout the execution of a solvent

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<sup>37</sup> See the 'Solvent exit indicators' section in Chapter 2.

<sup>38</sup> For example in the exercise of powers under section 55M of FSMA to impose and vary requirements on firms either by agreement or on the PRA's own initiative.

<sup>39</sup> See Chapter 2 for details.

exit. The barriers and risks identified in the solvent exit analysis<sup>40</sup> should be updated to ensure they remain complete, relevant, and current for the firm's solvent exit execution plan.

3.7 The PRA expects a firm to set out in its solvent exit execution plan details of the financial and non-financial resources needed to execute a solvent exit. A firm should take account of the costs of mitigating or removing barriers and risks to the solvent exit, including costs to mitigate any negative impacts of its decision to execute a solvent exit.<sup>41</sup> A firm should ensure its assessment of the resources needed is supported by:

- appropriate analysis, such as sensitivity analyses of factors that may impact the resources needed, and an analysis of any balance sheet items which may be difficult to transfer or sell after the main deposit and lending books have been disposed of;<sup>42</sup> and
- realistic exit valuations of assets and liabilities, including appropriate adjustments to their book value.<sup>43</sup>

3.8 The PRA expects a firm to set out in its solvent exit execution plan details of how it will maintain access to, and monitor the adequacy of, the financial and non-financial resources needed throughout the execution of a solvent exit.

3.9 The PRA expects a firm to set out in its solvent exit execution plan a clear and detailed communication plan for stakeholders impacted by the solvent exit.<sup>44</sup>

### During the execution of a solvent exit

3.10 The PRA expects a firm to make the PRA aware of its decision to initiate a solvent exit. A firm should keep the PRA,<sup>45</sup> and other stakeholders as appropriate, informed throughout the execution of a solvent exit. A firm should, in a prompt and timely manner, make its PRA supervisor aware if there arise risks to or concerns about the successful completion of a solvent exit.

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<sup>40</sup> See the 'Potential barriers and risks' section in Chapter 2.

<sup>41</sup> See also the 'Communication' section in Chapter 2.

<sup>42</sup> Examples include deposits with untraceable/uncontactable customers; and small and niche lending books.

<sup>43</sup> Assumptions underpinning accounting valuations conducted in BAU may no longer apply during the execution of a solvent exit, especially once a solvent exit has been publicly announced. This may result in asset sales which fail to provide adequate resources to repay liabilities.

<sup>44</sup> See the 'Communication' section in Chapter 2.

<sup>45</sup> Fundamental Rule 7: 'A firm must deal with its regulators in an open and cooperative way and must disclose to the PRA appropriately anything relating to the firm of which the PRA would reasonably expect notice'.

- 3.11 The PRA expects a firm to continually assess whether its solvent exit actions are likely to succeed and whether they remain feasible and appropriate.<sup>46</sup> A firm should assess whether it needs to take further actions to facilitate the completion of a solvent exit. Consistent with the duties that directors owe to a company and its creditors under the Companies Act 2006 and case law, a firm should also determine whether and when insolvency procedures should be invoked (ie when it appears to the firm that a solvent exit will no longer be successful).
- 3.12 The PRA expects a firm to continually monitor the projected and actual levels and trends of those solvent exit indicators which remain applicable,<sup>47</sup> and the implementation of the solvent exit execution plan, to inform the firm's decision-making.
- 3.13 The firm should submit an application to the PRA to have its Part 4A PRA permission removed, taking account of the cancellations timeline described on the PRA's web page.<sup>48</sup>
- 3.14 A firm must continue to comply with the PRA's threshold conditions, rules, and other regulatory requirements throughout the execution of a solvent exit. A firm should proactively and continually assess whether it may fall short of any legal or regulatory obligations during the execution of a solvent exit and, in line with Fundamental Rule 7, immediately alert the PRA if this might be the case.

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<sup>46</sup> For example, a solvent exit may no longer be feasible if barriers to a solvent exit cannot be mitigated, or the asset value is lower than expected, which may lead to insolvency procedures being invoked in relation to a firm. A solvent exit may also no longer be appropriate if, for example, changed market conditions make the firm's business model viable again, or if the firm finds a new investor and opts for restructuring instead of ceasing PRA-regulated activities.

<sup>47</sup> See the 'Solvent exit indicators' section in Chapter 2.

<sup>48</sup> See PRA's web page on 'Cancelling a firm's permissions' for further details. If the solvent exit involves the cessation of FCA-regulated activities, or activities authorised by non-UK authorities, the firm should also assess whether other regulatory approvals are required and inform relevant authorities as appropriate. Firms' attention is drawn in particular to Annex 4.5 of FCA's Handbook SUP 6 'Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements' regarding guidance on deposit-taking, which is relevant to firms, including dual-regulated firms.

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## Annex A – Solvent exit execution plan

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The following is a non-exhaustive list of contents that the PRA would expect a firm to set out in its solvent exit execution plan.<sup>49</sup>

- Actions and timelines for the solvent exit, from the point of initiation to the removal of the firm's Part 4A PRA permission. This includes actions that the firm will take to identify, and transfer or repay, deposits; sell assets; and transfer or repay other liabilities (if applicable).
- Identification and mitigation (or removal) of barriers and risks to the solvent exit. The firm should update the barriers and risks identified in its solvent exit analysis, prepared during BAU,<sup>50</sup> to reflect the circumstances which lead to the initiation of a solvent exit. The firm should also include how it will identify, monitor, and respond to emerging barriers and risks throughout the execution of the solvent exit.
- Communication plan for stakeholders impacted by the solvent exit. These include, but are not limited to: regulators, depositors, creditors, shareholders, staff, and other market participants. This should include anticipated reactions from different stakeholders, how such reactions could affect the solvent exit, and how the firm will respond to stakeholder reactions. Examples of negative reactions include potential depositor runs, resignation of key staff, defaults by customers, demands for full and final settlement from creditors, withdrawal of services from outsourced service providers, and abrogation of contracts by contractual counterparties.
- Detailed action plan for the execution of the solvent exit, such as:
  - the identification, and transfer or repayment, of deposits
  - dealing with customer complaints
  - dealing with existing contractual commitments
  - the sale or transfer of all or part of the business, assets, and liabilities
  - the vacation of premises and disposal of fixed assets
  - communication with stakeholders

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<sup>49</sup> This non-exhaustive list has been drawn up to be consistent with relevant parts of the FCA's WDPG where possible, albeit that is aimed at FCA solo-regulated firms.

<sup>50</sup> See Chapter 2 for details.

- 
- any formalities to comply with applicable legal and regulatory requirements, such as directors' duties and shareholders' rights under company law, data protection law, employment law, and insolvency procedures
  - Assessment of resources needed to complete the execution of the solvent exit and how the firm will monitor and maintain access to these throughout the execution of the solvent exit, covering:
    - financial resources, including capital, funding, and liquidity,<sup>51</sup> to absorb the full costs of the solvent exit and meet all liabilities to depositors (and other creditors as applicable), with realistic exit valuations of assets and liabilities and appropriate analysis conducted (such as sensitivity analyses of factors that may impact the resources needed, and an analysis of any balance sheet items which may be difficult to transfer or sell after the main deposit and lending books have been disposed of)
    - non-financial resources, including access to external specialist services or advice; the firm's key staff; operational and outsourcing arrangements; support from other group companies; premises; IT infrastructure; and certain data (eg SCV file)
  - Governance arrangements, including roles and responsibilities in making the formal decision to initiate the solvent exit, as well as in managing and monitoring the execution of the solvent exit
  - Organisational structure, operating model, and internal processes

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<sup>51</sup> If the firm anticipates the use of the Bank of England's lending facilities (eg Discount Window Facility), see more details in the 'Bank of England Market Operations Guide'.

# 3: Draft amendments to SS3/21– Non-systemic UK banks: The Prudential Regulation Authority’s approach to new and growing banks

In this appendix, new text is underlined and deleted text is struck through.

## 1 Introduction

1.1 This Supervisory Statement (SS) provides an overview of how the Prudential Regulation Authority’s (PRA)’s supervisory expectations of ‘new<sup>1</sup> and growing<sup>2</sup>’ non-systemic<sup>3</sup> UK-incorporated banks<sup>4,5</sup> (collectively referred to as ‘banks’), evolve as they grow from the point of authorisation to being regarded as fully established banks.

- ...
- Chapter 5 sets out the ~~PRA’s and the Bank of England’s coordinated approach to ensuring expectations on~~ new and growing banks ~~can exit the market in an orderly manner~~ to make preparations for recovery planning, solvent exit planning, and resolution.
- ...

...

1.5 There are a number of types of banks and other PRA-authorized firms that are not covered in this SS. These include:

- ...
- building societies;<sup>9</sup>
- ...

...

1.7 This SS should be read in conjunction with:

<sup>5</sup> UK bank means of a UK undertaking that has permission under Part 4A of the Financial Services and Markets Act 2000 (FSMA) to carry on the regulated activity of accepting deposits and is a credit institution, but is not a credit union, friendly society or a building society. ~~Building societies were excluded from the scope of CP9/20 because they are subject to different legislation. However, the authorisation of new building societies would include the option of mobilisation, and the expectation for solvent wind down (SWD) plans would apply.~~

<sup>9</sup> Building societies are subject to different legislation. However, The the authorisation of new building societies would include the option of mobilisation, and the expectation for SWD plans solvent exit planning would apply.

- ...
- SS31/15 'The Internal Capital Adequacy Assessment Process (ICAAP) and the Supervisory Review and Evaluation Process (SREP)';<sup>15</sup> and
- the Pillar 2 Statement of Policy (SoP) 'The PRA's methodologies for setting Pillar 2 capital';<sup>16</sup> and
- SS – Solvent exit planning for non-systemic banks and building societies.

...

**Table 1: Materials<sup>19</sup> to be read alongside SS 3/21 'Non-systemic UK Banks banks: the The Prudential Regulation Authority's approach to new and growing banks'**

...
<b>Recovery and resolution planning</b>
SS9/17 – Recovery Planning <sup>34</sup>
<u>SS – Solvent exit planning for non-systemic banks and building societies</u>
SS4/19 'Resolution assessment and public disclosure by firms on Recovery Planning' <sup>35</sup>
...

## 2 Overview of the PRA's supervisory approach for new and growing banks

...

2.2 The PRA's approach has been successful in supporting the authorisation of a number of banks. However new and growing banks have often underestimated the work involved post-authorisation to become a successful, and established bank that is able to exit the market in an orderly way in the event the firm becomes non-viable. In recognition that authorisation is the start of the journey for a bank, this SS sets out the PRA's expectations of how banks should progress from being a new and growing bank to becoming an established bank. In addition to ensuring they can achieve a solvent wind down (SWD) complete a solvent exit of their business, firms must also be able to show at all times how the preferred resolution strategy set for them (either via the Bank Insolvency Procedure or use of resolution tools where justified by the supply of transactional accounts or other critical functions at sufficient scale) could be carried out in an orderly way.

...

**Table 2: The PRA's expectations of banks as they mature**

...	...
Recovery and Resolvability	... Board approved SWD plan in place (while bank is on the new bank buffer approach). <u>Preparations for solvent exit approved by the Board.</u>
...	...



**Box 1 – Supervision of UK bank subsidiaries of international groups**

...

Other matters where there may be a difference of approach for subsidiaries of international firms include, but are not limited to, profitability, governance, recovery, resolution and ~~SWD~~solvent exit.

...

**4 Capital expectations of new and growing banks**

...

4.11 As the buffer for new banks is not calibrated on the basis of a stress test, it does not necessarily provide sufficient capital for banks to survive a stress or ~~enact a SWD~~execute a solvent exit. If a new or growing bank enters its buffer and is unable to restore its capital position or continues to erode capital, this may lead to the bank having to be resolved, subject to the statutory conditions being met. The boards of new and growing banks should be cognisant of this when setting their internal capital risk appetite.

...

**Capital Management**

...

4.14 Use of the PRA buffer is not in itself a breach of capital requirements or Threshold Conditions (see 5.33 of SS31/15). However given the speed of capital depletion that is often experienced by new and growing banks, if such banks expect to enter their PRA buffer, the board is expected to act quickly and decisively to address the problem, given the PRA buffer has not been calibrated to provide sufficient capital to survive a stress or ~~enact a SWD~~execute a solvent exit. A bank should notify the PRA as early as possible when it has identified it may need to use its capital buffer and explain how it plans to restore its buffer (see 5.34 and 5.35 of SS31/15).

...

**5 Orderly exit: recovery, solvent exit, and resolvability ~~resolution~~**

...

5.2 The likelihood of failure is higher during the early years of a bank's development.<sup>60</sup>

Factors which may lead new and growing banks to fail include failure to obtain the required loss absorbing capacity or an inability to realise their business model. Many new and growing banks operate in highly competitive markets and many have novel and untested business plans; this facilitates innovation and competition but not all may prove to be viable. Coupled with this, new and growing banks may have fewer recovery options

available to them than established banks, meaning it is crucial they have the ability make preparations to exit the market in an orderly way, if required.

~~5.3 Orderly exit is the overarching term for banks that no longer have a viable business model and that need to exit the market following unsuccessful attempts to recover. The exit options include going concern and resolution routes. Going concern routes refer to the actions the bank may be able to take to facilitate its own exit from the market. These firm led actions include selling the firm as a whole or winding down the firm as a whole while maintaining solvency throughout to the point it can be liquidated safely, repaying all depositors and creditors in full. Resolution routes refer to the firm's entry into the resolution regime.<sup>61</sup> Box 3 provides an overview.~~

5.3A A bank may discontinue its businesses (whether in part or in full) via the following routes.

- Recovery: a firm implements recovery options such as asset sales and disposal options to restore its financial position following a significant deterioration of its financial situation.
- Solvent exit: a firm ceases its PRA-regulated activities while remaining solvent. The firm should transfer or repay (or both) all deposits as part of its solvent exit. Firms which cease operating as a legal entity should also repay creditors in full.
- Resolution: a firm enters into the resolution regime.<sup>61</sup>

### Solvent exit planning

5.6A According to Chapter 7 of the Recovery Plans Part of the PRA Rulebook, a firm should prepare for solvent exit so that, if the need arises, it can effect a solvent exit in an orderly manner. As set out in SS – Solvent exit planning for non-systemic banks and building societies, a firm should produce a 'solvent exit analysis' as part of its business-as-usual activities; and a 'solvent exit execution plan' when solvent exit becomes a reasonable prospect.

5.7A A new and growing bank should have in place clear governance arrangements for solvent exit preparations. The Board is expected to play a key role in the approval of solvent exit analysis decision-making to initiate a solvent exit and monitoring of its execution. The PRA expects banks to engage with their supervisor at an early stage on decisions to execute (or not to execute) solvent exit actions.

5.8A The PRA expects banks to have in place preparations for a solvent exit approved by the Board at the point of authorisation (or exit from mobilisation). A bank should review and update its solvent exit analysis to ensure it remains appropriate as the business develops.

5.9A A bank should refer to Chapter 2 of SS – Solvent exit planning for non-systemic banks and building societies, which sets out the PRA's expectations for how a firm should prepare for a solvent exit. The level of detail in the solvent exit analysis should be proportionate to the nature, scale, and complexity of the firm. A firm may find it helpful to

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include the solvent exit analysis as a discrete section in its recovery plan. The firm can also decide to set out the solvent exit analysis separately if the firm finds it appropriate.

### **Solvent wind down (SWD)**

This sub-section has been deleted.

'Box 2: SWD plans – overview' has been deleted.

### **Resolution**

...

'Box 3: Orderly Exit Options' has been deleted.

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<sup>61</sup> Footnote 61 content is unchanged from that previously linked to the proposed deleted paragraph 5.3.

Draft for consultation

## 4: PRA statutory obligations

The statutory obligations applicable to the PRA's policy development process are set out below. This CP explains the policy assessment of relevant considerations.

- **For rules instruments and UK Technical Standards Instruments:** Purpose of the policy proposals (FSMA s138J(2)(b)).
- **For rules instruments and UK Technical Standards Instruments:** Cost benefit analysis (FSMA s138J(2)(a) and (7)(a)); and an estimate of those costs and benefits (if reasonable) (FSMA s138J(8)).
- **For rules instruments and UK Technical Standards Instruments:** Analysis of whether the impact on mutuals is significantly different to the impact on other authorised firms (FSMA s138J(2)(c) and 138K).
- Compatibility with the PRA's primary objectives (FSMA s138J(2)(d)(i), 2B and 2C).
- Compatibility with the PRA's secondary competition objective (FSMA s138J(2)(d)(ii) and 2H(1)).
- Compatibility with the regulatory principles (FSMA s138J(2)(d)(ii), 2H(2) and 3B).
- Have regard to the HMT recommendation letters (BoE Act s30B).
- Have due regard to the public sector equality duty (Equality Act s149).
- Have regard, subject to any other requirement affecting the exercise of the regulatory function, to the principles of good regulation and when determining general policy or principles to the Regulators Code (Legislative and Regulatory Reform Act 2006 s21 & 22).
- Have regard, so far as consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat (Natural Environment and Rural Communities Act 2006, s40).
- **For rules instruments and UK Technical Standards Instruments:** Consultation of the FCA (FSMA s138J(1)(a)).
- **For UK Technical Standards Instruments only:** FSMA s138J(1)(a) is replaced with: consultation of the FCA and/or Bank, where that Regulator has an interest in the technical standards (FSMA s138P(4) and (5)).
- **For UK Technical Standards Instruments only:** notice given to HMT of the consultation on the UKTS ('best efforts' basis).
- For CRR rules only: subject to certain exceptions, have regard to:
  - relevant standards recommended by the Basel Committee on Banking Supervision from time to time
  - the likely effect of the rules on the relative standing of the United Kingdom as a place for internationally active credit institutions and investment firms to be

based or to carry on activities. For these purposes, the PRA must consider the United Kingdom's standing in relation to the other countries and territories in which, in its opinion, internationally active credit institutions and investment firms are most likely to choose to be based or carry on activities

- the likely effect of the rules on the ability of CRR firms to continue to provide finance to businesses and consumers in the United Kingdom on a sustainable basis in the medium and long term
  - the target in section 1 of the Climate Change Act 2008 (carbon target for 2050)
  - (s144C (1) & (2) FSMA – exceptions in s144E FSMA).
- **For CRR rules only** – explanation of the ways in which having regard to the matters specified above has affected the proposed rules (s144D FSMA).
  - **For CRR rules only** – publication of a summary of the proposed CRR rules.
  - **For CRR rules only** – consideration and consultation with the Treasury about the likely effect of the rules on relevant equivalence decisions (s144C (3) & (4) FSMA).

Draft for consultation