

PRA RULEBOOK: CRR FIRMS: DEFINITION OF CAPITAL AMENDMENT 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.

PRA Rulebook: CRR Firms: Definition of Capital Amendment Instrument 2016

- D. The PRA makes the rules in the Annexes 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: CRR Firms: Definition of Capital Amendment Instrument 2016.

By order of the Board of the Prudential Regulation Authority
14 January 2016

Annex A

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

Part

DEFINITION OF CAPITAL

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7 NOTIFICATION REGIME - ISSUANCE

- 7.1 A *firm* ~~must 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 issue a capital instrument that it considers ~~believes~~ 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). ~~at least thirty days before the intended date of issue.~~ This rule does not apply to the capital instruments in the situation described in ~~7.3~~ 7.5 below.
- 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.
- ~~7.27.3~~ When giving notice under 7.1, the *firm* ~~must shall~~ provide:
- (1) details of the amount and type of *own funds* the *firm* is seeking to raise through the intended issue and whether the capital instruments are intended to be issued to external investors or to other members of its *group* 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; term sheet and details of any features of the capital instrument which are novel, unusual or different from a capital instrument of a similar nature previously issued by the *firm* or widely available in the market;
 - (3) ~~confirmation from a member of the *firm's* senior management responsible for authorising the intended issue or, in the case of an issue by another *group* member, for the issue's inclusion in the *firm's* consolidated *own funds*, that the capital instrument meets the conditions for qualification as an *own funds instrument*; and~~
 - ~~(4)~~(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.
- 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).

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.

7.6 The rule in 7.5 applies whether or not the notified issuance is pursuant to a NIP.

~~7.3 The firm does not have to give notice under 7.1 if the capital instrument is:~~

- ~~(1) an ordinary share with voting rights and no new or unusual features; or~~
- ~~(2) a debt instrument issued under a debt securities programme under which the firm or group member has previously issued and the firm has notified the PRA in accordance with this Chapter prior to a previous issuance under the programme.~~

~~7.4 A firm shall 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 of the firm, to issue a capital instrument described in 7.3.~~

~~7.5 When giving notice under 7.4, the firm shall provide:~~

- ~~(1) confirmation that the terms of the capital instrument have not changed since the previous issue by the firm of that type of capital instrument; and~~
- ~~(2) the items described in 7.2(1) and (3).~~

~~7.67.7 The firm shall notify the PRA in writing of any change to the intended date of issue, amount 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 or 7.4.~~

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.

7.9 (1) The Pre-Issuance Notification (PIN) Form can be found here: <http://www.bankofengland.co.uk/pradocuments/supervision/activities/pincrrfirms.pdf>

(2) The CET1 Compliance Template can be found here:
<http://www.bankofengland.co.uk/pru/Documents/supervision/activities/cet1template.pdf>

Annex B

In this Annex, all the text is new and is not underlined.

This Annex contains the Pre-Issuance Notification (PIN) Form to be used in connection with Definition of Capital 7.9(1)



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

Prudential Regulation Authority (PRA) - Pre Issuance Notification (PIN) Form for CRR Firms

Notification to the PRA of planned issuance of a regulatory capital instrument

Please send completed form to CRRFirms.regulatorycapital@bankofengland.co.uk.
Submission to your PRA supervisory contact does not constitute the required notice.

1. Name and, where applicable, Firm Reference Number (FRN) of the issuer:	
2. Reason(s) for the issuance of the capital instrument:	
3. Notification of amendment to an existing capital instrument? [Yes/No]	
4. Position of the issuer within the group (Please attach a current group structure chart and, if the group structure will change, the intended group structure post issuance):	
5. At what level is the regulatory capital proposed to be included (individual/(sub-)consolidated or a combination):	
6. Will the capital instrument be issued externally or intra-group? <ul style="list-style-type: none"> • If external, please describe the targeted investor group (if known) or a description of likely investors: • If intra-group, please identify the investor and describe how the purchase of the capital instrument will be funded: 	
7. Proposed tier of capital (Common Equity Tier 1, Additional Tier 1 or Tier 2):	
8. If the proposed tier of capital is Additional Tier 1, please state whether it will be characterised as an equity instrument or debt instrument under the applicable accounting framework:	
<i>(Please provide (in accordance with 7.3(4) of</i>	

<i>Definition of Capital) a draft of a properly reasoned opinion by your auditor):</i>	
9. <i>Proposed date of issue or amendment:</i>	
10. <i>Proposed currency and amount (or approximation) to be issued:</i>	
11. <i>Is the capital instrument compliant with the relevant provisions of the Capital Requirements Regulation (EU) No 575/2013 and Commission Delegated Regulation (EU) 241/2014 and any other relevant binding technical standard?</i> <i>(Please provide (in accordance with 7.3(3) of Definition of Capital) a draft of a properly reasoned independent legal opinion from an appropriately qualified individual), or a completed Common Equity Tier 1 compliance template (in accordance with 7.4 of Definition of Capital)</i>	

Please note that your submission is incomplete unless you have included the following:

- A completed PIN form for CRR Firms;
- A copy of the draft terms and conditions of the proposed capital instrument;
- For any item intended for inclusion Additional Tier1 or Tier 2 capital, a draft of a properly reasoned independent legal opinion from an appropriately qualified individual confirming that the capital instrument meets the conditions for qualification as Additional Tier 1 or Tier 2 capital (in accordance with 7.3(3) of Definition of Capital);
- For any item intended for inclusion within Common Equity Tier 1 capital, a Common Equity Tier 1 compliance template completed by an appropriately qualified individual confirming that the capital instrument meets the conditions for qualification as Common Equity Tier 1 capital (in accordance with 7.4 of Definition of Capital); and
- For any item intended for inclusion within Additional Tier 1 capital, a draft of a properly reasoned opinion by your auditor (in accordance with 7.3(4) of Definition of Capital).
- For any item intended for inclusion within Additional Tier 1 capital a written statement confirming compliance with art. 52(1) (a),(b) and (c) CRR and for any item intended for inclusion within Tier 2 capital a written statement confirming compliance with art. 63 (a),(b) and (c) CRR.

Declaration by a member of the senior management¹:

I confirm that I have reviewed and assessed the capital instrument against the requirements for own funds in title one of part two of the Capital Requirements Regulation (EU) 575/2013 and Commission Delegated Regulation (EU) 241/2014. I confirm that the information given in this form is accurate and complete and that the capital instrument meets the criteria for inclusion in the proposed tier of capital.

¹ As defined in the Glossary part of the PRA Rulebook.

Signed (member of the senior management)

Name / position in firm / date

Note: The PRA understands that at the time firms provide notification (at least one month in advance of the intended issue date), they might be able to give only preliminary information about some details. In order to ensure that the PRA receives the necessary information to enable effective supervision, firms will need to provide final confirmation of any such matters no later than on the day that the instrument is issued. This will include details of the final amount and coupon.

Annex C

In this Annex, all the text is new and is not underlined.

This Annex contains the CET1 Compliance Template to be used in connection with Definition of Capital 7.9(2)

CRR provision ²	Terms & conditions	Articles of association	National Regulation	Comments + reference to document(s)
Article 26				
3. Competent authorities shall evaluate whether issuances of CET1 instruments meet the criteria set out in Article 28 or, where applicable, Article 29. With respect to issuances after 28 June 2013, institutions shall classify capital instruments as Common Equity Tier 1 instruments only after permission is granted by the competent authorities, which may consult EBA.				
Article 27				
1. CET1 items shall include any capital instrument issued by an institution under its statutory terms provided that the following conditions are met:				
(a) the institution is of a type that is defined under applicable national law and which competent authorities consider to qualify as any of the following ³ :				
(i) a mutual;				

² Applicable (A); not applicable (NA)

³ Please specify the type of institution. If institutions within (v), please provide additional information according to that number

CRR provision ²	Terms & conditions	Articles of association	National Regulation	Comments + reference to document(s)
(ii) a cooperative society; (iii) a savings institution; (iv) a similar institution; (v) a credit institution which is wholly owned by one of the institutions referred to in points (i) to (iv) and has approval from the relevant competent authority to make use of the provisions in this Article, provided that, and for as long as, 100 % of the ordinary shares in issue in the credit institution are held directly or indirectly by an institution referred to in those points;				
(b) the conditions laid down in Articles 28 or, where applicable, Article 29, are met.				
Those mutuals, cooperative societies or savings institutions recognised as such under applicable national law prior to 31 December 2012 shall continue to be classified as such for the purposes of this Part, provided that they continue to meet the criteria that determined such recognition.				
Article 28				
1. Capital instruments shall qualify as CET1 instruments only if all the following conditions are met:				
(a) the instruments are issued directly by the				

CRR provision ²	Terms & conditions	Articles of association	National Regulation	Comments + reference to document(s)
institution with the prior approval of the owners of the institution or, where permitted under applicable national law, the management body of the institution;				
(b) the instruments are paid up and their purchase is not funded directly or indirectly by the institution;				
(c) the instruments meet all the following conditions as regards their classification:				
(i) they qualify as capital within the meaning of Article 22 of Directive 86/635/EEC;				
(ii) they are classified as equity within the meaning of the applicable accounting framework;				
(iii) they are classified as equity capital for the purposes of determining balance sheet insolvency, where applicable under national insolvency law;				
(d) the instruments are clearly and separately disclosed on the balance sheet in the financial statements of the institution;				
(e) the instruments are perpetual;				

CRR provision ²	Terms & conditions	Articles of association	National Regulation	Comments + reference to document(s)
(f) the principal amount of the instruments may not be reduced or repaid, except in either of the following cases ⁴ :				
(i) the liquidation of the institution;				
(ii) discretionary repurchases of the instruments or other discretionary means of reducing capital, where the institution has received the prior permission of the competent authority in accordance with Article 77;				
(g) the provisions governing the instruments do not indicate expressly or implicitly that the principal amount of the instruments would or might be reduced or repaid other than in the liquidation of the institution, and the institution does not otherwise provide such an indication prior to or at issuance of the instruments, except in the case of instruments referred to in Article 27 where the refusal by the institution to redeem such instruments is prohibited under applicable national law;				
The condition laid down in point (g) of paragraph 1 shall be deemed to be met notwithstanding the provisions governing the				

⁴The condition laid down in point (f) of paragraph 1 shall be deemed to be met notwithstanding the reduction of the principal amount of the capital instrument within a resolution procedure or as a consequence of a write down of capital instruments required by the resolution authority responsible for the institution

CRR provision ²	Terms & conditions	Articles of association	National Regulation	Comments + reference to document(s)
capital instrument indicating expressly or implicitly that the principal amount of the instrument would or might be reduced within a resolution procedure or as a consequence of a write down of capital instruments required by the resolution authority responsible for the institution.				
(h) the instruments meet the following conditions as regards distributions:				
(i) there is no preferential distribution treatment regarding the order of distribution payments, including in relation to other CET1 instruments, and the terms governing the instruments do not provide preferential rights to payment of distributions;				
For the purposes of point (h)(i) of paragraph 1, differentiated distributions shall only reflect differentiated voting rights. In this respect, higher distributions shall only apply to Common Equity Tier 1 instruments with fewer or no voting rights.				
(ii) distributions to holders of the instruments may be paid only out of distributable items;				
(iii) the conditions governing the instruments do not include a cap or other restriction on the maximum level of distributions, except in the				

CRR provision ²	Terms & conditions	Articles of association	National Regulation	Comments + reference to document(s)
case of the instruments referred to in Article 27;				
The condition laid down in point (h)(iii) of paragraph 1 shall be deemed to be met notwithstanding the instrument paying a dividend multiple, provided that such a dividend multiple does not result in a distribution that causes a disproportionate drag on own funds				
(iv) the level of distributions is not determined on the basis of the amount for which the instruments were purchased at issuance, except in the case of the instruments referred to in Article 27;				
(v) the conditions governing the instruments do not include any obligation for the institution to make distributions to their holders and the institution is not otherwise subject to such an obligation;				
(vi) non-payment of distributions does not constitute an event of default of the institution;				
(vii) the cancellation of distributions imposes no restrictions on the institution;				
(i) compared to all the capital instruments issued by the institution, the instruments absorb the first and proportionately greatest				

CRR provision ²	Terms & conditions	Articles of association	National Regulation	Comments + reference to document(s)
share of losses as they occur, and each instrument absorbs losses to the same degree as all other CET1 instruments; ⁵				
(j) the instruments rank below all other claims in the event of insolvency or liquidation of the institution;				
(k) the instruments entitle their owners to a claim on the residual assets of the institution, which, in the event of its liquidation and after the payment of all senior claims, is proportionate to the amount of such instruments issued and is not fixed or subject to a cap, except in the case of the capital instruments referred to in Article 27;				
(l) the instruments are neither secured nor subject to a guarantee that enhances the seniority of the claim by any of the following:				
(i) the institution or its subsidiaries; (ii) the parent undertaking of the institution or its subsidiaries; (iii) the parent financial holding company or its subsidiaries; (iv) the mixed activity holding company or its subsidiaries; (v) the mixed financial holding company and				

⁵ The conditions laid down in point (i) of paragraph 1 shall be deemed to be met notwithstanding a write down on a permanent basis of the principal amount of AT1 or T2 instruments

CRR provision ²	Terms & conditions	Articles of association	National Regulation	Comments + reference to document(s)
its subsidiaries; (vi) any undertaking that has close links with the entities referred to in points (i) to (v);				
(m) the instruments are not subject to any arrangement, contractual or otherwise, that enhances the seniority of claims under the instruments in insolvency or liquidation.				
The condition set out in point (j) of the first subparagraph shall be deemed to be met, notwithstanding the instruments are included in AT1 or T2 by virtue of Article 484 (3), provided that they rank pari passu.				
Article 29				
1. Capital instruments issued by mutuals, cooperative societies, savings institutions and similar institutions shall qualify as CET1 instruments only if the conditions laid down in Article 28 with modifications resulting from the application of this Article are met.				
2. The following conditions shall be met as regards redemption of the capital instruments:				
(a) except where prohibited under applicable national law, the institution shall be able to refuse the redemption of the instruments;				
(b) where the refusal by the institution of the redemption of instruments is prohibited under				

CRR provision ²	Terms & conditions	Articles of association	National Regulation	Comments + reference to document(s)
applicable national law, the provisions governing the instruments shall give the institution the ability to limit their redemption;				
(c) refusal to redeem the instruments, or the limitation of the redemption of the instruments where applicable, may not constitute an event of default of the institution.				
3. The capital instruments may include a cap or restriction on the maximum level of distributions only where that cap or restriction is set out under applicable national law or the statute of the institution.				
4. Where the capital instruments provide the owner with rights to the reserves of the institution in the event of insolvency or liquidation that are limited to the nominal value of the instruments, such a limitation shall apply to the same degree to the holders of all other CET1 instruments issued by that institution.				
The condition laid down in the first subparagraph is without prejudice to the possibility for a mutual, cooperative society, savings institution or a similar institution to recognise within CET1 instruments that do not afford voting rights to the holder and that				

CRR provision ²	Terms & conditions	Articles of association	National Regulation	Comments + reference to document(s)
meet all the following conditions:				
(a) the claim of the holders of the non-voting instruments in the insolvency or liquidation of the institution is proportionate to the share of the total CET1 instruments that those non-voting instruments represent;				
(b) the instruments otherwise qualify as CET1 instruments.				
5. Where the capital instruments entitle their owners to a claim on the assets of the institution in the event of its insolvency or liquidation that is fixed or subject to a cap, such a limitation shall apply to the same degree to all holders of all CET1 instruments issued by the institution.				