

DEFINITION OF CAPITAL FOR INVESTMENT FIRMS INSTRUMENT 2025

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following sections of the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 138D (Actions for damages);
 - (4) section 139A (Power of the FCA to give guidance);
 - (5) section 143D (Duty to make rules applying to parent undertakings); and
 - (6) section 143E (Powers to make rules applying to parent undertakings).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 April 2026.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Prudential sourcebook for MiFID Investment Firms (MIFIDPRU) is amended in accordance with Annex B to this instrument.

Notes

- F. In the annexes to this instrument, the notes (indicated by “**Note:**” or “*Editor’s note:*”) are included for the convenience of readers, but do not form part of the legislative text.

Citation

- G. This instrument may be cited as the Definition of Capital for Investment Firms Instrument 2025.

By order of the Board
2 October 2025

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>accumulated other comprehensive income</i>	means the accumulated balance of ‘other comprehensive income’ as defined in International Accounting Standard (IAS) 1.
<i>additional tier 1 or comparable instrument</i>	has the meaning in <i>MIFIDPRU</i> 3.4A.22R.
<i>additional tier 1 item</i>	has the meaning in <i>MIFIDPRU</i> 3.4A.2R.
<i>common equity tier 1 or comparable instrument</i>	has the meaning in <i>MIFIDPRU</i> 3.3A.29R.
<i>common equity tier 1 item</i>	has the meaning in <i>MIFIDPRU</i> 3.3A.2R.
<i>distribution</i>	means the payment, in any form, of dividends or interest.
<i>external investor</i>	an <i>undertaking</i> that is not included in the <i>investment firm group</i> .
<i>intangible asset</i>	has the same meaning as in the applicable accounting framework and includes goodwill.
<i>liquidation</i>	means the winding up of a <i>firm</i> under Part IV of the Insolvency Act 1986, and any other comparable process.
<i>minority interest</i>	means the <i>common equity tier 1 items</i> , <i>additional tier 1 items</i> or <i>tier 2 items</i> of a <i>subsidiary</i> of a <i>UK parent entity</i> that are attributable to an <i>external investor</i> .
<i>other reserves</i>	means reserves, within the meaning of the applicable accounting framework, that: <ul style="list-style-type: none"> (a) are required to be disclosed under the applicable accounting standard; and

- (b) are not included in *accumulated other comprehensive income* or *retained earnings*.

<i>reciprocal cross-holding</i>	means a holding by a <i>firm</i> of the <i>own funds instruments</i> or other capital instruments issued by a <i>financial sector entity</i> where that entity also holds <i>own funds instruments</i> issued by the <i>firm</i> .
<i>reduction of capital</i>	means a call, redemption, repurchase, buyback, repayment of principal and any other transaction with a similar economic effect.
<i>retained earnings</i>	means profits and losses brought forward as a result of an <i>undertaking's</i> finalised profit or loss for the year under the applicable accounting framework.
<i>tier 2 or comparable instrument</i>	has the meaning in <i>MIFIDPRU</i> 3.5A.17R.
<i>tier 2 item</i>	has the meaning in <i>MIFIDPRU</i> 3.5A.2R.

Amend the following definitions as shown.

<i>additional tier 1 capital</i>	(1) (in <i>MIFIDPRU</i>) as defined in article 61 of the <i>UK CRR</i>, as applied and modified by <i>MIFIDPRU</i> 3.4 <u>has the meaning in <i>MIFIDPRU</i> 3.4A.2R.</u>
	(2) as defined in article 61 of the <i>UK CRR</i>.
<i>additional tier 1 instrument</i>	(1) (in relation to an instrument issued by a <i>MIFIDPRU investment firm</i>) a capital instrument that qualifies as an additional tier 1 capital instrument under article 52 of the <i>UK CRR</i> as applied and modified by the requirements in <i>MIFIDPRU</i> 3.4 <u>a capital instrument that complies with the conditions in <i>MIFIDPRU</i> 3.4A.3R to <i>MIFIDPRU</i> 3.4A.15R and that is not a <i>common equity tier 1 instrument</i>.</u>
	(2) (in any other case) a capital instrument that qualifies as an additional tier 1 capital instrument under article 52 of the <i>UK CRR</i>.
<i>common equity tier 1 capital</i>	(1) (in <i>MIFIDPRU</i>) as defined in article 50 of the <i>UK CRR</i>, as applied and modified by <i>MIFIDPRU</i> 3.3 <u>has the meaning in <i>MIFIDPRU</i> 3.3A.2R.</u>
	(2) (except in <i>MIFIDPRU</i>) as defined in article 50 of the <i>UK CRR</i>.

<i>common equity tier 1 instrument</i>	a capital instrument that qualifies as a common equity tier 1 instrument under article 26 of the UK CRR a capital instrument that complies with the conditions in <u>MIFIDPRU 3.3A.3R to MIFIDPRU 3.3A.16R.</u>
<i>contingent convertible instrument</i>	<p>a <i>financial instrument</i> which meets the requirements for either:</p> <p>(a) Additional Tier 1 instruments under article 52 <u>of the Own Funds (CRR) Part of the PRA Rulebook</u>; or</p> <p>(aa) <u>Additional tier 1 instruments</u>; or</p> <p>(b) Tier 2 instruments under article 63 <u>of the Own Funds (CRR) Part of the PRA Rulebook or Tier 2 instruments</u>, provided:</p> <p>(i) the provisions governing the instrument require that, upon the occurrence of a trigger event, the principal amount of the instrument be written down on a permanent or temporary basis or the instrument be converted to one or more common equity Tier 1 instruments; and</p> <p>(ii) the trigger mechanism in (i) is different from, or additional to, any discretionary mechanism for converting or writing down the principal amount of the instrument which is activated following a determination by the relevant authority that the issuer of the <i>financial instrument</i> (or its <i>group</i>, or any member of its <i>group</i>) is no longer viable, or will no longer be viable unless the relevant instrument is converted or written down;</p> <p>in each case of the UK CRR, or (where applicable) its provisions as applied and amended by MIFIDPRU 3.</p>
<i>own funds</i>	<p>...</p> <p>(4A) (in <i>MIFIDPRU</i>) has the meaning in MIFIDPRU 3.2.1R <u>MIFIDPRU 3.2A.2R.</u></p> <p>...</p>
<i>own funds instruments</i>	(1) (in relation to an instrument issued by a MIFIDPRU investment firm except in (2)) capital instruments that qualify as <i>common equity tier 1 instruments</i> , <i>additional tier 1 instruments</i> or <i>tier 2 instruments</i> .

	(2)	(in relation to a <i>parent undertaking</i> to which the <i>group capital test</i> applies) as defined <u>has the meaning in MIFIDPRU 2.6.2R</u> MIFIDPRU 2.6.2R(1).
	(3)	(in any other case) has the meaning in article 4(1)(119) of the UK CRR.
<i>tier 2 capital</i>	(1)	(in MIFIDPRU) as defined in article 71 of the UK CRR, as applied and modified by MIFIDPRU 3.5 <u>has the meaning in MIFIDPRU 3.5A.2R.</u>
	(2)	(except in MIFIDPRU) as defined in article 71 of the UK CRR.
<i>tier 2 instruments</i>		a capital instrument that qualify as tier 2 instruments under article 62 of the UK CRR <u>complies with the conditions in MIFIDPRU 3.5A.3R to MIFIDPRU 3.5A.11R and is not a common equity tier 1 instrument or an additional tier 1 instrument.</u>

Delete the following definitions. The text is not shown struck through.

<i>AVA</i>	an additional valuation adjustment calculated under <i>MIFIDPRU 3 Annex 8R</i> .
<i>cooperative society</i>	a cooperative society as defined in <i>MIFIDPRU 3 Annex 7.4R</i> .
<i>intermediate entity</i>	an intermediate entity as defined in <i>MIFIDPRU 3 Annex 7.32R</i> .
<i>similar institution</i>	a similar institution as defined in <i>MIFIDPRU 3 Annex 7.5R</i> .
<i>valuation exposure</i>	means the amount of a <i>valuation position</i> that is sensitive to the movement in a <i>valuation input</i> .
<i>valuation input</i>	means a market observable or non-observable parameter or matrix of parameters that influences the fair value of a <i>valuation position</i> .
<i>valuation position</i>	means a <i>financial instrument</i> or commodity or portfolio of <i>financial instruments</i> or commodities, which are measured at fair value.

Annex B

Amendments to the Prudential sourcebook for MiFID Investment Firms (MIFIDPRU)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise indicated.

1 Application

1.1 Application and purpose

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Voluntary application of stricter requirements

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- 1.1.9 G (1) If a *firm* applies stricter measures than those required under *MIFIDPRU* in accordance with *MIFIDPRU* 1.1.8R, the *firm* must still ensure that it meets the basic requirements of *MIFIDPRU*. This is illustrated by the following two examples:

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- (b) Example 2: A *firm* decides to hold a significant amount of additional *own funds* instead of applying the deductions from its *common equity tier 1 capital* required under ~~*MIFIDPRU* 3.3.6R~~ *MIFIDPRU* 3. It does so on the basis that the additional *own funds* far exceed the estimated value of the required deductions and the *firm* considers that the deduction calculations are too onerous. While the *firm* may consider that holding these additional *own funds* is a stricter measure, this approach would not meet the basic requirements of *MIFIDPRU*, which require the *firm* to calculate and apply the deductions. In addition, the failure to apply the correct deductions to *common equity tier 1 capital* may result in the *firm* incorrectly applying the *concentration risk* requirements and limits in *MIFIDPRU* 5. This approach would therefore not be permitted under *MIFIDPRU* 1.1.8R because it does not meet the basic requirements of *MIFIDPRU*.

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2 Level of application of requirements

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2.5 Prudential consolidation

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Prudential consolidation – main requirements

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- 2.5.10 R (1) ~~When applying MIFIDPRU 3 on a consolidated basis, the requirements in Title II of Part Two of the UK CRR shall also apply with the modifications in this rule.~~
- (2) ~~A reference in Title II of Part Two of the UK CRR to an entity or person included within the “consolidation pursuant to Chapter 2 of Title II of Part One” is a reference to an entity or person included in the consolidated situation of the investment firm group under MIFIDPRU 2.5.~~
- (3) ~~The relevant subsidiaries for the purposes of articles 81(1)(a) and 82(a) of the UK CRR are:~~
- ~~(a) a MIFIDPRU investment firm;~~
 - ~~(b) a designated investment firm; and~~
 - ~~(c) a UK credit institution that is included in the consolidated situation under MIFIDPRU 2.5 because it is a connected undertaking.~~
- (4) ~~The modifications in (5) apply where the following provisions of the UK CRR apply to a subsidiary that is a MIFIDPRU investment firm:~~
- ~~(a) article 84(1)(a)(i);~~
 - ~~(b) article 85(1)(a)(i); and~~
 - ~~(c) article 87(1)(a)(i).~~
- (5) ~~The modifications referred to in (4) are as follows:~~
- ~~(a) the relevant amount of common equity tier 1 capital in article 84(1)(a)(i) is the sum of:~~
 - ~~(i) the amount of common equity tier 1 capital required to meet the firm’s own funds threshold requirement; and~~
 - ~~(ii) any other requirements that apply to the firm under additional third countries local supervisory regulations in to the extent that those requirements must be met by common equity tier 1 capital;~~
 - ~~(b) the relevant amount of tier 1 capital in article 85(1)(a)(i) is the sum of:~~

- (i) ~~the amount of *tier 1 capital* required to meet the *firm's own funds threshold requirement*; and~~
- (ii) ~~any other requirements that apply to the *firm* under additional local supervisory regulations in *third countries* to the extent that those requirements must be met by *tier 1 capital*; and~~
- (e) ~~the relevant amount of *own funds* in article 87(1)(a)(i) is the sum of:~~
 - (i) ~~the amount of *own funds* required to meet the *firm's own funds threshold requirement*; and~~
 - (ii) ~~any other requirements that apply to the *firm* under additional local supervisory regulations in *third countries* to the extent that those requirements must be met by *own funds*.~~
- (6) The following provisions of the *UK CRR* are modified as follows:
 - (a) article 84(1)(a)(ii) applies as if it refers to the sum of:
 - (i) ~~the amount of consolidated *common equity tier 1 capital* that relates to the *subsidiary* that is required on a *consolidated basis* to meet the requirement in *MIFIDPRU 2.5*; and~~
 - (ii) ~~any other requirements that apply to the *subsidiary* under additional local supervisory regulations in *third countries* to the extent that those requirements must be met by *common equity tier 1 capital*;~~
 - (b) article 85(1)(a)(ii) applies as if it refers to the sum of:
 - (i) ~~the amount of consolidated *tier 1 capital* that relates to the *subsidiary* that is required on a *consolidated basis* to meet the requirement in *MIFIDPRU 2.5*; and~~
 - (ii) ~~any other requirements that apply to the *subsidiary* under additional local supervisory regulations in *third countries* to the extent that those requirements must be met by *tier 1 capital*; and~~
 - (c) article 87(1)(a)(ii) applies as if it refers to the sum of:
 - (i) ~~the amount of consolidated *own funds* that relates to the *subsidiary* that is required on a *consolidated basis* to meet the requirement in *MIFIDPRU 2.5*; and~~

- (ii) ~~any other requirements that apply to the subsidiary under additional local supervisory regulations in third countries to the extent that those requirements must be met by own funds.~~ [deleted]

2.5.10A G ~~MIFIDPRU 3 Annex 7.57G and MIFIDPRU 3 Annex 7.58R contain supplementary provisions that may be relevant when a firm is applying MIFIDPRU 2.5.10R.~~ [deleted]

- 2.5.10B R (1) When applying MIFIDPRU 3 on a consolidated basis, a UK parent entity may include the minority interest of an external investor in a subsidiary ('X') in the UK parent entity's consolidated common equity tier 1 capital, subject to the requirements in (2) to (5) of this rule.
- (2) X must be fully consolidated under MIFIDPRU 2.5.13R(1).
- (3) The minority interest must meet all of the criteria for common equity tier 1 items in MIFIDPRU 3.
- (4) (a) The minority interest must not have been funded directly or indirectly by an undertaking in the investment firm group.
- (b) Sub-paragraph (a) does not apply if the funding is provided in the ordinary course of the firm's business.
- (5) The amount of the minority interest in X that is eligible to count towards the UK parent entity's consolidated common equity tier 1 capital is limited to:

$$\underline{R * P}$$

where:

- R is the amount of the consolidated own funds requirement of the UK parent entity that arises from the inclusion of X and its subsidiaries in the consolidated situation, to the extent this must be met by common equity tier 1 capital; and
 - P is the percentage of X's common equity tier 1 items that is attributable to external investors.
- (6) When calculating the minority interests eligible for inclusion in a UK parent entity's consolidated tier 1 capital, (2) to (5) apply subject to the following modifications:
- (a) references to common equity tier 1 items in (3) and (5) are read as references to common equity tier 1 items and additional tier 1 items; and
- (b) references to common equity tier 1 capital in (5) are read as references to tier 1 capital.

- (7) When calculating the *minority interests* eligible for inclusion in a *UK parent entity's consolidated own funds*, (2) to (5) apply subject to the following modifications:
- (a) references to *common equity tier 1 items* in (3) and (5) are read as references to *common equity tier 1 items, additional tier 1 items and tier 2 items*; and
 - (b) references to *common equity tier 1 capital* in (5) are read as references to *own funds*.

- 2.5.10C G (1) MIFIDPRU 2.5.10BR permits a *UK parent entity* to count the capital of a *subsidiary* ('X') that is attributable to an *external investor* towards the relevant component of its *consolidated own funds*.
- (2) Such capital cannot have been funded directly or indirectly by an *undertaking* in the *investment firm group*, unless the funding is provided in the ordinary course of business. The *guidance* in MIFIDPRU 3.3A.10G(2) explains what this means.
- (3) Such capital is only eligible if it is being used to meet the contribution that X makes to the *consolidated own funds requirement* of the *investment firm group*. Surplus capital that is attributable to an *external investor* is not eligible because it is not available to meet losses incurred by the wider *investment firm group* – if the capital was returned, it would be due back to the *external investor* rather than available to the *UK parent entity*.
- (4) MIFIDPRU 2.5.24G to MIFIDPRU 2.5.46R explain how to calculate the *consolidated own funds requirement*. X's contribution to the consolidated requirement will not necessarily be the same as X's individual capital requirement – for example, because intra-group transactions can sometimes be netted off.
- (5) X's contribution to the *consolidated own funds requirement* can be calculated by comparing the *consolidated own funds requirement* of the *investment firm group* with the consolidated requirement if X (and its *subsidiaries*) were not included in the *investment firm group*.
- (6) The *UK parent entity* is still required to comply with the requirements on composition of *own funds* in MIFIDPRU 3.2A on a *consolidated basis*. Even where *minority interests* are eligible, their use may be limited by the applicable limits for different tiers of capital.
- (7) The definition of *subsidiary* includes a *subsidiary* of another *subsidiary*. If there are multiple *subsidiaries* with *minority interests* in a single *investment firm group*, a *UK parent entity* should repeat the calculation in MIFIDPRU 2.5.10BR for each *subsidiary*.

- 2.5.10D G (1) The following examples illustrate how to apply MIFIDPRU 2.5.10BR to calculate how much of a minority interest may be included in a UK parent entity's consolidated common equity tier 1 capital.
- (2) X is a subsidiary of a UK parent entity. Its contribution to the consolidated own funds requirement of its UK parent entity which must be met by common equity tier 1 capital is 35.
- (3) X has common equity tier 1 instruments in issue of 20, of which 16 are owned by the UK parent entity and 4 by an external investor. 20% are therefore attributable to an external investor.
- (4) X also has 40 in retained earnings. Because retained earnings are attributable in the same proportions as the common equity tier 1 instruments, 8 of the retained earnings (20%) are also attributable to the external investor.
- (5) The total minority interest in X is therefore 4 common equity tier 1 instruments plus 8 in retained earnings, so 12.
- (6) MIFIDPRU 2.5.10BR(5) limits how much of the 12 minority interest is eligible to count towards the UK parent entity's consolidated common equity tier 1 capital.
- (7) To calculate the limit in MIFIDPRU 2.5.10BR(5):
- (a) R, the contribution of X to the consolidated own funds requirement of its UK parent entity which must be met by common equity tier 1 capital, is 35.
- (b) P, the percentage of common equity tier 1 items attributable to an external investor, is 20%.
- (c) The amount of the minority interest eligible for inclusion in the consolidated common equity tier 1 capital of the UK parent entity is therefore limited to R*P or $35*20\% = 7$.

- 2.5.10E G (1) The following examples illustrate how to apply MIFIDPRU 2.5.10BR to calculate how much of a minority interest may be included in a UK parent entity's consolidated own funds.
- (2) X is a subsidiary of a UK parent entity. Its contribution to the consolidated own funds requirement of its UK parent entity which must be met by own funds is 15.
- (3) The sum of X's common equity tier 1 items and additional tier 1 items is 15. This capital is fully owned by the UK parent entity.
- (4) X issues tier 2 instruments to external investors for 5 capital.
- (5) The total minority interest in X is therefore 5.

- (6) MIFIDPRU 2.5.10BR(5) limits how much of the 5 minority interest is eligible to count towards the UK parent entity's consolidated own funds.
- (7) To calculate the limit in MIFIDPRU 2.5.10BR(5):
- (a) R, the contribution of X to the consolidated own funds requirement of its UK parent entity which must be met by own funds, is 15.
- (b) P, the percentage of common equity tier 1 items, additional tier 1 items and tier 2 items owned by an external investor, is 25% (5/20*100).
- (c) The amount eligible for inclusion in the consolidated own funds of the UK parent entity is therefore limited to R*P or 15*25% = 3.75.

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Prudential consolidation in practice: own funds

2.5.23 G ...

- (2) ~~MIFIDPRU 2.5.10R applies the provisions on minority interests and additional tier 1 instruments and tier 2 instruments issued by subsidiaries in Title II of Part Two of the UK CRR to a UK parent entity, but with the modifications set out in that rule. MIFIDPRU 2.5.10BR to MIFIDPRU 2.5.10EG explain the circumstances in which the minority interest of an external investor in a subsidiary is eligible to count towards consolidated own funds.~~
- (2A) In the case of a participation, own funds items attributable to an external investor are not eligible to count towards consolidated own funds.

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2.6 The group capital test

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Group capital test: requirements

2.6.2 R For the purposes of MIFIDPRU 2.6:

- (1) 'own funds instruments' means own funds as defined in MIFIDPRU 3, without applying the deductions referred to in ~~MIFIDPRU 3.3.6R(8), article 56(d), and article 66(d) of the UK CRR~~ MIFIDPRU 3.3A.27R,

MIFIDPRU 3.4A.20R and MIFIDPRU 3.5A.15R for any relevant financial undertaking in the investment firm group;

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2.6.4 G ~~*MIFIDPRU 3.7*~~ *MIFIDPRU 3.7A* contains rules and guidance on the composition of capital for *parent undertakings* subject to the *group capital test*.

2.6.5 R Where the *FCA* has granted an application under *MIFIDPRU 2.4.17R*, a *UK parent entity* and any other *GCT parent undertakings* in the *investment firm group* must hold own funds instruments sufficient to cover the sum of the following:

- (1) the sum of the full book value of their holdings, subordinated claims and instruments referred to in ~~*MIFIDPRU 3.3.6R(8)*~~, ~~article 56(d)~~, and ~~article 66(d) of the UK CRR~~ *MIFIDPRU 3.3A.27R*, *MIFIDPRU 3.4A.20R* and *MIFIDPRU 3.5A.15R* in *relevant financial undertakings* in the *investment firm group*; and

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MIFIDPRU 3.1 (Application and purpose) is deleted in its entirety. The deleted text is not shown but the section is marked [deleted] as shown below.

3.1 ~~Application and purpose~~ [deleted]

Insert the following new section, MIFIDPRU 3.1A, after MIFIDPRU 3.1. All the text is new and is not underlined.

3.1A Application, purpose and interpretation

Application

3.1A.1 R This chapter applies to:

- (1) a *MIFIDPRU investment firm*; and
- (2) a *UK parent entity* that is required by *MIFIDPRU 2.5.7R* to comply with *MIFIDPRU 3* on the basis of its *consolidated situation*.

3.1A.2 R This chapter also applies to a *parent undertaking* that is subject to the *group capital test* in accordance with *MIFIDPRU 2.6.5R*, but with the following modifications:

- (1) the definitions in *MIFIDPRU* 2.6.2R apply when calculating the *own funds instruments* of the *parent undertaking* for the purposes of the *group capital test*; and
- (2) *MIFIDPRU* 3.2A.4R and *MIFIDPRU* 3.2A.5R do not apply, but *MIFIDPRU* 3.7A applies instead.

3.1A.3 R For the purposes of this chapter:

- (1) where this chapter applies to a *parent undertaking* that is not a *firm*, reference to a '*MIFIDPRU investment firm*' or a '*firm*' includes a reference to that *parent undertaking*; and
- (2) where this chapter applies on the basis of the *consolidated situation* of an entity under *MIFIDPRU* 3.1A.1R(2), a reference in this chapter to a '*firm*' is a reference to the hypothetical single *MIFIDPRU investment firm* created under the *consolidated situation*.

Purpose

3.1A.4 G This chapter contains requirements for the calculation of a *MIFIDPRU investment firm's own funds*. *Own funds* is the term the *FCA* commonly uses to describe a *firm's* regulatory capital.

Principles underlying the definition of own funds

3.1A.5 G By requiring a *firm* to maintain an appropriate level of *own funds*, the *FCA* helps ensure that:

- (1) a *firm* can absorb losses while continuing to operate as a going concern;
- (2) a *firm* can absorb losses in *liquidation* in an orderly way that minimises harm to clients, markets and the wider financial system;
- (3) *own funds* are calculated consistently and transparently, allowing the *FCA* and other stakeholders to assess a *firm's* loss-absorbing capacity; and
- (4) the interests of a *firm's* owners are appropriately aligned with the long-term interests of the *firm* itself.

Interpretation

3.1A.6 R A *firm* must categorise and value its assets and off-balance sheet items in accordance with the applicable accounting framework, unless a *rule* specifies otherwise.

3.1A.7 G Every provision in the *Handbook* must be interpreted in the light of its purpose (*GEN* 2.2.1R). A *firm* must therefore look beyond the legal form of its capital

arrangements and consider their economic substance. This includes considering matters not set out in the terms of a capital instrument.

Mutual societies

- 3.1A.8 G The *FCA* recognises that a mutual society may require modification of certain requirements in this chapter. The *FCA* will generally use the *own funds* rules for mutual societies in the *PRA rulebook* as the starting point for such modifications, but will discuss this with relevant mutual societies.

MIFIDPRU 3.2 (Composition of own funds and initial capital) is deleted in its entirety. The deleted text is not shown but the section is marked [deleted] as shown below.

3.2 ~~Composition of own funds and initial capital~~ [deleted]

Insert the following new section, MIFIDPRU 3.2A, after MIFIDPRU 3.2. All the text is new and is not underlined.

3.2A Composition of own funds and initial capital

- 3.2A.1 G The *FCA* divides *own funds* into categories, or tiers, reflecting differences in the extent to which the capital concerned meets the purposes set out in *MIFIDPRU* 3.1A.5G.
- 3.2A.2 R The *own funds* of a *firm* are the sum of its:
- (1) *common equity tier 1 capital*;
 - (2) *additional tier 1 capital*; and
 - (3) *tier 2 capital*.
- 3.2A.3 G The *FCA* generally prefers a *firm* to hold *common equity tier 1 capital* because it provides the highest quality of loss absorption and permanence. *Common equity tier 1 capital* can be used to meet a *firm's* capital requirements without limit. Other tiers of capital are subject to limits as set out in *MIFIDPRU* 3.2A.4R.
- 3.2A.4 R A *firm* must, at all times, have *own funds* that satisfy all the following conditions:
- (1) the *firm's common equity tier 1 capital* must be equal to or greater than 56% of the *firm's own funds requirement* under *MIFIDPRU* 4.3;
 - (2) the sum of the *firm's common equity tier 1 capital* and *additional tier 1 capital* must be equal to or greater than 75% of the *firm's own funds requirement* under *MIFIDPRU* 4.3; and

- (3) the *firm's own funds* must be equal to or greater than 100% of the *firm's own funds requirement* under MIFIDPRU 4.3.

3.2A.5 R A *firm's initial capital* must be made up of *own funds*.

MIFIDPRU 3.3 (Common equity tier 1 capital) is deleted in its entirety. The deleted text is not shown but the section is marked [deleted] as shown below.

3.3 ~~Common equity tier 1 capital~~ [deleted]

Insert the following new section, MIFIDPRU 3.3A, after MIFIDPRU 3.3. All the text is new and is not underlined.

3.3A Common equity tier 1 capital

3.3A.1 G (1) *Common equity tier 1 capital* has the following core characteristics:

- (a) it is able to absorb losses as they occur;
- (b) it ranks below all other claims in *liquidation*;
- (c) it is permanent;
- (d) there is no obligation to make a *distribution*; and
- (e) the level of *distributions* is not capped.

- (2) The remainder of MIFIDPRU 3.3A contains the detailed *rules* and *guidance* for calculating *common equity tier 1 capital*.

3.3A.2 R A *firm* must calculate its *common equity tier 1 capital* in accordance with the first column of the following table. The second column indicates where relevant *rules* and *guidance* are found.

Item		Relevant rules and guidance
<i>Common equity tier 1 items:</i>		
(1)	<i>common equity tier 1 instruments;</i>	MIFIDPRU 3.3A.3R to MIFIDPRU 3.3A.16R
(2)	share premium accounts related to the <i>common equity tier 1 instruments;</i>	
(3)	<i>retained earnings;</i>	

(4)	interim or provisional year-end profits;	<i>MIFIDPRU 3.3A.17R and MIFIDPRU 3.3A.18G</i>
(5)	<i>accumulated other comprehensive income;</i>	
(6)	<i>other reserves;</i>	
<p>Note: (3) to (6) may only be recognised as <i>common equity tier 1 items</i> if they are available to the <i>firm</i> for unrestricted and immediate use to cover risks or losses as soon as these occur.</p>		
LESS		
Deductions from <i>common equity tier 1 items</i> :		<i>MIFIDPRU 3.3A.19G</i>
(7)	losses for the current financial year;	<i>MIFIDPRU 3.3A.20R</i>
(8)	<i>intangible assets;</i>	<i>MIFIDPRU 3.3A.21R</i>
(9)	deferred tax assets that rely on future profitability;	<i>MIFIDPRU 3.3A.22R</i>
(10)	defined benefit pension fund assets;	<i>MIFIDPRU 3.3A.23R</i>
(11)	direct, indirect and synthetic holdings of own <i>common equity tier 1 instruments</i> ;	<i>MIFIDPRU 3.3A.24R, MIFIDPRU 3.3A.30R and MIFIDPRU 3.3A.31G</i>
(12)	direct, indirect and synthetic holdings of <i>common equity tier 1 or comparable instruments</i> of <i>financial sector entities</i> where those entities have a <i>reciprocal cross-holding</i> with the <i>firm</i> ;	<i>MIFIDPRU 3.3A.25R, MIFIDPRU 3.3A.26G, and MIFIDPRU 3.3A.29R to MIFIDPRU 3.3A.31G</i>
(13)	direct, indirect and synthetic holdings of <i>common equity tier 1 or comparable instruments</i> of <i>financial sector entities</i> which are not held in the <i>trading book</i> ;	<i>MIFIDPRU 3.3A.27R to MIFIDPRU 3.3A.31G</i>
(14)	any excess of alternative tier 1 deductions above the <i>firm's additional tier 1 capital</i> ;	<i>MIFIDPRU 3.3A.32R</i>

(15)	foreseeable tax charges relating to <i>common equity tier 1 items</i> ;	<i>MIFIDPRU 3.3A.33R</i>
(16)	<i>qualifying holdings</i> outside the financial sector;	<i>MIFIDPRU 3.3A.34R</i> and <i>MIFIDPRU 3.3A.35G</i>
(17)	(for <i>partnerships</i> or <i>limited liability partnerships</i>) excess withdrawals;	<i>MIFIDPRU 3.3A.36R</i>
ADJUSTED FOR		
Prudential filters for <i>common equity tier 1 capital</i> :		
(18)	cash flow hedges and changes in the value of own liabilities due to own credit standing; and	<i>MIFIDPRU 3.3A.37R</i> and <i>MIFIDPRU 3.3A.38G</i>
(19)	additional valuation adjustment for the <i>trading book</i> .	<i>MIFIDPRU 3.3A.39R</i>

Prior permission and notification of issuances of common equity tier 1 instruments

- 3.3A.3 R (1) A *firm* must not classify an issuance of a capital instrument as a *common equity tier 1 instrument* unless:
- (a) it has obtained prior permission from the *FCA*; or
 - (b) (i) it is issuing new instruments on terms which are substantially the same as instruments for which the *firm* has already received the *FCA's* prior permission; and
 - (ii) it notifies the *FCA* sufficiently far in advance of classifying the new instruments as *common equity tier 1 instruments*.
- (2) The *FCA* will grant the permission in (1)(a) if it is satisfied that the capital instrument meets the criteria in *MIFIDPRU 3.3A.5R* to *MIFIDPRU 3.3A.16R*.
- (3) (a) A *firm* must obtain the permission in (1)(a) by completing the form in *MIFIDPRU 3 Annex 2R* and submitting it to the *FCA* using the *online notification and application system*.
- (b) A *firm* must notify under (1)(b) by completing the form in *MIFIDPRU 3 Annex 3R* and submitting it to the *FCA* using the *online notification and application system*.

- 3.3A.4 G The *FCA* generally expects to receive a notification of a new issuance of an existing form of *common equity tier 1 instrument* under *MIFIDPRU* 3.3A.3R(1)(b)(ii) at least 20 *business days* before the *firm* intends to classify that issuance as *common equity tier 1 instruments*.

Common equity tier 1 instruments: loss absorption

- 3.3A.5 R (1) A *common equity tier 1 instrument* must be classified as equity within the meaning of the applicable accounting framework.
- (2) A *firm's* obligations under the instrument must not constitute a liability (including a contingent or prospective liability) that would be relevant for the purposes of section 123(2) of the Insolvency Act 1986.
- (3) The holder of the instrument must not have any right, arising from the non-payment of any sums connected to the instrument, to petition for the winding up or administration of the *firm*, or any similar procedure.
- (4) The instrument must not be secured by, or subject to, a guarantee or other arrangement which enhances the legal or economic seniority of the claim.
- (5) (a) The *common equity tier 1 instruments* must rank below all other claims in the event of *liquidation*, except for claims from holders of other ordinary *shares* which rank *pari passu* with the instruments.
- (b) The *common equity tier 1 instruments* must entitle their owners to a claim on the residual assets of the *firm* which, in the event of *liquidation* and after payment of all senior claims, is proportionate to the amount of such instruments issued and is not fixed or subject to a cap, except that a claim specified as a percentage of residual assets does not constitute a fixed or capped claim.
- (c) Each *common equity tier 1 instrument* must absorb losses to the same degree as all other *common equity tier 1 instruments*, and all *common equity tier 1 instruments* must absorb losses before any other *own funds instruments* issued by the *firm*.
- 3.3A.6 R While the conditions in *MIFIDPRU* 3.3A.5R(5) require *common equity tier 1 instruments* to absorb losses before any other *own funds instruments*, the fact that an *additional tier 1 instrument* or *tier 2 instrument* may be permanently written down does not prevent these conditions being met.
- 3.3A.7 R (1) A *common equity tier 1 instrument* must be fully paid and the proceeds of issue immediately and fully available to the *firm*.
- (2) Where an instrument is partly paid, only the paid-up portion is eligible as a *common equity tier 1 instrument*.

- 3.3A.8 G *MIFIPDRU* 3.3A.7R requires that the full amount of capital has been irrevocably received by the *firm*, is fully under the *firm's* control, and does not directly or indirectly expose the *firm* to the credit risk of the investor. This condition is stricter than the definition of ‘fully paid’ in the Companies Act 2006, which may be met by an undertaking to pay.
- 3.3A.9 R (1) A *common equity tier 1 instrument* must not be funded directly or indirectly by the *firm* itself.
- (2) Paragraph (1) does not apply if the funding is provided in the ordinary course of the *firm's* business.
- 3.3A.10 G (1) *MIFIDPRU* 3.3A.9R prevents the artificial inflation of a *firm's own funds* by prohibiting a *firm* from funding its own capital instruments, at issuance or thereafter. This includes situations where:
- (a) a *firm* grants a loan or other funding to an investor that is used to purchase the *firm's own* capital instruments;
- (b) a *firm* grants any funding to an existing investor in its capital instruments;
- (c) a *firm* provides a guarantee, enters into a credit derivative, or enters into some other form of arrangement so that the credit risk in a capital instrument is or may be transferred to the *firm*; or
- (d) the funding in (a), (b) or (c) is provided to an external investor indirectly – for example, by a member of the *firm's group* or via another intermediary.
- (2) However, there is an exception for funding that is provided in the ordinary course of a *firm's* business. This covers situations where:
- (a) funding is provided as part of a *firm's* normal trading or business operations;
- (b) the terms are comparable to the terms the *firm* offers for third-party instruments; and
- (c) the funding is not designed to support the *firm's* capital position.
- (3) For example, a market maker providing standard margin lending that happens to involve the market maker's own capital instruments is likely to qualify for the exception. However, a structured arrangement specifically designed to fund purchases of the *firm's* capital instruments would not qualify.

Common equity tier 1 instruments: perpetuity

- 3.3A.11 R (1) A *common equity tier 1 instrument* must be perpetual, with a *reduction of capital* only permissible where:
- (a) the *firm* is in *liquidation*; or
 - (b) the *firm* carries out a *reduction of capital* which complies with *MIFIDPRU 3.6A.4R* or *MIFIDPRU 3.6A.6R*.
- (2) A *firm* must not do anything to create an expectation that it will or might carry out a *reduction of capital* under (1)(b) when it issues the instrument, and the statutory or contractual terms of the instrument must not contain any feature which would or might give rise to such an expectation.
- 3.3A.12 G (1) A *firm* generally has the right to carry out a *reduction of capital* under company law. However, *MIFIDPRU 3.6A.4R* requires that any *reduction of capital* is generally first approved by the *FCA*.
- (2) The *FCA* recognises that relevant documentation may acknowledge the fact that a *firm* is able to carry out a *reduction of capital*. However, the *firm* must not create an expectation that it would or might carry out a *reduction of capital* when it issues the relevant instrument.
- (3) An expectation that a *firm* would or might carry out a *reduction of capital* may be created by:
- (a) a term which creates an economic incentive for the *firm* to carry out a *reduction of capital* at a particular point in time;
 - (b) a term which suggests that a *reduction of capital* may be carried out at a particular point in time, or at the initiative of any *person* other than the *firm*, even if this is conditional upon the approval of the *firm's management body* and the *FCA*; or
 - (c) any other contractual or non-contractual indication that the *firm* would or might carry out a *reduction of capital* on a particular date, or in particular circumstances.

Common equity tier 1 instruments: perpetuity, partnerships and limited liability partnerships

- 3.3A.13 R (1) This *rule* applies to:
- (a) a *partner's* account in a *firm* that is a *partnership*; and
 - (b) a member's account in a *firm* that is a *limited liability partnership*.
- (2) References to a *partner* or a *partnership* in this *rule* include a member and a *limited liability partnership* respectively.

- (3) A *partner's* account satisfies the conditions in *MIFIDPRU* 3.3A.11R if:
- (a) capital contributed by *partners* is paid into the account; and
 - (b) the terms of the partnership agreement ensure that (otherwise than with prior *FCA* consent under *MIFIDPRU* 3.6A.4R or in the circumstances set out in *MIFIDPRU* 3.6A.6R) capital may only be withdrawn from the account by a *partner* ('A') if:
 - (i) A ceases to be a *partner* and an equal amount is contributed to another *partner's* account by A's former *partners* or any *person* replacing A as their *partner*;
 - (ii) any reduction in the capital credited to A's account is immediately offset by an equal contribution to other *partner* accounts by one or more of A's *partners* (including any *person* becoming a *partner* of A at the time that the additional contribution is made);
 - (iii) the *partnership* is wound up or dissolved; or
 - (iv) the *firm* ceases to be *authorised* or no longer has a *Part 4A permission*.

Common equity tier 1 instruments: distributions

3.3A.14 R A *common equity tier 1 instrument* must meet the following conditions regarding *distributions* (subject to *MIFIDPRU* 3.3A.16R):

- (1) the instrument must not provide or allow for the payment of preferential *distributions* over other *common equity tier 1 instruments* or any other capital instruments;
- (2) the instrument must not include a cap on *distributions* or any other restriction on the maximum amount payable;
- (3) the level of *distributions* must not be linked to the amount for which the instrument was purchased at issuance;
- (4) there must be no circumstances in which *distributions* are obligatory, including where non-payment triggers some other obligation (for example, to make payments in kind); and
- (5) failure to make *distributions* must not constitute an event of default.

3.3A.15 G (1) *MIFIDPRU* 3.3A.14R(1) prohibits differentiated levels of *distributions*, or preferences in factors such as the order or timing of *distributions*, subject to the exception for instruments with fewer or no voting rights in *MIFIDPRU* 3.3A.16R.

- (2) *MIFIDPRU 3.3A.14R(5)* means that a failure to make *distributions* must not have contractual or other consequences associated with an event of default, such as by engaging rights of termination, early repayment, additional voting rights, or other similar consequences.

Common equity tier 1 instruments: dividend multiples on instruments with fewer or no voting rights

3.3A.16 R A *common equity tier 1 instrument* may pay a dividend multiple relative to another *common equity tier 1 instrument* if:

- (1) the higher dividend multiple applies to *common equity tier 1 instruments* with fewer or no voting rights;
- (2) the dividend multiple is set contractually or under the *firm's* constitution;
- (3) the dividend multiple is not revisable;
- (4) the same dividend multiple applies to all instruments with a dividend multiple;
- (5) the dividend multiple is no more than 125% of the *distribution* on one voting *common equity tier 1 instrument*; and
- (6) the total amount of *distributions* paid on all *common equity tier 1 instruments* during a 1-year period does not exceed 105% of the amount that would have been paid if instruments with fewer or no voting rights received the same *distributions* as voting instruments.

Inclusion of interim profits or provisional year-end profits in common equity tier 1 capital

- 3.3A.17 R (1) A *firm* must not include interim profits or year-end profits in its *common equity tier 1 capital* before its formal decision confirming final profit or loss for the year, unless:
- (a) those profits have been verified by a *person* who is independent of the *firm* and is responsible for the auditing of the accounts of that *firm*;
 - (b) the verification provides an adequate level of assurance that those profits have been evaluated in accordance with the principles set out in the applicable accounting framework;
 - (c) the *firm* is satisfied that any foreseeable charge or dividend has been deducted from the amount of those profits on a prudent and conservative basis; and
 - (d) the *firm* notifies the *FCA* as soon as reasonably practicable after including the profits in its *common equity tier 1 capital*.

- (2) A *firm* must make the notification in (1)(d) by completing the form in *MIFIDPRU 3 Annex 1R* and submit it to the *FCA* using the *online notification and application system*.

- 3.3A.18 G (1) When deducting foreseeable dividends under *MIFIDPRU 3.3A.17R(1)(c)*, a *firm* should consider:
- (a) any formal decisions about dividends that have been taken by the *firm's management body*;
 - (b) the upper end of any dividend policy;
 - (c) the ratio of dividends to income paid out in previous years; and
 - (d) any other factors that might reasonably affect the *firm's* approach to *distributions* for the relevant period.
- (2) When deducting foreseeable charges under *MIFIDPRU 3.3A.17R(1)(c)*, a *firm* should consider:
- (a) any tax charges attributable to the profits being verified;
 - (b) any other charges that are attributable to the relevant period but have not yet been reflected in the *firm's common equity tier 1 capital* calculation; and
 - (c) any other factors that might reasonably be expected to affect the final profit or loss figure for the period.

Deductions and filters for common equity tier 1 capital

- 3.3A.19 G (1) Deductions and filters help to ensure that a *firm* measures its *own funds* in a way that reflects its ability to absorb losses in stressed conditions or *liquidation*.
- (2) They achieve this by adjusting accounting values – for example, because those values:
- (a) are subject to significant valuation uncertainty;
 - (b) may not reflect realisable values in stressed conditions;
 - (c) include unrealised or market-value gains and losses that may reverse with changing market conditions; or
 - (d) are only realisable if the *firm* continues to operate as a going concern.

Deduction of losses for the current financial year

- 3.3A.20 R (1) A *firm* must deduct losses for the current financial year, save where the losses have already resulted in a reduction in its *common equity tier 1 items*.
- (2) For the purposes of (1), a *firm* must:
- (a) apply the same accounting policies and standards as used for the year-end financial report;
 - (b) prudently estimate and assign income and expenses to the interim period in which they are incurred;
 - (c) recognise material or non-recurrent events in full and without delay in the interim period during which they arise; and
 - (d) determine profits, gains and losses, and deduct any resulting losses, as they arise.

Deduction of intangible assets

- 3.3A.21 R (1) A *firm* must deduct *intangible assets*.
- (2) For the purposes of (1):
- (a) a *firm* must also deduct any *intangible assets* included in the valuation of its *qualifying holdings*;
 - (b) where the *qualifying holding* in (2)(a) is not wholly owned or controlled by the *firm*, the *firm* must only deduct the portion of *intangible assets* corresponding to its percentage of ownership or control; and
 - (c) a *firm* must reduce the amount to be deducted by the amount of associated deferred tax liabilities that would be extinguished if the *intangible assets* became impaired or were derecognised, under the applicable accounting framework.

Deduction of deferred tax assets that rely on future profitability

- 3.3A.22 R (1) A *firm* must deduct deferred tax assets that rely on future profitability.
- (2) For the purposes of (1):
- (a) a *firm* may offset deferred tax liabilities against associated deferred tax assets if:
 - (i) the *firm* has a legally enforceable right to set off those current tax assets against current tax liabilities;

- (ii) the deferred tax assets and the deferred tax liabilities arise from the same tax authority and for the same taxable entity; and
 - (iii) the deferred tax liabilities do not reduce the amount of *intangible assets* or defined pension fund assets deductible under *MIFIDPRU 3.3A.21R* or *MIFIDPRU 3.3A.23R*; and
- (b) for the calculation of deferred tax assets and liabilities at consolidated level, a taxable entity includes any number of entities which are members of the same tax group, fiscal consolidation, fiscal unity or consolidated tax return.

Deduction of defined benefit pension fund assets on the firm's balance sheet

- 3.3A.23 R (1) A *firm* must deduct the value of any defined benefit pension fund assets on its balance sheet.
- (2) For the purposes of (1):
- (a) a *firm* must net off pension fund assets against its obligations under the fund; and
 - (b) a *firm* must reduce the amount to be deducted by the amount of associated deferred tax liabilities which would be extinguished if the assets became impaired or were derecognised, under the applicable accounting framework.

Deduction of holdings of own common equity tier 1 instruments

- 3.3A.24 R (1) A *firm* must deduct direct, indirect and synthetic holdings of its own *common equity tier 1 instruments*.
- (2) For the purposes of (1):
- (a) a *firm* must also apply the deduction where it could be obliged to purchase its own *common equity tier 1 instrument* as a result of an existing contractual obligation;
 - (b) a *firm* must deduct its gross long position unless (2)(c) applies; and
 - (c) a *firm* may deduct its net long position if:
 - (i) the long and short positions are in the same underlying exposure;
 - (ii) the short positions are cleared through an *authorised central counterparty* or subject to appropriate margining requirements; and

- (iii) the long and short positions are both held in the *trading book* or are both held outside the *trading book*.

Deduction of holdings of common equity tier 1 or comparable instruments where a firm has a reciprocal cross-holding designed to inflate own funds artificially

- 3.3A.25 R (1) A *firm* must deduct direct, indirect and synthetic holdings of the *common equity tier 1 or comparable instruments of financial sector entities* where those entities have a *reciprocal cross-holding* with the *firm* that is designed to inflate the *own funds* of the *firm* artificially.
- (2) For the purposes of (1), a *firm* must deduct holdings based on its gross long position.
- 3.3A.26 G The following factors indicate a *reciprocal cross-holding* designed to inflate *own funds* artificially:
- (1) the cross-holding does not serve a genuine business purpose;
 - (2) the timing and circumstances of the cross-holding suggest an intention to boost regulatory capital; or
 - (3) other connections between relevant entities which might indicate coordinated capital management.

Deduction of holdings of common equity tier 1 or comparable instruments of financial sector entities

- 3.3A.27 R (1) A *firm* must deduct direct, indirect and synthetic holdings of *common equity tier 1 or comparable instruments of financial sector entities* which are held outside of the *trading book*, unless MIFIDPRU 3.3A.28R applies.
- (2) A *firm* must calculate holdings based on its gross long position unless (3) applies.
- (3) A *firm* may calculate holdings based on its net long position where:
- (a) (i) the maturity date of the short position is the same as, or longer than, the maturity date of the long position; or
 - (ii) the residual maturity of the short position is at least one year; and
 - (b) the long and short positions are held outside of the *trading book*.

Holdings of common equity tier 1 instruments issued by a financial sector entity within an investment firm group

- 3.3A.28 R A *firm* is not required to deduct holdings of *common equity tier 1 instruments* of a *financial sector entity* under *MIFIDPRU 3.3A.27R* if all of the following conditions are met:
- (1) the *financial sector entity* forms part of the same *investment firm group* as the *firm*;
 - (2) there is no current or foreseen material, practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the *financial sector entity*;
 - (3) the *investment firm group* is subject to prudential consolidation under *MIFIDPRU 2.5*; and
 - (4) the risk evaluation, measurement and control procedures of the *parent undertaking* include the *financial sector entity*.

Common equity tier 1 or comparable instruments

- 3.3A.29 R A *common equity tier 1 or comparable instrument* means:
- (1) (for an entity subject to *MIFIDPRU*) a *common equity tier 1 instrument*;
 - (2) (for an *insurer* subject to the Solvency II Firms part of the *PRA Rulebook*) ‘Tier 1 own funds’ as defined in the Own Funds (Solvency II Firms) part of the *PRA Rulebook*, the inclusion of which is not restricted by Own Funds (Solvency II Firms) 4A.3 in the *PRA Rulebook*; and
 - (3) (for a *financial sector entity* not subject to (1) or (2)) any capital instrument that ranks below all other claims in *liquidation*.

Identifying and valuing indirect and synthetic holdings

- 3.3A.30 R For the purposes of *MIFIDPRU 3.3A.24R*, *MIFIDPRU 3.3A.25R* and *MIFIDPRU 3.3A.27R*:
- (1) An indirect holding means an economic exposure through an intermediate entity such as a holding company or special purpose vehicle.
 - (2) A *firm* must calculate the amount to be deducted for indirect holdings by:
 - (a) identifying any intermediate entities or structures through which it may be exposed to a deductible *common equity tier 1 instrument*;

- (b) making a prudent estimate of the full economic exposure of the intermediate entities or structures to deductible instruments; and
 - (c) deducting the proportion of economic exposure that is attributable to the *firm*.
- (3) A *firm* is not required to treat a holding in a *fund* as an indirect holding.
- (4) A synthetic holding means an economic exposure through a derivative instrument, guarantee, credit protection or other similar arrangement.
- (5) A *firm* must calculate the amount to be deducted for synthetic holdings by determining the maximum potential loss that would arise if the underlying deductible *common equity tier 1 instrument* or equivalent economic exposure had zero value, taking into account:
- (a) all contractual obligations relating to the position; and
 - (b) any other features that could increase the *firm's* economic exposure.
- 3.3A.31 G (1) *MIFIDPRU* 3.3A.30R explains how a *firm* should identify and value any indirect or synthetic holdings for the purposes of *MIFIDPRU* 3.3A.24R, *MIFIDPRU* 3.3A.25R and *MIFIDPRU* 3.3A.27R.
- (2) The *FCA* generally considers it disproportionate to require a *firm* to look through a *fund* for these purposes, given the limited exposures to a *firm's* own capital instruments and those of other *financial sector entities* that are likely to arise through most *funds*.
- (3) However, *MIFIDPRU* 3.1A.7G reminds *firms* to consider the economic substance of its capital arrangements. The *FCA* does not expect to see *firms* entering into arrangements intended to arbitrage this or other such concessions. Where a *fund* has a purpose or mandate to invest mainly in the capital instruments of *financial sector entities*, a *firm* should apply the relevant capital deductions accordingly.

Deduction of excess AT1 deductions

- 3.3A.32 R A *firm* must deduct from *common equity tier 1 items* the amount by which any items required to be deducted from *additional tier 1 capital* under *MIFIDPRU* 3.4A.2R exceed *additional tier 1 items*.

Deduction of foreseeable tax charges relating to common equity tier 1 items

- 3.3A.33 R (1) This deduction applies if a *firm* does not calculate its *own funds* in accordance with *UK-adopted international accounting standards*.
- (2) Where this deduction applies, a *firm* must:

- (a) deduct any foreseeable current and deferred tax charges relating to *common equity tier 1 items* that are not yet accounted for in its *common equity tier 1 capital*;
- (b) calculate the amount to be deducted using the approach in *UK-adopted international accounting standards*; and
- (c) deduct the amount of foreseeable current and deferred tax charges without netting off against any unrecognised deferred tax assets.

Deduction of qualifying holdings outside the financial sector

- 3.3A.34 R (1) A *firm* must deduct the higher of:
- (a) the sum of the amounts by which any *qualifying holdings* in *non-financial sector entities* each exceed 15% of the *firm's own funds*; or
 - (b) the amount by which all its *qualifying holdings* in *non-financial sector entities* exceed 60% of the *firm's own funds*.
- (2) The *own funds* limits in (1)(a) and (1)(b) must be calculated before applying this deduction.
- (3) When calculating the amounts in (1), a *firm* must treat a *fund* as a *non-financial sector entity*.
- (4) When calculating the amounts in (1), a *firm* must exclude:
- (a) shares held in the name of the *firm* on behalf of others;
 - (b) shares held in the *trading book*; and
 - (c) shares which are not financial fixed assets as defined in paragraph 94 of Schedule 2 of the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/401).
- 3.3A.35 G (1) The following examples illustrate how to apply the deduction in *MIFIDPRU 3.3A.34R*.
- (2) Firm Z has *own funds* of £100m before applying this deduction. Firm Z has *qualifying holdings* in *non-financial sector entities* of £20m, £25m and £30m.
- (3) Firm Z must deduct the higher of the amounts calculated under *MIFIDPRU 3.3A.34R(1)(a)* or (b).
- (4) Firm Z calculates the amount in *MIFIDPRU 3.3A.34R(1)(a)* as (£20m – £15m) + (£25m – £15m) + (£30m – £15m) = £30m.

- (5) Firm Z calculates the amount in *MIFIDPRU* 3.3A.34R(1)(b) as (£20m + £25m + £30m) – £60m = £15m.
- (6) £30m is the higher amount and Firm Z therefore deducts £30m.

Deduction of excess partnership withdrawals

- 3.3A.36 R A *firm* that is a *partnership* or a *limited liability partnership* must deduct the amount by which the aggregate of any amounts withdrawn by its *partners* or members exceeds the profits of the *firm*, except to the extent that the amount:
- (1) has already been deducted from the *firm's own funds* as a loss under *MIFIDPRU* 3.3A.20R;
 - (2) was repaid in accordance with *MIFIDPRU* 3.3A.13R(3); or
 - (3) is already reflected in a reduction of the *firm's own funds* that was permitted under *MIFIDPRU* 3.6A.4R or *MIFIDPRU* 3.6A.6R.

Adjustment for cash flow hedges and changes in the value of own liabilities

- 3.3A.37 R A *firm* must exclude the following from its *common equity tier 1 items*:
- (1) any unrealised gain or loss on cash flow hedges of financial instruments that are not measured at fair value, except where:
 - (a) the hedged item itself is measured at fair value; or
 - (b) the unrealised gain or loss represents effective net investment hedges of foreign operations; and
 - (2) any gain or loss arising from changes in the value of its liabilities that are due to changes in the *firm's own credit standing*.
- 3.3A.38 G (1) *MIFIDPRU* 3.3A.37R(1) prevents unrealised gains or losses that arise from cash flow hedges from being included in *common equity tier 1 capital* where the hedged financial instruments are not measured at fair value. This filter is necessary because these hedge-related gains or losses may reverse over time, while not being matched by corresponding changes in the value of the hedged item in the regulatory capital calculation.
- (2) *MIFIDPRU* 3.3A.37R(2) ensures that a deterioration in a *firm's own creditworthiness* does not increase its *common equity tier 1 capital*. For example, if a *firm's creditworthiness* deteriorates, this could result in the fair value of its liabilities decreasing, resulting in an accounting gain. This gain is counterproductive from a prudential perspective because the *firm's financial condition* is actually worsening. *MIFIDPRU* 3.3A.37R(2) filters this out to ensure capital reflects true loss-absorbing capacity.

Additional value adjustment for the trading book

- 3.3A.39 R (1) A *firm* with a *trading book* must deduct the additional valuation adjustment in (2) from its *common equity tier 1 items*.
- (2) A *firm* must calculate the additional valuation adjustment as 0.1% of the base value of positions in the *trading book*.
- (3) The base value of positions in the *trading book* is the sum of the absolute value of fair-valued assets and liabilities stated in its financial statements under the applicable accounting framework, except that:
- (a) exactly matching offsetting fair-valued assets and liabilities must be excluded;
 - (b) where a change in the accounting valuation of fair-valued assets and liabilities would only partially be reflected in *common equity tier 1 capital*, the value of those assets or liabilities must only be included in proportion to the impact of the relevant valuation change on *common equity tier 1 capital*; and
 - (c) where a change in the accounting valuation of fair-valued assets and liabilities would have no impact on *common equity tier 1 capital*, the value of those assets or liabilities must be excluded.

- 3.3A.40 G MIFIDPRU 4.11 (Trading book and dealing on own account: general provisions) contains additional requirements for managing and valuing positions in the *trading book*.

MIFIDPRU 3.4 (Additional Tier 1 capital) is deleted in its entirety. The deleted text is not shown but the section is marked [deleted] as shown below.

3.4 ~~Additional Tier 1 capital~~ [deleted]

Insert the following new section, MIFIDPRU 3.4A, after MIFIDPRU 3.4. All the text is new and is not underlined.

3.4A Additional tier 1 capital

- 3.4A.1 G (1) *Additional tier 1 capital* has the following core characteristics:
- (a) it converts into *common equity tier 1 capital*, or is written down, upon the occurrence of one or more trigger events;
 - (b) it has no fixed maturity;
 - (c) there is no inescapable obligation to make a *distribution*; and
 - (d) *distributions* do not accelerate when the *firm* experiences stress.

- (2) The remainder of *MIFIDPRU 3.4A* contains the detailed *rules and guidance* for calculating *additional tier 1 capital*.

3.4A.2 R A *firm* must calculate its *additional tier 1 capital* in accordance with the first column of the following table. The second column indicates where relevant *rules and guidance* are found.

Item		Relevant rules and guidance
<i>Additional tier 1 items:</i>		
(1)	<i>additional tier 1 instruments;</i>	<i>MIFIDPRU 3.4A.3R to MIFIDPRU 3.4A.16G</i>
(2)	share premium accounts related to the <i>additional tier 1 instruments;</i>	
LESS		
<i>Deductions from additional tier 1 items:</i>		
(3)	direct, indirect and synthetic holdings of own <i>additional tier 1 instruments;</i>	<i>MIFIDPRU 3.4A.17R and MIFIDPRU 3.4A.23R</i>
(4)	direct, indirect and synthetic holdings of <i>additional tier 1 or comparable instruments</i> of <i>financial sector entities</i> where those entities have a <i>reciprocal cross-holding</i> with the <i>firm;</i>	<i>MIFIDPRU 3.4A.18R, MIFIDPRU 3.4A.19G, MIFIDPRU 3.4A.22R and MIFIDPRU 3.4A.23R</i>
(5)	direct, indirect and synthetic holdings of <i>additional tier 1 or comparable instruments</i> of <i>financial sector entities</i> which are not held in the <i>trading book;</i>	<i>MIFIDPRU 3.4A.20R to MIFIDPRU 3.4A.23R</i>
(6)	any excess of tier 2 deductions above the <i>firm's tier 2 capital;</i> and	<i>MIFIDPRU 3.4A.24R</i>
(7)	foreseeable tax charges relating to <i>additional tier 1 items.</i>	<i>MIFIDPRU 3.4A.25R</i>

Additional tier 1 instruments: loss absorption

3.4A.3 R (1) If one or more trigger events occur, the full principal amount of the *additional tier 1 instrument* must be written down on a permanent or temporary basis, or the instrument converted into a *common equity tier*

1 instrument, in accordance with the requirements of *MIFIDPRU 3.4A.9R to MIFIDPRU 3.4A.12R*.

- (2) A *firm's* obligations under the instrument must not constitute a liability (including a contingent or prospective liability) that would be relevant for the purposes of section 123(2) of the Insolvency Act 1986.
- (3) An *additional tier 1 instrument* must not be secured or subject to a guarantee or other arrangement which enhances the legal or economic seniority of the claim.
- (4) The instrument must rank below any *tier 2 instrument* in liquidation.
- (5) The instrument must not be subject to set-off or netting arrangements that would undermine its capacity to absorb losses.
- (6) The provisions governing the instrument must not include any feature that could hinder the recapitalisation of the *firm*.

3.4A.4 G For the purposes of *MIFIDPRU 3.4A.3R(6)*, a feature that could hinder the recapitalisation of the *firm* includes:

- (1) a provision that requires the *firm* to compensate existing holders of capital instruments where a new capital instrument is issued; and
- (2) other terms that could discourage the *firm* from issuing new capital instruments for recapitalisation.

3.4A.5 R (1) An *additional tier 1 instrument* must be fully paid and the proceeds of issue must be immediately and fully available to the *firm*.

- (2) Where an instrument is partly paid, only the paid-up portion is eligible as an *additional tier 1 instrument*.

3.4A.6 G *MIFIDPRU 3.3A.8G* applies to *additional tier 1 instruments* as it applies to *common equity tier 1 instruments*.

3.4A.7 R (1) An *additional tier 1 instrument* must not be funded directly or indirectly by the *firm* itself.

- (2) Paragraph (1) does not apply if the funding is provided in the ordinary course of the *firm's* business.

3.4A.8 G *MIFIDPRU 3.3A.10G* applies to *additional tier 1 instruments* as it applies to *common equity tier 1 instruments*.

Additional tier 1 instruments: trigger events

3.4A.9 R (1) A *firm* must specify one or more trigger events in the terms of an *additional tier 1 instrument*.

- (2) The trigger events specified under (1) must include a trigger event that occurs where the *common equity tier 1 capital* of the *firm* falls below a level specified by the *firm* that is no lower than 64% of the *firm's own funds requirement*.
- (3) The full principal amount of an *additional tier 1 instrument* must be written down or converted when a trigger event occurs.
- (4) The amount recognised for *additional tier 1 instruments* and any associated share premium accounts must not exceed the amount of *common equity tier 1 items* that would be generated if there was a write down or conversion.
- (5) Where a trigger event occurs, a *firm* must:
 - (a) convene the *management body* or other *relevant body* without delay to determine that a trigger event has occurred;
 - (b) immediately inform the *FCA*;
 - (c) inform the holders of the *additional tier 1 instruments*; and
 - (d) write down or convert the instruments without delay, and within 1 *month*.

- 3.4A.10 G (1) *MIFIDPRU 3.4A.9R* requires that the principal amount of an *additional tier 1 instrument* converts into *common equity tier 1 instruments* or is written down if the *firm's common equity tier capital* falls below a specified level.
- (2) This level must be set at no lower than 64% of the *firm's own funds requirement*, but a *firm* may set the relevant trigger at a higher level (such as 70% of its *own funds requirement*) if it wishes.
 - (3) A *firm* may also specify additional trigger events alongside the required trigger event in *MIFIDPRU 3.4A.9R(2)*.

Additional tier 1 instruments: write down

- 3.4A.11 R Where a *firm* issues *additional tier 1 instruments* that write down:
- (1) the write-down must extinguish:
 - (a) the claim of the holder in *liquidation*;
 - (b) any amount required to be paid in the event of call or redemption of the instrument; and
 - (c) any *distribution* on the instrument;

- (2) the write-down must apply to all holders of *additional tier 1 instruments* that include the same trigger; and
- (3) in the case of a write-up after temporary write-down:
 - (a) any write-up must be based on profits after the *firm* has taken a formal decision confirming the final profits;
 - (b) any write-up must be at the full discretion of the *firm* (subject to (c) to (e) below), and there must be no obligation on the *firm* to operate or accelerate a write-up under specific circumstances;
 - (c) write-up must be operated on a pro rata basis among *additional tier 1 instruments* with the same trigger that was subject to write-down;
 - (d) the maximum amount that can be written up must be calculated using the formula:

$$M = P * A/T$$

where:

- M = the maximum amount that can be written up;
 - P = the profit of the *firm*;
 - A = the aggregate nominal value (before write-down) of all *additional tier 1 instruments* that were subject to a write-down; and
 - T = the sum of the *common equity tier 1 capital* and *additional tier 1 capital* of the *firm*; and
- (e) any write-up amount must be treated as a payment that reduces the *firm's common equity tier 1 capital*.

Additional tier 1 instruments: conversion into common equity tier 1

3.4A.12 R Where a *firm* issues *additional tier 1 instruments* that convert into *common equity tier 1 instruments*, it must:

- (1) specify in the provisions governing the *additional tier 1 instruments* either:
 - (a) the rate of such conversion; or
 - (b) a range within which the instruments will convert into *common equity tier 1 instruments*;
- (2) retain all necessary authorisations for converting all of its *additional tier 1 instruments* into *common equity tier 1 instruments*; and
- (3) ensure there are no procedural impediments to conversion under its constitutional or contractual arrangements.

Additional tier 1 instruments: perpetuity

- 3.4A.13 R (1) An *additional tier 1 instrument* must be perpetual, with a *reduction of capital* only permissible where:
- (a) the *firm* is in *liquidation*; or
 - (b) the *firm* carries out a *reduction of capital* which:
 - (i) complies with *MIFIDPRU* 3.6A.4R or *MIFIDPRU* 3.6A.6R; and
 - (ii) does not take place before 5 years after the date of issuance, unless the conditions in *MIFIDPRU* 3.6A.6R(1) or (2) are met.
- (2) The *additional tier 1 instrument* must not include any incentive for the *firm* to carry out a *reduction of capital*.
- (3) A *firm* must not explicitly or implicitly indicate that the *additional tier 1 instrument* would be redeemed or repaid other than in *liquidation*, and the terms of the instrument must not provide such an indication.
- (4) Where the *additional tier 1 instrument* includes one or more early redemption options including call options, the options must be exercisable at the sole discretion of the *firm*.
- (5) A *firm* must not indicate explicitly or implicitly that the *FCA* would consent to a *reduction of capital*.
- 3.4A.14 G (1) An incentive to carry out a *reduction of capital* in *MIFIDPRU* 3.4A.13R(2) includes any feature that provides, at the date of issuance of a capital instrument, an expectation that the capital instrument is likely to be redeemed.
- (2) Examples of (1) include:
- (a) a term which creates an economic incentive for the *firm* to carry out a *reduction of capital* at a particular point in time; and
 - (b) marketing of the instrument in a way which suggests to investors that the instrument will be called.

Additional tier 1 instruments: distributions

- 3.4A.15 R An *additional tier 1 instrument* must meet the following conditions regarding *distributions*:
- (1) the *firm* must at all times have full discretion to cancel *distributions* on the instruments for an unlimited period and on a non-cumulative basis;

- (2) the *firm* must be able to use cancelled *distributions* to meet its obligations as they fall due, without restriction;
- (3) failure to make *distributions* must not constitute an event of default;
- (4) the *additional tier 1 instrument* must not include a requirement:
 - (a) to make a *distribution* in the event of a *distribution* being made on another instrument that ranks the same or more junior;
 - (b) that, if a *distribution* is not made on that instrument, a *distribution* cannot be made on another capital instrument; or
 - (c) substituting the obligation to make a *distribution* with any other obligation to make payment in any other form; and
- (5) the level of *distribution* must not change in a way that is linked to the credit standing of the *firm* or any member of the *firm's group*.

3.4A.16 G *MIFIDPRU* 3.4A.15R(3) means that a failure to make *distributions* must not have contractual or other consequences associated with an event of default, such as by engaging rights of termination, early repayment, additional voting rights, or other similar consequences.

Deduction of holdings of own additional tier 1 instruments

- 3.4A.17 R (1) A *firm* must deduct direct, indirect and synthetic holdings of its own *additional tier 1 instruments*.
- (2) For the purposes of (1):
- (a) a *firm* must also apply the deduction where it could be obliged to purchase the *additional tier 1 instrument* as a result of an existing contractual obligation;
 - (b) a *firm* must deduct its gross long position unless (2)(c) applies; and
 - (c) a *firm* may deduct its net long position if:
 - (i) the long and short positions are in the same underlying exposure;
 - (ii) the short positions are cleared through an *authorised central counterparty* or subject to appropriate margining requirements; and
 - (iii) the long and short positions are both held in the *trading book* or are both held outside of the *trading book*.

Deduction of holdings of additional tier 1 or comparable instruments where a firm has a reciprocal cross-holding designed to inflate own funds artificially

- 3.4A.18 R (1) A *firm* must deduct direct, indirect and synthetic holdings of the *additional tier 1 or comparable instruments of financial sector entities* where those entities have a *reciprocal cross-holding* with the *firm* designed to inflate the *own funds* of the *firm* artificially.
- (2) For the purposes of (1), a *firm* must calculate holdings based on its gross long position.
- 3.4A.19 G The factors in *MIFIDPRU 3.3A.26G* indicate a *reciprocal cross-holding* designed to inflate *own funds* artificially.

Deduction of holdings of additional tier 1 or comparable instruments of financial sector entities

- 3.4A.20 R (1) A *firm* must deduct direct, indirect and synthetic holdings of *additional tier 1 or comparable instruments of financial sector entities* which are held outside of the *trading book*, unless *MIFIDPRU 3.4A.21R* applies.
- (2) A *firm* must calculate holdings based on its gross long position unless (3) applies.
- (3) A *firm* may calculate holdings based on its net long position where:
- (a) (i) the maturity date of the short position is the same or later than the maturity date of the long position; or
- (ii) the residual maturity of the short position is at least 1 year; and
- (b) the long and short positions are held outside of the *trading book*.

Holdings of additional tier 1 instruments issued by a financial sector entity within an investment firm group

- 3.4A.21 R A *firm* is not required to deduct holdings of *additional tier 1 instruments* of a *financial sector entity* under *MIFIDPRU 3.4A.20R* if all of the following conditions are met:
- (1) the *financial sector entity* forms part of the same *investment firm group* as the *firm*;
- (2) there is no current or foreseen material, practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the *financial sector entity*;
- (3) the *investment firm group* is subject to prudential consolidation under *MIFIDPRU 2.5*; and

- (4) the risk evaluation, measurement and control procedures of the *parent undertaking* include the *financial sector entity*.

Additional tier 1 or comparable instruments

3.4A.22 R An *additional tier 1 or comparable instrument* means:

- (1) (for an entity subject to *MIFIDPRU*) an *additional tier 1 instrument*;
- (2) (for an *insurer* subject to the Solvency II Firms part of the *PRA Rulebook*) ‘Tier 1 own funds’ as defined in the Own Funds (Solvency II) part of the *PRA Rulebook*, the inclusion of which is restricted by Own Funds (Solvency II Firms) 4A.3 in the *PRA Rulebook*; and
- (3) (for a *financial sector entity* not subject to (1) or (2)) any capital instrument that does not rank below all other claims in *liquidation* but absorbs losses on a going concern basis.

Identifying and valuing indirect and synthetic holdings

3.4A.23 R *MIFIDPRU* 3.3A.30R (Identifying and valuing indirect and synthetic holdings) applies to holdings of *additional tier 1 instruments* as it applies to holdings of *common equity tier 1 instruments*.

Deduction of excess tier 2 deductions

3.4A.24 R A *firm* must deduct from *additional tier 1 items* the amount by which any items required to be deducted from *tier 2 items* under *MIFIDPRU* 3.5A.2R exceed *tier 2 items*.

Deduction of foreseeable tax charges relating to additional tier 1 items

- 3.4A.25 R
- (1) This deduction applies if a *firm* does not calculate its *own funds* in accordance with *UK-adopted international accounting standards*.
 - (2) Where this deduction applies, a *firm* must:
 - (a) deduct any current and deferred tax charges relating to *additional tier 1 items* that are not yet accounted for in its *common equity tier 1 capital*;
 - (b) calculate the amount to be deducted using the approach in *UK-adopted international accounting standards*; and
 - (c) deduct the amount of foreseeable current and deferred tax charges without netting off against any unrecognised deferred tax assets.

MIFIDPRU 3.5 (Tier 2 capital) is deleted in its entirety. The deleted text is not shown but the section is marked [deleted] as shown below.

3.5 ~~Tier 2 capital~~ [deleted]

Insert the following new section, MIFIDPRU 3.5A, after MIFIDPRU 3.5. All the text is new and is not underlined.

3.5A Tier 2 capital

- 3.5A.1 G (1) *Tier 2 capital* has the following core characteristics:
- (a) it ranks below ordinary creditors in *liquidation*;
 - (b) it has an original maturity of at least 5 years;
 - (c) it amortises over the final 5 years; and
 - (d) *distributions* do not accelerate when the *firm* experiences stress.
- (2) The remainder of *MIFIDPRU 3.5A* contains detailed *rules* and *guidance* for calculating *tier 2 capital*.
- 3.5A.2 R A *firm* must calculate its *tier 2 capital* in accordance with the first column of the following table. The second column indicates where relevant *rules* and *guidance* are found.

Item		Relevant rules and guidance
<i>Tier 2 items:</i>		
(1)	<i>Tier 2 instruments</i> ;	<i>MIFIDPRU 3.5A.3R to MIFIDPRU 3.5A.11R</i>
(2)	share premium accounts related to the <i>tier 2 instruments</i> ;	
LESS		
<i>Deductions from tier 2 items:</i>		
(3)	direct, indirect and synthetic holdings of own <i>tier 2 instruments</i> ;	<i>MIFIDPRU 3.5A.12R and MIFIDPRU 3.5A.18R</i>
(4)	direct, indirect and synthetic holdings of <i>tier 2 or comparable instruments</i> of <i>financial sector entities</i> where those entities have a <i>reciprocal cross-holding</i> with the <i>firm</i> ; and	<i>MIFIDPRU 3.5A.13R, MIFIDPRU 3.5A.14G, MIFIDPRU 3.5A.17R and MIFIDPRU 3.5A.18R</i>

(5)	direct, indirect and synthetic holdings of <i>tier 2 or comparable instruments of financial sector entities</i> which are not held in the <i>trading book</i> .	<i>MIFIDPRU 3.5A.15R to MIFIDPRU 3.5A.18R</i>
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Tier 2 instruments: loss absorption

- 3.5A.3 R (1) The claim on the principal amount of a *tier 2 instrument* must be wholly subordinated to the claims of all non-subordinated creditors.
- (2) A *tier 2 instrument* must not be secured or subject to a guarantee or other arrangement which enhances the legal or economic seniority of the claim.
- (3) A *tier 2 instrument* must not be subject to set-off or netting arrangements that would undermine its capacity to absorb losses.
- 3.5A.4 R (1) A *tier 2 instrument* must be fully paid and the proceeds of issue immediately and fully available to the *firm*.
- (2) Where an instrument is partly paid, only the paid-up portion is eligible as a *tier 2 instrument*.
- 3.5A.5 G *MIFIDPRU 3.3A.8G* applies to *tier 2 instruments* as it applies to *common equity tier 1 instruments*.
- 3.5A.6 R (1) A *tier 2 instrument* must not be funded directly or indirectly by the *firm* itself.
- (2) Paragraph (1) does not apply if the funding is provided in the ordinary course of the *firm's* business.
- 3.5A.7 G *MIFIDPRU 3.3A.10G* applies to *tier 2 instruments* as it applies to *common equity tier 1 instruments*.

Tier 2 instruments: duration

- 3.5A.8 R (1) A *tier 2 instrument* must have an original maturity of at least 5 years, with a *reduction of capital* prior to maturity only permissible where:
- (a) the *firm* is in *liquidation*; or
- (b) the *firm* carries out a *reduction of capital* which:
- (i) has been approved by the *FCA* under *MIFIDPRU 3.6A.4R*; and

- (ii) does not take place before 5 years after the date of issuance, unless the conditions in *MIFIDPRU* 3.6A.6R(1) or (2) are met.
- (2) A *tier 2 instrument* must not include any incentive for the principal amount to be redeemed or repaid prior to maturity, or a right to accelerate early redemption or repayment.
- (3) A *firm* must not explicitly or implicitly indicate that the *tier 2 instrument* would be redeemed or repaid prior to maturity other than in *liquidation*, and the terms of the instrument must not provide such an indication.
- (4) Where the *tier 2 instrument* includes one or more early redemption options including call options, the options must be exercisable at the sole discretion of the *firm*.
- 3.5A.9 G (1) An incentive for the principal amount to be redeemed or repaid in *MIFIDPRU* 3.5A.8R(2) includes any feature that provides, at the date of issuance of a capital instrument, an expectation that the capital instrument is likely to be redeemed before its stated maturity date.
- (2) Examples of an incentive under (1) include:
- (a) a term which creates an economic incentive for the *firm* to reduce or repay the principal before maturity; and
- (b) marketing of the instrument in a way which suggests to investors that the instrument will be called before maturity.

Tier 2 instruments: amortisation

- 3.5A.10 R Where a *tier 2 instrument* has a residual maturity of 5 years or less, the proportion of the instrument which qualifies as a *tier 2 item* must be calculated by multiplying A and B, where:
- A is the notional amount of the instrument on the first day of the final 5-year period of its contractual maturity divided by the number of *days* in that period; and
 - B is the number of remaining *days* of contractual maturity of the instrument.

Tier 2 instruments: distributions

- 3.5A.11 R A *tier 2 instrument* must meet the following conditions regarding *distributions*:
- (1) the holder of the instrument must have no right to accelerate the future scheduled payment of *distributions*, other than in *liquidation*; and

- (2) the level of *distribution* must not change in a way that is linked to the credit standing of the *firm* or any member of the *firm's group*.

Deduction of holdings of own tier 2 instruments

- 3.5A.12 R (1) A *firm* must deduct direct, indirect and synthetic holdings of its own *tier 2 instruments*.
- (2) For the purposes of (1):
- (a) a *firm* must also apply the deduction where it could be obliged to purchase the *tier 2 instrument* as a result of an existing contractual obligation;
- (b) a *firm* must deduct its gross long position unless (c) applies; and
- (c) a *firm* may deduct its net long position if:
- (i) the long and short positions are in the same underlying exposure;
- (ii) the short positions are cleared through an *authorised central counterparty* or subject to appropriate margining requirements; and
- (iii) the long and short positions are both held in the *trading book* or are both held outside of the *trading book*.

Deduction of holdings of tier 2 or comparable instruments where a firm has a reciprocal cross-holding designed to inflate own funds artificially

- 3.5A.13 R (1) A *firm* must deduct direct, indirect and synthetic holdings of the *tier 2 or comparable instruments* of *financial sector entities* where those entities have a *reciprocal cross-holding* with the *firm* designed to inflate the *own funds* of the *firm* artificially.
- (2) For the purposes of (1), a *firm* must calculate holdings based on its gross long position.

- 3.5A.14 G The factors in *MIFIDPRU* 3.3A.26G indicate a *reciprocal cross-holding* designed to inflate *own funds* artificially.

Deduction of holdings of tier 2 or comparable instruments of financial sector entities

- 3.5A.15 R (1) A *firm* must deduct direct, indirect and synthetic holdings of *tier 2 or comparable instruments* of *financial sector entities* which are held outside of the *trading book*, unless *MIFIDPRU* 3.5A.16R applies.

- (2) A *firm* must calculate holdings based on its the gross long position unless (3) applies.
- (3) A *firm* may calculate holdings based on its net long positions where:
 - (a) (i) the maturity date of the short position is the same or later than the maturity date of the long position; or
 - (ii) the residual maturity of the short position is at least 1 year; and
 - (b) the long and short positions are held outside of the *trading book*.

Holdings of tier 2 instruments issued by a financial sector entity within an investment firm group

- 3.5A.16 R A *firm* is not required to deduct holdings of *tier 2 instruments* of a *financial sector entity* under MIFIDPRU 3.5A.15R if all of the following conditions are met:
- (1) the *financial sector entity* forms part of the same *investment firm group* as the *firm*;
 - (2) there is no current or foreseen material, practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the *financial sector entity*;
 - (3) the *investment firm group* is subject to prudential consolidation under MIFIDPRU 2.5; and
 - (4) the risk evaluation, measurement and control procedures of the *parent undertaking* include the *financial sector entity*.

Tier 2 or comparable instruments

- 3.5A.17 R A *tier 2 or comparable instrument* means:
- (1) (for an entity subject to MIFIDPRU) a *tier 2 instrument*;
 - (2) (for an *insurer* subject to the Solvency II Firms part of the *PRA Rulebook*):
 - (a) ‘Tier 2 basic own funds’ as defined in the Own Funds (Solvency II Firms) part of the *PRA Rulebook*; and
 - (b) ‘Tier 3 own funds’ that are ‘basic own funds’ as those terms are defined in the Own Funds (Solvency II Firms) part of the *PRA Rulebook*; and

- (3) (for a *financial sector entity* not subject to (1) or (2)) any subordinated instrument that does not absorb losses on a going-concern basis.

Identifying and valuing indirect and synthetic holdings

- 3.5A.18 R *MIFIDPRU 3.3A.30R* (Identifying and valuing indirect and synthetic holdings) applies to holdings of *tier 2 instruments* as it applies to holdings of *common equity tier 1 instruments*.

MIFIDPRU 3.6 (General requirements for own funds instruments) is deleted in its entirety. The deleted text is not shown but the section is marked [deleted] as shown below.

3.6 ~~General requirements for own funds instruments~~ [deleted]

Insert the following new section, *MIFIDPRU 3.6A*, after *MIFIDPRU 3.6*. All the text is new and is not underlined.

3.6A General requirements for own funds instruments

- 3.6A.1 R An *own funds instrument* must not provide or allow for the payment of *distributions* in a form other than cash or *own funds instruments*.
- 3.6A.2 R For the purposes of the deductions in *MIFIDPRU 3.3A.24R*, *MIFIDPRU 3.3A.27R*, *MIFIDPRU 3.4A.17R*, *MIFIDPRU 3.4A.20R*, *MIFIDPRU 3.5A.12R* and *MIFIDPRU 3.5A.15R*, a *firm* may reduce the amount of a long position in a capital instrument by the portion of a short position in an index that is made up of the same underlying exposure, provided that:
- (1) the positions are either both held in the *trading book*, or are both held outside of the *trading book*; and
 - (2) the positions are held at fair value on the *firm's* balance sheet.
- 3.6A.3 R An *own funds instrument* and any associated share premium account immediately ceases to count towards *own funds* if it ceases to meet any applicable requirement in *MIFIDPRU 3*.

Reduction of own funds instruments

- 3.6A.4 R Save in the circumstances set out in *MIFIDPRU 3.6A.6R*, a *firm* must obtain the prior permission of the *FCA* to:
- (1) carry out a *reduction of capital* in relation to any of its *common equity tier 1 instruments*;
 - (2) reduce, distribute or reclassify as another *own funds* item the share premium accounts related to any of its *own funds instruments*;

- (3) carry out a *reduction of capital* in relation to an *additional tier 1 instrument*, whether on a call date or otherwise; or
 - (4) carry out a *reduction of capital* in relation to a *tier 2 instrument* prior to maturity.
- 3.6A.5 R (1) To obtain the permission in *MIFIDPRU 3.6A.4R*, a *firm* must complete the form in *MIFIDPRU 3 Annex 4R* and submit it to the *FCA* using the *online notification and application system*.
- (2) The *FCA* will grant the permission in (1) if it is satisfied that the *firm* will continue to exceed its *own funds threshold requirement* by a margin sufficient to ensure adequate financial resilience for the foreseeable future.
- 3.6A.6 R A *firm* is not required to obtain the permission in *MIFIDPRU 3.6A.4R* if:
- (1) the instrument is being repurchased for market making purposes; or
 - (2) all of the following conditions are met:
 - (a) either of the conditions in *MIFIDPRU 3.6A.7R* are met;
 - (b) at least 20 *business days* before the *day* on which the *reduction of capital* is proposed to occur, the *firm* has notified the *FCA* of:
 - (i) the proposed *reduction of capital*; and
 - (ii) the basis on which the *firm* has concluded that either condition in (a) is satisfied;
 - (c) the notification in (2)(b) is made using the form in *MIFIDPRU 3 Annex 5R* and submitted using the *online notification and application system*; and
 - (d) the *FCA* has not notified the *firm* of any objection to the proposal before the *day* on which the *reduction of capital* is proposed to occur.
- 3.6A.7 R The conditions referred to in *MIFIDPRU 3.6A.6R(2)(a)* are that:
- (1) before or at the same time as the *reduction of capital*, the *firm* replaces the relevant *own funds instruments* with *own funds instruments* of equal or higher quality on terms that are sustainable for the income capacity of the *firm*, so that:
 - (a) the profitability of the *firm* will continue to be sound and will not see any negative change in the foreseeable future after the replacement of the original *own funds instruments* with *own funds instruments* of equal or higher quality; and

- (b) the assessment of profitability in the foreseeable future in (1)(a) takes into account the *firm's* profitability in stressed situations; or
- (2) the *firm* is redeeming *additional tier 1 instruments* or *tier 2 instruments* within 5 years of their date of issue and either:
 - (a) there is a change in the regulatory classification of the instruments that is likely to result in their exclusion from *own funds* or reclassification as a lower quality form of *own funds*, and both the following conditions are met:
 - (i) there are reasonable grounds to conclude that the change is sufficiently certain; and
 - (ii) the regulatory reclassification of the instruments was not reasonably foreseeable at the time of their issuance; or
 - (b) there is a change in the applicable tax treatment of those instruments which is material and was not reasonably foreseeable at the time of their issuance.

Notification of issuance of additional tier 1 and tier 2 instruments

- 3.6A.8 R (1) A *firm* must notify the *FCA* at least 20 *business days* before the intended issuance date of the *firm's* intention to issue:
- (a) *additional tier 1 instruments*; or
 - (b) *tier 2 instruments*.
- (2) The notification requirement in (1) does not apply if:
- (a) the *firm* has previously notified the *FCA* of an issuance of the same class of *additional tier 1 instruments* or *tier 2 instruments*; and
 - (b) the terms of the new instruments are identical in all material respects to the terms of the instruments in the issuance previously notified to the *FCA*.
- (3) The notification under (1) must:
- (a) be submitted to the *FCA* through the *online notification and application system* using the form in *MIFIDPRU 3 Annex 6R*; and
 - (b) include the following:

- (i) confirmation of whether the instruments are intended to be classified as *additional tier 1 instruments* or *tier 2 instruments*;
- (ii) confirmation of whether the instruments are intended to be issued to external investors or only to other members of the *firm's group* or connected parties;
- (iii) a copy of the 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;
- (iv) confirmation from a member of the *firm's senior management* or *governing body* who has oversight of the intended issuance that the instrument meets the conditions in *MIFIDPRU 3.4A* or *MIFIDPRU 3.5A* (as applicable) to be classified as *additional tier 1 instruments* or *tier 2 instruments*; and
- (v) a properly reasoned legal opinion from an appropriately qualified *individual*, confirming that the capital instruments meet the conditions in (iv).

3.6A.9 G *Firms* that are proposing to classify an issuance of capital instruments as *common equity tier 1 capital* should refer to the obligations and *guidance* in *MIFIDPRU 3.3A.3R* and *MIFIDPRU 3.3A.4G*. In particular, *firms* must obtain the *FCA's* prior permission for the first issuance of a class of instruments that is intended to comprise *common equity tier 1 capital*.

3.6A.10 G Submitting a notification in accordance with *MIFIDPRU 3.6A.8R* does not guarantee that the relevant instruments meet the required conditions in *MIFIDPRU 3.4A* or *MIFIDPRU 3.5A* to qualify as *own funds*. The *firm* or *parent undertaking* must ensure that an instrument continues to meet the conditions to be counted as *own funds*, including if its terms are varied on a later date.

MIFIDPRU 3.7 (Composition of capital for parent undertakings subject to the group capital test) is deleted in its entirety. The deleted text is not shown but the section is marked [deleted] as shown below.

3.7 ~~Composition of capital for parent undertakings subject to the group capital test~~ [deleted]

Insert the following new section, MIFIDPRU 3.7A, after MIFIDPRU 3.7. All the text is new and is not underlined.

3.7A Composition of capital for parent undertakings subject to the group capital test

- 3.7A.1 R This section applies to a *parent undertaking* in accordance with *MIFIDPRU 3.1A.2R*.
- 3.7A.2 R A *parent undertaking* must, at all times, have *own funds instruments* that satisfy the following conditions:
- (1) the *parent undertaking's common equity tier 1 capital* must be at least equal to:
 - (a) the sum of the book value of the *parent undertaking's* holdings of the *common equity tier 1 capital* of the *relevant financial undertakings* under *MIFIDPRU 2.6.5R*; plus
 - (b) the total amount of all the *parent undertaking's* contingent liabilities in favour of the *relevant financial undertakings* under *MIFIDPRU 2.6.5R*;
 - (2) the sum of *common equity tier 1 capital* and *additional tier 1 capital* of the *parent undertaking* must be at least equal to the sum of:
 - (a) the amounts in (1)(a) and (1)(b); plus
 - (b) the sum of the book value of the *parent undertaking's* holdings in the *additional tier 1 capital* of the *relevant financial undertakings* under *MIFIDPRU 2.6.5R*; and
 - (3) the sum of the *parent undertaking's own funds instruments* must be at least equal to the total requirement under *MIFIDPRU 2.6.5R*.
- 3.7A.3 G As explained in *MIFIDPRU 2.6.6G*, the *group capital test* effectively applies to each intermediate *parent undertaking*, as well as to the ultimate *parent undertaking* of the *investment firm group*.
- 3.7A.4 R (1) This *rule* applies where a *responsible UK parent* applies the approach in *MIFIDPRU 2.6.7R(2)(a)* in relation to an *undertaking* established in a *third country*.
- (2) Where this *rule* applies, a *responsible UK parent* must comply with *MIFIDPRU 3.3A.3R* or *MIFIDPRU 3.6A.8R* in relation to any issuance of *own funds instruments* by the *undertaking* established in a *third country*.

Amend the following as shown.

3 Annex 1R ~~Application under MIFIDPRU 3.3.2R – permission~~ Notification under MIFIDPRU 3.3A.17R to include interim or year-end profits as CET1

~~[Editor's note: The form can be found at this address:]~~ This annex consists of a form which can be found at the following link:

[Editor's note: insert link]

MIFIDPRU 3 Annex 1R**~~Application under MIFIDPRU 3.3.2R for permission~~ Notification under MIFIDPRU 3.3A.17R to include interim or year-end profits as common equity tier 1 (CET1) capital before the firm has taken a formal decision confirming the final profit and loss for the year**

Details of Senior Manager responsible for this ~~application~~ notification:

If the ~~application~~ notification is being made in respect of a MIFIDPRU investment firm or another SMCR firm, we would expect the individual responsible for it to hold a senior management function (SMF).

Name of individual	
Job title / position	
Individual reference number (if applicable)	

1. Please confirm which of the following the ~~applicant firm~~ notifying entity is:

- a. MIFIDPRU investment firm that is not a consolidating UK parent entity
- b. MIFIDPRU investment firm that is a consolidating UK parent entity
- c. Consolidating UK parent entity (other than a MIFIDPRU investment firm)

If the ~~application~~ notification concerns more than one firm in the investment firm group, please submit separate ~~applications~~ notifications for each firm.

For ~~applications~~ notifications on consolidated basis, references to firm/~~institution~~ should be interpreted as to a consolidated situation of the UK parent.

2. Please confirm whether the following apply and if so, provide supporting evidence:

- a. The profits have been verified by persons independent of your ~~institution~~ firm, who are responsible for auditing the accounts of that ~~institution~~ firm:

Yes/No

- b. Any foreseeable charge or dividend has been deducted from the amount of those profits and the basis of this calculation:

Yes/No/Not applicable

Supporting evidence attached (e.g. an independent auditor’s letter confirming the above)

3. Please provide the following:

a. The start of your financial year:

b. The period in which the interim/year-end profits were earned:

c. Profits as verified by auditors:

d. Foreseeable charges/deductions (e.g. dividends):

e. Amount to be included as profit:

f. Firm’s total CET1 after the inclusion of any amounts to which this application relates (please complete for all that apply):

MIFIDPRU investment firm (solo CET1)	£
Consolidating UK parent undertaking basis (consolidated CET1)	£

g. If you have calculated expected dividend pay-out by using a pay-out range instead of a fixed value, please confirm that you have used the upper end of that range:

h. If you have calculated expected dividend pay-out as a range, please confirm whether you wish to exclude any exceptional dividends paid during the period covered by that range:

If you have responded “Yes”, please attach further information, and note that this will require a separate conversation with the FCA:

Further information attached

i h. Auditor's details (name, address, contact details):

4. Please confirm that the inclusion of the interim or year-end profits to which this ~~application~~ notification relates complies with the applicable material ~~in the UK CRR and~~ in MIFIDPRU.

Yes

**3 Annex 2R Application under ~~MIFIDPRU 3.3.3R(1)~~ MIFIDPRU 3.3A.3R(1)(a) -
permission to classify capital instruments as CET1**

~~[Editor's note: The form can be found at this address:]~~ This annex consists of a form which can be found at the following link:

[Editor's note: insert link]

Application under ~~MIFIDPRU 3.3.3R~~ MIFIDPRU 3.3A.3R(1)(a) for permission to classify an issuance of capital instruments as common equity tier 1 (CET1) capital

1. Please confirm which of the following the applicant firm is:
 - a. MIFIDPRU investment firm that is not a consolidating UK parent entity or a GCT parent undertaking
 - b. MIFIDPRU investment firm that is a consolidating UK parent entity
 - c. MIFIDPRU investment firm that is a GCT parent undertaking
 - d. Consolidating UK parent entity (other than a MIFIDPRU investment firm)
 - e. GCT parent undertaking (other than a MIFIDPRU investment firm)

If the application concerns more than one firm in the investment firm group, please submit separate applications for each firm.

For applications on consolidated basis, references to firm/~~institution~~ should be interpreted as to a consolidated situation of the UK parent.

2. For the instrument you would like to classify as CET1 capital, please provide the following information:
 - a. Type of instrument (e.g. ordinary shares, partnership capital):
 - b. If there is more than one class of the instrument, please list the different instrument classes:
 - c. Total number of shares/units of instrument that have been issued or will be issued:
 - d. Nominal value per share/unit of instrument:

e. Share premium per share, if applicable:

f. Total amount of capital being raised:

g. Proposed date to be issued:

h. Total expected CET 1 after the inclusion of the amounts to which this application relates (please complete for all that apply):

MIFIDPRU investment firm (solo CET1)	£
GCT parent undertaking (expected value of own funds instruments as specified in MIFIDPRU 2.6.2R(1))	£
Consolidating UK parent undertaking basis (consolidated CET1)	£

~~3. For capital instruments to qualify as CET 1 instruments, the following conditions must be met (see article 28 of the UK CRR). Please confirm whether these conditions are met:~~

~~a. The instruments are issued directly by your institution, with prior approval of the owners or, if permitted by national law, the management body of the institution:~~

~~b. The instruments are paid up and their purchase is not funded directly or indirectly by your institution (indirect funding is defined in MIFIDPRU 3 Annex 7.20R):~~

~~c. The instruments meet all of the following conditions as regards their classification:~~

~~i. they qualify as capital within the meaning of Art 28(1)(c)(i) of the UK CRR:~~

- 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 your institution:~~

- e. ~~The instruments are perpetual:~~

- f. ~~The principal amount of the instruments may not be reduced or repaid except in the following cases:~~

- i. ~~the liquidation of your institution; or~~
 ii. ~~discretionary repurchases of the instruments or other discretionary means of reducing capital (e.g. call, redemption or repayment), where your institution has been granted prior permission of the competent authority under article 77 of the UK CRR:~~

- 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 your institution, and your institution does not otherwise provide such an indication prior to or at issuance of the instruments:~~

- h. ~~The instruments meet the following conditions regarding distributions:~~

- i. ~~there is no preferential distribution treatment regarding the order of distribution payments, including in relation to other Common Equity Tier 1 instruments, and the terms governing the instruments do not provide preferential rights to payment of distributions:~~

Yes/No

ii. ~~distributions to holders of the instruments may be paid only out of distributable items:~~

Yes/No

iii. ~~the conditions governing the instruments do not include a cap or other restriction on the maximum level of distributions:~~

Yes/No

iv. ~~the level of distributions is not determined on the basis of the amount for which the instruments were purchased at issuance:~~

Yes/No

v. ~~the conditions governing the instruments do not include any obligation for your institution to make distributions to their holders and your institution is not otherwise subject to such an obligation:~~

Yes/No

vi. ~~non-payment of distributions does not constitute an event of default of your institution:~~

Yes/No

vii. ~~the cancellation of distributions imposes no restrictions on your institution:~~

Yes/No

i. ~~Compared to all the capital instruments issued by your institution, the instruments absorb the first and proportionately greatest share of losses as they occur, and each instrument absorbs losses to the same degree as all other Common Equity Tier 1 instruments:~~

Yes/No

j. ~~The instruments rank below all other claims in the event of insolvency or liquidation of your institution:~~

Yes/No

k. ~~The instruments entitle their owners to a claim on the residual assets of your institution, which, in the event of its liquidation and after the~~

~~payment of all senior claims, is proportionate to the amount of the instruments issued and is not fixed or subject to a cap:~~

~~Yes/No~~

~~l. The instruments are not secured, or subject to a guarantee that enhances the seniority of the claim by any of the following: (Answer yes if the instruments are not secured in this way)~~

- ~~i. your institution or its subsidiaries:~~
- ~~ii. the parent undertaking of your 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 its subsidiaries:~~
- ~~vi. any undertaking that has close links with the entities referred to in points i. to v.:~~

~~Yes/No~~

~~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: (Answer "yes" if the instruments are not subject to any arrangement in this way)~~

~~Yes/No~~

3. For capital instruments to qualify as CET 1 instruments, all of the conditions in MIFIDPRU 3.3A.5R to MIFIDPRU 3.3A.16R must be met. Please confirm that the following conditions are met by answering 'yes' to confirm that the condition is met:

a. The instruments meet all of the following conditions as regards their classification:

i. The instruments are classified as equity within the meaning of the applicable accounting framework;

~~Yes/No~~

ii. The firm's obligations under the instruments do not constitute a liability (including a contingent or prospective liability) that would be relevant for the purposes of section 123(2) of the Insolvency Act 1986.

~~Yes/No~~

iii. The owners of the instruments have no right arising from the non-payment of any sums connected to the instrument to petition for winding up, administration or any similar procedure.

Yes/No

- iv. The instruments are not secured by, or subject to, a guarantee or other arrangement which enhances the legal or economic seniority of the claim.

Yes/No

- v. The instruments rank below all other claims in the event of liquidation, except for claims from holders of other ordinary shares which rank pari passu with the instruments.

Yes/No

- vi. The instruments entitle their owners to a claim on the residual assets of the firm which, in the event of liquidation and after payment of all senior claims, is proportionate to the amount of such instruments issued and is not fixed or subject to a cap, except that a claim specified as a percentage of residual assets does not constitute a fixed or capped claim.

Yes/No

- vii. Each instrument absorbs losses to the same degree as all other common equity tier 1 instruments, and all common equity tier 1 instruments absorb losses before any other own funds instruments issued by the firm.

Yes/No

- b. The instruments are fully paid and the proceeds of issue are immediately and fully available to the firm (relevant guidance is provided in MIFIDPRU 3.3A.8G).

Yes/No

- c. The instruments are not funded directly or indirectly by the firm, unless funding is provided in the ordinary course of business (relevant guidance is provided in MIFIDPRU 3.3A.10G):

Yes/No

- d. The instruments are perpetual:

Yes/No

- e. The principal amount of the instruments may not be reduced or repaid except:

- i. in liquidation; or
- ii. in a reduction of capital which complies with MIFIDPRU 3.6A.4R or MIFIDPRU 3.6A.6R.

Yes/No

- f. The firm has not done anything to create an expectation that it will or might reduce or repay the principal amount, and the statutory or contractual terms of the instrument do not contain any feature which would or might give rise to such an expectation (relevant guidance is provided in MIFIDPRU 3.3A.12G):

Yes/No

- g. The instruments meet the following conditions regarding distributions:

- i. the instruments do not provide or allow for the payment of preferential distributions over other common equity tier 1 instruments or any other capital instruments (relevant guidance is provided in MIFIDPRU 3.3A.15G(1)):

Yes/No

- ii. the conditions governing the instruments do not include a cap or other restriction on the maximum amount payable:

Yes/No

- iii. the level of distributions is not linked to the amount for which the instruments were purchased at issuance:

Yes/No

- iv. there are no circumstances in which distributions are obligatory, including where non-payment triggers some other obligation (for example, to make payments in kind):

Yes/No

- v. failure to make distributions does not constitute an event of default (relevant guidance is provided in MIFIDPRU 3.3A.15G(2)):

Yes/No

4. Partnership capital (this section should only be completed by partnerships).

Is the capital contributed in accordance with ~~MIFIDPRU 3.3.16R or MIFIDPRU 3.3.17R~~ MIFIDPRU 3.3A.13R?

Yes/No

~~Material on how UK CRR article 28(1)(e) and (f) may be complied with can be found in MIFIDPRU 3.3.16R and 3.3.17R.~~

5. Please confirm whether the capital issuance to which this application relates meets the criteria required by ~~the UK CRR (as applied by MIFIDPRU 3), including any relevant requirements in MIFIDPRU 3 Annex 7R.~~

Yes/No

Please note that the FCA may request a copy of the terms of the instrument, or further information.

3 Annex 3R Notification under ~~MIFIDPRU 3.3.3R(2)~~ MIFIDPRU 3.3A.3R(1)(b) - issuance of additional capital instruments that have already been approved as CET1 instruments

~~[Editor's note: The form can be found at this address:]~~ This annex consists of a form which can be found at the following link:

[Editor's note: insert link]

MIFIDPRU 3 Annex 3R

Notification under ~~MIFIDPRU 3.3.3R(2)~~ MIFIDPRU 3.3A.3R(1)(b) of issuance of additional capital instruments that have already been approved as CET1 instruments

Details of Senior Manager responsible for this notification:

If the notification is being made in respect of a MIFIDPRU investment firm or another SMCR firm, we would expect the individual responsible for it to hold a senior management function (SMF).

Name of individual	
Job title / position	
Individual reference number (if applicable)	

1. Please confirm which of the following the notifying entity is:

- a. MIFIDPRU investment firm that is not a consolidating UK parent entity or a GCT parent undertaking
- b. MIFIDPRU investment firm that is a consolidating UK parent entity
- c. MIFIDPRU investment firm that is a GCT parent undertaking
- d. Consolidating UK parent entity (other than a MIFIDPRU investment firm)
- e. GCT parent undertaking (other than a MIFIDPRU investment firm)

2. Please provide the following details in respect of the proposed issuance:

a. Type of instrument (e.g. ordinary shares, partnership capital):

b. Name of instrument:

c. Date FCA permitted previous issuance to be treated as CET1:

- d. Amount of additional instruments to be issued:

- e. Proposed date on which the instruments will be classified as CET1
(*this should be at least 20 business days after this notification is sent to the FCA*):

3. Please confirm that the provisions governing the proposed issuance to which this notification relates are substantially the same as the provisions governing the issuance for which the firm has already received permission, and that you can provide supporting evidence if requested.

3 Annex 4R Application under ~~MIFIDPRU 3.6.2R~~ MIFIDPRU 3.6A.4R - permission to reduce own funds instruments when neither condition in ~~MIFIDPRU 3.6.4R~~ MIFIDPRU 3.6A.7R applies

~~[Editor's note: The form can be found at this address:]~~ This annex consists of a form which can be found at the following link:

[Editor's note: insert link]

MIFIDPRU 3 Annex 4R

Application under ~~MIFIDPRU 3.6.2R~~ MIFIDPRU 3.6A.4R for permission to reduce own funds instruments where neither condition in ~~MIFIDPRU 3.6.4R~~ MIFIDPRU 3.6A.7R applies

Details of Senior Manager responsible for this application:

If the application is being made in respect of a MIFIDPRU investment firm or another SMCR firm, we would expect the individual responsible for it to hold a senior management function (SMF).

Name of individual	
Job title / position	
Individual reference number (if applicable)	

1. Please confirm which of the following the applicant firm is:
 - a. MIFIDPRU investment firm that is not a consolidating UK parent entity or a GCT parent undertaking
 - b. MIFIDPRU investment firm that is a consolidating UK parent entity
 - c. MIFIDPRU investment firm that is a GCT parent undertaking
 - d. Consolidating UK parent entity (other than a MIFIDPRU investment firm)
 - e. GCT parent undertaking (other than a MIFIDPRU investment firm)

If the application concerns more than one firm in the investment firm group, please submit separate applications for each firm.

For applications on consolidated basis, references to firm should be interpreted as to a consolidated situation of the UK parent.

2. Please confirm to which of the following the application relates:
 - a. ~~Permission to reduce, redeem or repurchase any of its CET1 instruments~~ Carry out a reduction of capital in relation to any of its common equity tier 1 instruments
 - b. ~~Permission to reduce~~ Reduce, distribute or reclassify as another own funds item the share premium accounts related to any of its own funds instruments
 - c. ~~Permission to effect the call, redemption, repayment or repurchase of its additional tier 1 instruments or tier 2 instruments prior to the date of their contractual maturity~~ Carry out a reduction of capital in

relation to an additional tier 1 instrument, whether on a call date or otherwise

- d. Carry out a reduction of capital in relation to a tier 2 instrument prior to maturity

3. Please provide the date of the intended capital reduction:

DD/MM/YYYY

4. Please confirm the amount of the intended reduction:

£

5. Please explain, in detail, the rationale for the reduction of own funds.

6. Please explain, and provide supporting calculations to demonstrate, how the firm ~~meets the conditions in Article 78 of the UK CRR~~ will continue to exceed its own funds threshold requirement by a margin sufficient to ensure adequate financial resilience for the foreseeable future, and in particular:

- a. will have sufficient capital resources to meet its capital resources requirement immediately after the capital reduction;
- b. will have sufficient financial resources to meet its own funds threshold requirement immediately after the capital reduction; and
- c. will be able to meet the requirements in (a) and (b) above at all times (including in stress scenarios), for a minimum of three years.

Supporting calculations attached

3 Annex 5R Notification under ~~MIFIDPRU 3.6.3R~~ MIFIDPRU 3.6A.6R(2) - intended reduction in own funds instruments where a condition in ~~MIFIDPRU 3.6.4R~~ MIFIDPRU 3.6A.7R applies

~~[Editor's note: The form can be found at this address:]~~ This annex consists of a form which can be found at the following link:

[Editor's note: insert link]

MIFIDPRU 3 Annex 5R

Notification under ~~MIFIDPRU 3.6.3R~~ MIFIDPRU 3.6A.6R(2) of the intended reduction in own funds instruments where a condition in ~~MIFIDPRU 3.6.4R~~ MIFIDPRU 3.6A.7R applies

Details of Senior Manager responsible for this notification:

If the notification is being made in respect of a MIFIDPRU investment firm or another SMCR firm, we would expect the individual responsible for it to hold a senior management function (SMF).

Name of individual	
Job title / position	
Individual reference number (if applicable)	

1. Please confirm which of the following the notifying entity is:
 - a. MIFIDPRU investment firm that is not a consolidating UK parent entity or a GCT parent undertaking
 - b. MIFIDPRU investment firm that is a consolidating UK parent entity
 - c. MIFIDPRU investment firm that is a GCT parent undertaking
 - d. Consolidating UK parent entity (other than a MIFIDPRU investment firm)
 - e. GCT parent undertaking (other than a MIFIDPRU investment firm)

If the notification concerns more than one firm in the consolidated group, please submit separate notifications for each firm.

2. Please confirm to which of the following the application relates:
 - a. ~~Permission to reduce, redeem or repurchase any of its CET1 instruments~~ Carry out a reduction of capital in relation to any of its common equity tier 1 instruments;
 - b. ~~Permission to reduce~~ Reduce, distribute or reclassify as another own funds item the share premium accounts related to any of its own funds instruments; ~~or~~
 - c. ~~Permission to effect the call, redemption, repayment or repurchase of its additional tier 1 instruments or tier 2 instruments prior to the date of their contractual maturity.~~ Carry out a reduction of capital in relation to an additional tier 1 instrument, whether on a call date or otherwise; or
 - d. Carry out a reduction of capital in relation to a tier 2 instrument prior

to maturity.

3. Date of the intended capital reduction:

DD/MM/YYYY

The intended reduction must not take place until at least 20 business days after this notification is made.

4. The amount of the intended reduction:

£

5. A firm may only make use of this notification procedure if one of the conditions in ~~MIFIDPRU 3.6.4R~~ MIFIDPRU 3.6A.7R are met, otherwise it must apply for permission under ~~MIFIDPRU 3.6.2R~~ MIFIDPRU 3.6A.4R. Please explain the basis on which the firm has concluded that one of the conditions in ~~MIFIDPRU 3.6.4R~~ MIFIDPRU 3.6A.7R applies.

3 Annex 6R Notification under ~~MIFIDPRU 3.6.5R~~ MIFIDPRU 3.6A.8R of issuance of additional tier 1 or tier 2 instruments

~~[Editor's note: The form can be found at this address:]~~ This annex consists of a form which can be found at the following link:

[Editor's note: insert link]

MIFIDPRU 3 Annex 6R

Notification under ~~MIFIDPRU 3.6.5R~~ MIFIDPRU 3.6A.8R of the intended issuance of AT1 or T2 instruments

Details of Senior Manager responsible for this notification:

If the notification is being made in respect of a MIFIDPRU investment firm or another SMCR firm, we would expect the individual responsible for it to hold a senior management function (SMF).

Name of individual	
Job title / position	
Individual reference number (if applicable)	

1. Please confirm which of the following the notifying entity is:
 - a. MIFIDPRU investment firm that is not a consolidating UK parent entity or a GCT parent undertaking
 - b. MIFIDPRU investment firm that is a consolidating UK parent entity
 - c. MIFIDPRU investment firm that is a GCT parent undertaking
 - d. Consolidating UK parent entity (other than a MIFIDPRU investment firm)
 - e. GCT parent undertaking (other than a MIFIDPRU investment firm)

2. Please confirm which of the following categories of instruments the notification relates to:
 - a. Additional tier 1 instruments
 - b. Tier 2 instruments

3. Please provide the following details of the intended issuance:

- | | |
|--|------------|
| a. Type of instrument | |
| b. Name of instrument | |
| c. Amount of instruments to be issued | £ |
| d. Proposed issuance date (<i>this must be at least 20 business days after this notification is sent to the FCA</i>) | DD/MM/YYYY |

4. Please confirm whether the instruments are intended to be issued to external

investors or only to other members of the firm’s group and connected parties:

a. only to other members of the firm’s group and connected parties	Yes/No
b. to other members of the firm’s group and connected parties, as well as external investors	Yes/No
c. external parties only	Yes/No

5. Please attach a copy of the term sheet and provide 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.

Term sheet attached

6. Please confirm that the firm’s senior management or governing body who has oversight of the intended issuance ~~are~~ is satisfied that the instrument meets the conditions in ~~MIFIDPRU 3.4 or MIFIDPRU 3.5 (as applicable, and including any conditions in the UK CRR applied by those sections)~~ MIFIDPRU 3.4A or MIFIDPRU 3.5A (as applicable) to be classified as AT1 or T2 instruments.

Yes/No

7. Please attach a legal opinion from an appropriately qualified individual, confirming that the capital instruments meet the conditions in ~~MIFIDPRU 3.4 or MIFIDPRU 3.5 (as applicable, and including any conditions in the UK CRR applied by those sections)~~ MIFIDPRU 3.4A or MIFIDPRU 3.5A (as applicable).

Legal opinion attached

MIFIDPRU 3 Annex 7R (Additional provisions relating to own funds) and MIFIDPRU 3 Annex 8R (Prudent valuation and additional valuation adjustments) are deleted in their entirety. The deleted text is not shown but the Annexes are marked [deleted] as shown below.

3 Annex 7R ~~Additional provisions relating to own funds~~ **[deleted]**

3 Annex 8R ~~Prudent valuation and additional valuation adjustments~~ **[deleted]**

Amend the following as shown.

4 Own funds requirements

...

4.5 Fixed overheads requirement

...

4.5.3 R ...

(2) The items that a *firm* may deduct from its total expenditure are:

...

(j) payments related to contract-based profit and loss transfer agreements according to which the *firm* is obliged to transfer its annual profit to the *parent undertaking* following the preparation of the *firm's annual financial statements*; and

(k) ~~payments into a fund for general banking risk in accordance with article 26(1)(f) of the UK CRR, as applied by MIFIDPRU 3.3.1R; and~~ **[deleted]**

(l) other expenses, to the extent that their value has already been reflected in a deduction from *own funds* under ~~MIFIDPRU 3.3.6R~~ MIFIDPRU 3.

...

8 Disclosure

...

8 Annex 1R Disclosure template for information required under MIFIDPRU 8.4.1R in respect of own funds

This annex consists of a template which can be found at the following link:

[*Editor's note*: insert link]

...
Own funds: main features of own instruments issued by the firm
...
<i>Examples</i>
...
Write-down features
<u>Position in capital structure</u>
<u>Description of any equal ranking arrangements with other instruments</u>
<u>Loss absorption mechanics where equal ranking exists</u>
<u>Proportion of residual assets claimed</u>
<u>How losses are shared between equally ranked instruments (where applicable)</u>
Link to the terms and conditions of the instrument
...

...

9 Reporting

...

9 Annex 1R Data items for MIFIDPRU 9

This annex consists of a template which can be found at the following link:

[Editor's note: insert link]

Data items for MIFIDPRU 9 Annex 1R

MIF001 – Own funds

...

Own funds held

3 CET1 own funds held (net of deductions - see MIFIDPRU 3.3 MIFIDPRU 3.3A)

--

4 AT1 own funds held (net of deductions - see MIFIDPRU 3.4 MIFIDPRU 3.4A)

--

5 T2 own funds held (net of deductions - see MIFIDPRU 3.5 MIFIDPRU 3.5A)

--

...

MIF007 – ICARA questionnaire

...

Part B: Assessing and monitoring the adequacy of own funds

Own funds held as at ICARA process reference date

7 CET1 own funds held (net of deductions - see MIFIDPRU 3.3 MIFIDPRU 3.3A)

<i>number</i>

8 AT1 own funds held (net of deductions - see MIFIDPRU 3.4 MIFIDPRU 3.4A)

<i>number</i>

9 T2 own funds held (net of deductions - see MIFIDPRU 3.5 MIFIDPRU 3.5A)

<i>number</i>

...

--

9 Annex 2G **Guidance notes on data items in MIFIDPRU 9 Annex 1R**

This annex consists of guidance which can be found through the following link:

[*Editor's note:* insert link]

Guidance notes on data items in MIFIDPRU 9 Annex 1R

MIF001 – Adequate financial resources (Own funds)

...

Own funds held

...

3A – Common Equity Tier 1 capital

FCA investment firms should enter the amount of CET1 capital they hold for their own funds. CET1 capital should be calculated in accordance with ~~Article 50 of the UK CRR as applied and modified by Section 3.3 of MIFIDPRU~~ MIFIDPRU 3.3A – Common equity tier 1 capital.

4A – Additional Tier 1 capital

FCA investment firms should enter the amount of AT1 capital they hold for their own funds. AT1 capital should be calculated in accordance with ~~Article 61 of the UK CRR as applied and modified by Section 3.4 of MIFIDPRU~~ MIFIDPRU 3.4A – Additional tier 1 capital.

...

5A – Tier 2 capital

FCA investment firms should enter the amount of T2 capital they hold for their own funds. T2 capital should be calculated in accordance with ~~Article 71 of the UK CRR as applied and modified by Section 3.5 of MIFIDPRU~~ MIFIDPRU 3.5A – Tier 2 capital.

...

MIF007 – ICARA Questionnaire

...

Own funds held as at the ICARA accounting reference date

7A – Common Equity Tier 1 capital

FCA investment firms should enter the amount of CET1 capital they hold for their own funds. CET1 capital should be calculated in accordance with ~~Article 50 of the UK CRR as applied and modified by Section 3.3 of MIFIDPRU~~ MIFIDPRU 3.3A – Common equity tier 1 capital.

8A – Additional Tier 1 capital

FCA investment firms should enter the amount of AT1 capital they hold for their own funds. AT1 capital should be calculated in accordance with ~~Article 61 of the UK CRR as applied and modified by Section 3.4 of MIFIDPRU~~ MIFIDPRU 3.4A – Additional tier 1 capital.

...

9A – Tier 2 capital

FCA investment firms should enter the amount of T2 capital they hold for their own funds. T2 capital should be calculated in accordance with ~~Article 71 of the UK CRR as applied and modified by Section 3.5 of MIFIDPRU~~ MIFIDPRU 3.5A – Tier 2 capital.

...

...

TP 1 Own funds transitional provisions

...		
		Continuing application of certain UK CRR permissions
...		
1.6	R	This table belongs to <i>MIFIDPRU</i> TP 1.5R.

(A) UK CRR permission granted before 1 January 2022	(B) Deemed basis for permission on or after 1 January 2022
Article 26(2) <i>UK CRR</i> : inclusion of interim or year-end profits in <i>common equity tier 1 capital</i> before the <i>firm</i> has taken a formal decision confirming the final profit or loss for the year	<i>MIFIDPRU</i> 3.3.2R <i>MIFIDPRU</i> 3.3A.17R
Article 26(3) <i>UK CRR</i> : classification of an issuance of capital instruments as <i>common equity tier 1 capital</i>	<i>MIFIDPRU</i> 3.3.3R <i>MIFIDPRU</i> 3.3A.3R

1.7	G	The effect of <i>MIFIDPRU</i> TP 1.5 and <i>MIFIDPRU</i> TP 1.6 is that a permission that was initially granted under article 26(2) or 26(3) of the <i>UK CRR</i> will continue to produce an equivalent effect under the corresponding provisions in <i>MIFIDPRU</i> 3.3 <i>MIFIDPRU</i> 3.3A . The duration of the original permission is not affected. For example, a permission granted on 1 June 2021 for a one-year duration will be treated from 1 January 2022 as if it had been granted under <i>MIFIDPRU</i> 3.3 <i>MIFIDPRU</i> 3.3A , but will still expire on 1 June 2022.	
		Additional tier 1 capital instruments issued before 1 January 2022	
1.8	R	...	
		(2)	Where this <i>rule</i> applies, by no later than 1 February 2022, a <i>MIFIDPRU investment firm</i> must:
		(a)	notify the <i>FCA</i> using the form in <i>MIFIDPRU</i> TP 1 Annex 1R, submitted via the <i>online notification and application</i> system, to confirm whether:

			(i)	the relevant instruments satisfy the conditions in <i>MIFIDPRU 3.4 MIFIDPRU 3.4A</i> to be classified as <i>additional tier 1 instruments</i> ; or
			(ii)	the relevant instruments do not satisfy the relevant conditions in <i>MIFIDPRU 3.4 MIFIDPRU 3.4A</i> and the <i>firm</i> has therefore ceased to recognise them as part of its <i>additional tier 1 capital</i> or has otherwise redeemed or replaced them; or
			(b)	apply to the <i>FCA</i> under section 138A of the <i>Act</i> for a modification of the relevant provisions in <i>MIFIDPRU 3.4 MIFIDPRU 3.4A</i> to continue to allow the <i>firm</i> to classify the instruments as <i>additional tier 1 instruments</i> for the purposes of <i>MIFIDPRU</i> .
1.9	G	...		
		(2)		Although <i>MIFIDPRU 3.4 MIFIDPRU 3.4A</i> contains provisions for the classification of instruments under <i>MIFIDPRU</i> as <i>additional tier 1 instruments</i> which are broadly equivalent to those in the <i>UK CRR</i> , the trigger event under article 54(1)(a) of the <i>UK CRR</i> does not apply under <i>MIFIDPRU</i> . This is because the <i>own funds requirement</i> under <i>MIFIDPRU</i> is calculated on a different basis and therefore the trigger event for conversion of <i>additional tier 1 instruments</i> under <i>MIFIDPRU</i> is defined by reference to different criteria.
1.10	G			An <i>additional tier 1 instrument</i> issued before 1 January 2022 under the <i>UK CRR</i> may satisfy the conditions in <i>MIFIDPRU 3.4 MIFIDPRU 3.4A</i> so that it can be classified as an <i>additional tier 1 instrument</i> for the purposes of <i>MIFIDPRU</i> . This may depend upon how the trigger events were defined in the terms of the relevant instrument and whether additional trigger events (i.e. over and above the mandatory <i>UK CRR</i> trigger event that was applicable at the time of issuance) were also included.
1.11	G	(1)		A <i>firm</i> may apply to the <i>FCA</i> under section 138A of the <i>Act</i> to modify the provisions of <i>MIFIDPRU 3.4 MIFIDPRU 3.4A</i> for existing <i>additional tier 1 instruments</i> issued under the <i>UK CRR</i> before 1 January 2022, to allow those instruments to be recognised as <i>additional tier 1 instruments</i> under <i>MIFIDPRU</i> .
		...		
Continuing validity of IFPRU own funds notifications				

...		
1.13	R	The table belongs to <i>MIFIDPRU</i> TP 1.12R.

(A) IFPRU notification submitted before 1 January 2022	(B) Deemed notification for the purposes of MIFIDPRU on or after 1 January 2022
<i>IFPRU</i> 3.2.10R: notification of issuance of own funds instruments	<i>MIFIDPRU</i> 3.6.5R(1) <u><i>MIFIDPRU</i> 3.6A.8R(1)</u> (for a <i>MIFIDPRU</i> investment firm) <i>MIFIDPRU</i> 3.6.8R(1)(b) (for a UK parent entity to which consolidation under <i>MIFIDPRU</i> 2.5.7R applies) <i>MIFIDPRU</i> 3.7.4R(1)(b) (for or a parent undertaking to which the group capital test applies)
<i>IFPRU</i> 3.2.13R: notification of issuance of ordinary <i>shares</i> or debt instruments under a debt securities programme	<i>MIFIDPRU</i> 3.6.5R(1) <u><i>MIFIDPRU</i> 3.6A.8R(1)</u> (for a <i>MIFIDPRU</i> investment firm) <i>MIFIDPRU</i> 3.6.8R(1)(b) (for a UK parent entity to which consolidation under <i>MIFIDPRU</i> 2.5.7R applies) <i>MIFIDPRU</i> 3.7.4R(1)(b) (for or a parent undertaking to which the group capital test applies)

1.14	G	The effect of <i>MIFIDPRU</i> TP 1.12R and 1.13R is that a notification that was validly submitted for the purposes of the <i>rules</i> relating to the issuance of own funds in <i>IFPRU</i> is valid for the purposes of the notification requirements relating to the issuance of <i>own funds</i> in <i>MIFIDPRU</i> 3.6 or 3.7 <u><i>MIFIDPRU</i> 3.6A</u> . This means that:
		...
		(2) where the <i>MIFIDPRU</i> investment firm or parent undertaking issues the same class of instruments on or after 1 January 2022, it can rely on the exemption from the notification requirement in <i>MIFIDPRU</i> 3.6.5R(2) <u><i>MIFIDPRU</i> 3.6A.8R(2)</u> , provided that the instruments are identical in all material respects to the previous issuance notified to the <i>FCA</i> under <i>IFPRU</i> .

...			
-----	--	--	--

...

TP 7 Transitional provision for own funds instruments without UK CRR approvals before 1 January 2022

...

...			
			Eligibility of pre-MIFIDPRU capital resources meeting requirements in MIFIDPRU 3 to qualify as own funds under MIFIDPRU without a separate permission or notification
7.4	R	...	
		(3)	A deemed permission or notification under (2) ceases to apply in relation to a capital instrument if the terms of the instrument are varied on or after 1 January 2022 and the instrument ceases to meet:
		(a)	in relation to an instrument being treated as <i>common equity tier 1 capital</i> , the conditions in MIFIDPRU 3.3 <u>MIFIDPRU 3.3A</u> (other than the condition for prior <i>FCA</i> permission to classify the instrument as <i>common equity tier 1 capital</i>);
		(b)	in relation to an instrument being treated as <i>additional tier 1 capital</i> , the conditions in MIFIDPRU 3.4 <u>MIFIDPRU 3.4A</u> ; and
		(c)	in relation to an instrument being treated as <i>tier 2 capital</i> , the conditions in MIFIDPRU 3.5 <u>MIFIDPRU 3.5A</u> .
7.5	R		This table belongs to <i>MIFIDPRU</i> TP 7.4R.

(A)	(B)
Requirement for permission or notification with which the <i>firm, UK parent entity or parent undertaking</i> is deemed to have complied	Conditions for deemed compliance to apply
<i>Individual MIFIDPRU investment firms</i>	

<p>Article 26(3) UK CRR (as applied and modified by MIFIDPRU 3.3.1R) and MIFIDPRU 3.3.3R <u>MIFIDPRU 3.3A.3R</u>:</p> <p>Requirement for prior <i>FCA</i> permission to classify an issuance of capital instruments by a <i>firm</i> as <i>common equity tier 1 capital</i></p>	<p>Immediately before <i>MIFIDPRU</i> began to apply or, if later, on the date on which the notification in <i>MIFIDPRU</i> TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as <i>common equity tier 1 capital</i> in <i>MIFIDPRU 3.3</i> <u><i>MIFIDPRU 3.3A</i></u>, except for the requirement for prior <i>FCA</i> permission under article 26(3) of the UK CRR and <i>MIFIDPRU 3.3.3R</i> <u><i>MIFIDPRU 3.3A.3R</i></u></p>
<p><i>MIFIDPRU 3.6.5R(1)(a)</i> <u><i>MIFIDPRU 3.6A.8R(1)(a)</i></u>:</p> <p>Requirement to notify the <i>FCA</i> of the intention to issue <i>additional tier 1 instruments</i></p>	<p>Immediately before <i>MIFIDPRU</i> began to apply or, if later, on the date on which the notification in <i>MIFIDPRU</i> TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as <i>additional tier 1 capital</i> in <i>MIFIDPRU 3.4</i> <u><i>MIFIDPRU 3.4A</i></u></p>
<p><i>MIFIDPRU 3.6.5R(1)(b)</i> <u><i>MIFIDPRU 3.6A.8R(1)(b)</i></u>:</p> <p>Requirement to notify the <i>FCA</i> of the intention to issue <i>tier 2 instruments</i></p>	<p>Immediately before <i>MIFIDPRU</i> began to apply or, if later, on the date on which the notification in <i>MIFIDPRU</i> TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as <i>tier 2 capital</i> in <i>MIFIDPRU 3.5</i> <u><i>MIFIDPRU 3.5A</i></u></p>
<p><i>UK parent entities</i> to which consolidation under <i>MIFIDPRU 2.5.7R</i> applies</p>	
<p>Article 26(3) UK CRR (as applied and modified by MIFIDPRU 3.3.1R) and MIFIDPRU 3.6.8R, as they apply <u><i>MIFIDPRU 3.3A.3R</i></u> as it applies on a <i>consolidated basis</i> under <i>MIFIDPRU 2.5.7R(1)</i>:</p> <p>Requirement for prior <i>FCA</i> permission to classify an issuance of capital instruments by a <i>UK parent entity</i> as <i>common equity tier 1 capital</i></p>	<p>Immediately before <i>MIFIDPRU</i> began to apply or, if later, on the date on which the notification in <i>MIFIDPRU</i> TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as <i>common equity tier 1 capital</i> in <i>MIFIDPRU 3.3</i> <u><i>MIFIDPRU 3.3A</i></u> (as it applies on a consolidated basis), except for the requirement for prior <i>FCA</i> permission under article 26(3) of the UK CRR and</p>

	MIFIDPRU 3.3.3R <u>MIFIDPRU 3.3A.3R</u>
<p>MIFIDPRU 3.6.5R(1)(a), as modified by MIFIDPRU 3.6.8R <u>MIFIDPRU 3.6A.8R(1)(a)</u> as it applies on a <i>consolidated basis</i> under <u>MIFIDPRU 2.5.7R(1)</u>:</p> <p>Requirement to notify the <i>FCA</i> of the intention to issue <i>additional tier 1 instruments</i></p>	Immediately before <i>MIFIDPRU</i> began to apply or, if later, on the date on which the notification in <i>MIFIDPRU</i> TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as <i>additional tier 1 capital</i> in MIFIDPRU 3.4 <u>MIFIDPRU 3.4A</u> (as it applies on a consolidated basis)
<p>MIFIDPRU 3.6.5R(1)(b), as modified by MIFIDPRU 3.6.8R <u>MIFIDPRU 3.6A.8R(1)(b)</u> as it applies on a <i>consolidated basis</i> under <u>MIFIDPRU 2.5.7R(1)</u>:</p> <p>Requirement to notify the <i>FCA</i> of the intention to issue <i>tier 2 instruments</i></p>	Immediately before <i>MIFIDPRU</i> began to apply or, if later, on the date on which the notification in <i>MIFIDPRU</i> TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as <i>tier 2 capital</i> in MIFIDPRU 3.5 <u>MIFIDPRU 3.5A</u> (as it applies on a consolidated basis)
<i>Parent undertakings to which the group capital test applies</i>	
<p>Article 26(3) UK CRR (as applied and modified by MIFIDPRU 3.3.1R) and MIFIDPRU 3.3.3R, as they apply <u>MIFIDPRU 3.3A.3R</u> as it applies to a parent undertaking under MIFIDPRU 3.7.4R(1)(a) <u>MIFIDPRU 3.7A</u>:</p> <p>Requirement for prior <i>FCA</i> permission to classify an issuance of capital instruments by a <i>parent undertaking</i> as <i>common equity tier 1 capital</i></p>	Immediately before <i>MIFIDPRU</i> began to apply or, if later, on the date on which the notification in <i>MIFIDPRU</i> TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as <i>common equity tier 1 capital</i> in MIFIDPRU 3.3 <u>MIFIDPRU 3.3A</u> , except for the requirement for prior <i>FCA</i> permission under article 26(3) of the UK CRR and MIFIDPRU 3.3.3R <u>MIFIDPRU 3.3A.3R</u>
<p>MIFIDPRU 3.6.5R(1)(a), as modified by MIFIDPRU 3.7.4R(1)(b) <u>MIFIDPRU 3.6A.8R(1)(a)</u> as it applies to a parent undertaking under <u>MIFIDPRU 3.7A</u>:</p>	Immediately before <i>MIFIDPRU</i> began to apply or, if later, on the date on which the notification in <i>MIFIDPRU</i> TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as <i>additional tier 1 capital</i> in MIFIDPRU 3.4 <u>MIFIDPRU 3.4A</u>

<p>Requirement to notify the <i>FCA</i> of the intention to issue <i>additional tier 1 instruments</i></p>	
<p><i>MIFIDPRU 3.6.5R(1)(b)</i>, as modified by <i>MIFIDPRU 3.7.4R(1)(b)</i> <u><i>MIFIDPRU 3.6A.8R(1)(b)</i></u> as it applies to a parent undertaking under <u><i>MIFIDPRU 3.7A</i></u>: Requirement to notify the <i>FCA</i> of the intention to issue <i>tier 2 instruments</i></p>	<p>Immediately before <i>MIFIDPRU</i> began to apply or, if later, on the date on which the notification in <i>MIFIDPRU TP 7.4R(2)(b)</i> was made, the capital instruments met the conditions to be classified as <i>tier 2 capital</i> in <i>MIFIDPRU 3.5</i> <u><i>MIFIDPRU 3.5A</i></u></p>

<p>7.6</p>	<p>G</p>	<p>Where a <i>firm</i>, <i>UK parent entity</i> or <i>parent undertaking</i> is deemed under <i>MIFIDPRU TP 7.3R</i> and <i>7.4R</i> to have notified the <i>FCA</i> of its intention to issue <i>additional tier 1 instruments</i> or <i>tier 2 instruments</i>, <i>MIFIDPRU 3.6.5R(2)(a)</i> <u><i>MIFIDPRU 3.6A.8R(2)(a)</i></u> will apply to a subsequent issuance of the same class of instruments. In practice, this means that provided that the subsequent issuance of the same class is on terms that are identical in all material respects to the existing class of those instruments, a notification to the <i>FCA</i> under <i>MIFIDPRU 3.6.5R(1)</i> <u><i>MIFIDPRU 3.6A.8R(1)</i></u> is not required.</p>
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...

Insert the following new transitional provision, MIFIDPRU TP 13, after MIFIDPRU TP 12 (Disclosure requirements: transitional provisions). All the text is new and is not underlined.

TP 13 Definition of capital: transitional provisions

- TP 13.1 R (1) This *rule* applies where:
- (a) a permission was granted under a *rule* in *MIFIDPRU 3* as it applied immediately before 1 January 2026 (the ‘predecessor rule’); and
 - (b) the permission is substantively the same as a permission or notification under a *rule* contained in *MIFIDPRU 3* as it applies after 1 January 2026 (the ‘successor rule’).
- (2) Where this *rule* applies, the permission given in relation to the predecessor rule is treated as a permission or notification given in relation to the successor rule, until the permission ceases to have effect, or is revoked, whichever is the earlier.
- TP 13.2 R (1) This *rule* applies where:

- (a) a *rule* contained in *MIFIDPRU 3* as it applied immediately before 1 January 2026 (the ‘predecessor rule’) has been waived or modified in accordance with section 138A of the *Act* in a way that has continuing effect; and
- (b) the predecessor rule is substantively the same as a *rule* contained in *MIFIDPRU 3* as it applies after 1 January 2026 (the ‘successor rule’).
- (2) Where this *rule* applies, the successor rule must be read as if subject to the waiver or modification of the predecessor rule, until the waiver or modification ceases to have effect, or is revoked, whichever is the earlier.

TP 13.3 R The references to ‘*MIFIDPRU 3*’ in *MIFIDPRU* TP 13.1R(1)(a) and *MIFIDPRU* TP 13.2R(1)(a) include the *UK CRR* as applied by *MIFIDPRU 3*.

Amend the following as shown.

...

Sch 2 Notification requirements

- Sch 2.1 G (1) The aim of the *guidance* in the following table is to provide an overview of the relevant notification requirements in *MIFIDPRU*.
- (2) It is not a complete statement of those requirements and should not be relied on as if it were.

Handbook reference	Subject of notification	Trigger events	Time allowed
...			
<i>MIFIDPRU</i> 3.3.3R(2) <i>MIFIDPRU</i> <u>3.3A.3R(1)(b)</u>	Notification of subsequent issuance of capital instruments qualifying as <i>common equity tier 1 capital</i>	Proposed issuance of capital instruments of an existing class of <i>common equity tier 1 capital</i>	No fewer than 20 <i>business days</i> before the issuance
<i>MIFIDPRU</i> <u>3.3A.17R</u>	<u>Notification of inclusion of interim profits or year-end</u>	<u>Inclusion of such profits in <i>common equity tier 1 capital</i> before formal</u>	<u>As soon as reasonably practicable after inclusion</u>

	<u>profits in common equity tier 1 capital</u>	<u>decision confirming final profit or loss for the year</u>	
MIFIDPRU 3.6.3R <u>MIFIDPRU 3.6A.6R(2)</u>	Notification of proposed reduction, repurchase, call or redemption of own funds instruments <u>reduction of capital</u> where conditions in MIFIDPRU 3.6.4R <u>MIFIDPRU 3.6A.7R</u> are met	Proposed redemption of own funds instruments <u>reduction of capital</u> where conditions in MIFIDPRU 3.6.4R <u>MIFIDPRU 3.6A.7R</u> are met	No later than the 20th <i>business day</i> before the <i>day</i> on which the reduction, repurchase, call or redemption <u>reduction of capital</u> will occur
MIFIDPRU 3.6.5R <u>MIFIDPRU 3.6A.8R</u>	Notification of proposed issuance of <i>additional tier 1 instruments</i> or <i>tier 2 instruments</i>	Proposed issuance of <i>additional tier 1 instruments</i> or <i>tier 2 instruments</i>	At least 20 <i>business days</i> before the intended issuance date
...			