STATUTORY INSTRUMENTS

2014 No. 894

The Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014

PART 3

Countercyclical Capital Buffer

CHAPTER 1

Designated authority and interpretation

Designated authority

7. The Bank is the designated authority for the purposes of Article 136(1) of the capital requirements directive.

Meaning of "UK institution"

8. In this Part—

"EEA authority" means an authority designated in an EEA State other than the United Kingdom for the purposes of Article 136(1) of the capital requirements directive;

"UK institution" means an institution with permission to carry on a regulated activity under Part 4A of FSMA.

CHAPTER 2

Exposures located in the United Kingdom

The buffer guide

9.—(1) The FPC must calculate for every quarter a buffer guide as a reference to guide its exercise of judgement in assessing and setting the buffer rate in accordance with regulation 10.

(2) The buffer guide must—

(a) reflect, in a meaningful way, the credit cycle and the risks due to excess credit growth in the United Kingdom; and

(b) duly take into account the specificities of the economy of the United Kingdom.

(3) The buffer guide must be based on the deviation of the ratio of credit to gross domestic product from its long term trend, taking into account—

(a) an indicator of the growth of levels of credit within the United Kingdom and, in particular, an indicator reflecting the changes in the ratio of credit granted in the United Kingdom to gross domestic product; and

(b) any guidance maintained by the ESRB in accordance with Article 135(1)(b) of the capital requirements directive.

Countercyclical buffer rate

10.—(1) The FPC must assess and set a buffer rate for the United Kingdom.

(2) The purpose of the buffer rate is to enable institutions with exposures located in the United Kingdom to calculate their institution-specific countercyclical capital buffers.

(3) The buffer rate must be assessed and set on a quarterly basis, taking into account—

(a) the buffer guide calculated in accordance with regulation 9(1);

(b) any current guidance maintained by the ESRB in accordance with Articles 135(1)(a), (c) and (d) of the capital requirements directive;

(c) any recommendation issued by the ESRB on setting buffer rates for the countercyclical capital buffer; and

(d) any other variables that the FPC considers relevant for addressing cyclical systemic risk.

(4) The buffer rate must be expressed as a percentage of the total risk exposure of institutions with exposures located in the United Kingdom.

(5) Total risk exposure must be calculated in accordance with Article 92(3) of the capital requirements regulation.

(6) The buffer rate must be—

(a) set between 0% and 2.5%, except where the matters referred to in paragraph (3) justify a higher rate; and

(b) an integer multiple of 0.25%.

Date from which changes to the buffer rate apply

11.—(1) Where the FPC—

(a) sets the buffer rate above zero for the first time; or

(b) increases the buffer rate;

it must decide the date from which UK institutions must apply the buffer rate for the purposes of calculating their institution-specific countercyclical capital buffers.

(2) The date referred to in paragraph (1) must be 12 months after the date when the buffer rate is published in accordance with regulation 12(1), unless an earlier date is justified on the basis of exceptional circumstances.

(3) Where the FPC reduces the buffer rate, it must decide on an indicative period during which no increase in that rate is expected.

(4) The indicative period referred to in paragraph (3) is not be binding on the FPC.

Announcement of changes to the buffer rate

12.—(1) The Bank must publish the following information on its website—

(a) the buffer rate assessed and set by the FPC in accordance with regulation 10(1);

(b) the relevant ratio of credit to gross domestic product and its deviation from the long-term trend;

(c) the buffer guide calculated by the FPC in accordance with regulation 9;

(d) the reasons for the FPC's decision on the level of the buffer rate.

(2) Where the FPC decides to increase the buffer rate, the Bank must publish on its website—

(a) the date from which UK institutions must apply the new buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer; and

(b) any exceptional circumstances which justify any decision by the FPC to require institutions to apply the new buffer rate less than a year after it is published.

(3) Where the FPC decides to decrease the buffer rate, the Bank must publish on its website the indicative period referred to in regulation 11(3) and the FPC's reasons for choosing that period.

(4) The Bank must take all reasonable steps to co-ordinate the timing of the publication of the buffer rate with the publication by the EEA authorities of the buffer rates for the countercyclical capital buffer in the EEA.

(5) Every quarter, the Bank must notify the ESRB of the information referred to in paragraphs (1) to (3).

CHAPTER 3

Exposures located outside the United Kingdom

Buffer rates for EEA exposures: before 1st January 2016

13.—(1) This regulation(**1**) applies where—

(a) an EEA State other than the United Kingdom has implemented the countercyclical capital buffer before 1st January 2016; and

(b) the EEA authority for that EEA State has set a buffer rate ("the EEA buffer rate") for that EEA State, for the purpose of enabling institutions with exposures located in that EEA State to calculate their institution-specific countercyclical capital buffers.

(2) The FPC may—

(a) recognise the EEA buffer rate; or

(b) set a buffer rate for that EEA State which is less than the EEA buffer rate.

(3) The purpose for which a buffer rate may be recognised or set under paragraph (2) is so that UK institutions with exposures located in that EEA State may be required by the PRA and FCA to apply that buffer rate in their calculation of their institution-specific countercyclical capital buffers.

(4) The FPC may not set a buffer rate for an EEA State other than the United Kingdom except as permitted by this regulation.

Buffer rates for EEA exposures: on or after 1st January 2016

14.—(1) This regulation(**2**) applies where—

(a) an EEA authority has set a buffer rate ("the EEA buffer rate") for that EEA State, for the purpose of enabling institutions with exposures in that EEA State to calculate their institution-specific countercyclical capital buffer; and

(b) the EEA buffer rate exceeds 2.5%.

(2) The FPC may recognise the EEA buffer rate, so that UK institutions with exposures located in that EEA State may be required by the PRA and FCA to apply the EEA buffer rate in their calculation of their institution-specific countercyclical capital buffers.

Buffer rates for exposures outside the EEA

15.—(1) This regulation specifies the circumstances in which the FPC may recognise or set a buffer rate for exposures—

(a) held by a UK institution; and

(**1**) This regulation ceases to have effect on 1st January 2016. See regulation 1(5).
(**2**) This regulation commences on 1st January 2016. See regulation 1(3).

(b) located in a country outside of the EEA (a "third country").

(2) Where the supervisory authority of the third country has not set and published a buffer rate for a capital buffer serving the same purpose as the countercyclical capital buffer, the FPC may set a buffer rate for the third country.

(3) Where the supervisory authority of the third country sets a buffer rate of more than 2.5% for a capital buffer serving the same purpose as the countercyclical capital buffer, the FPC may recognise that buffer rate.

(4) Where the supervisory authority of the third country sets a buffer rate (the "third country buffer rate") for a capital buffer serving the same purpose as the countercyclical capital buffer and the FPC reasonably considers that the third country buffer rate is not sufficient to protect UK institutions from the risks of excessive credit growth in the third country, the FPC may—

(a) set a buffer rate for the third country which is higher than the third country buffer rate; or

(b) set a buffer rate for the third country which is lower than the third country buffer rate, provided the buffer rate set by the FPC exceeds 2.5%.

(5) The purpose for which a buffer rate may be recognised or set under this regulation is so that UK institutions with exposures located in the third country may be required by the PRA and FCA to apply that buffer rate in their calculation of their institution-specific countercyclical capital buffers.

Buffer rates: integer multiples of 0.25%

16. A buffer rate set by the FPC under regulation 13(2)(b), 15(2) or 15(4) must be an integer multiple of 0.25%.

Date of application of buffer rates

17.—(1) Where FPC—

(a) recognises or sets a buffer rate under regulations 13, 14 or 15 in relation to exposures located outside the United Kingdom; and

(b) the buffer rate is higher than the buffer rate which UK institutions are currently required to apply in relation to those exposures when calculating their institution-specific countercyclical capital buffers;

then the FPC must decide the date from which UK institutions must apply the buffer rate for the purposes of calculating their institution-specific countercyclical capital buffers.

(2) The date referred to in paragraph (1)—

(a) may only be earlier than 12 months after the date when the buffer rate is published if such a date is justified on the basis of exceptional circumstances; and

(b) may not be later than 12 months after the date when the buffer rate is published where the FPC has set the buffer rate under regulation 15(2) or 15(4).

Announcement of changes to buffer rates

18.—(1) Where the FPC recognises or sets a buffer rate under regulations 13, 14 or 15, the Bank must publish the FPC's decision on its website.

(2) The Bank must also publish the following information when a decision is published under paragraph (1)—

(a) the buffer rate;

(b) where the FPC has set the buffer rate under regulation 15(2) or 15(4), the justification for the buffer rate;

(c) the EEA State or country to which that buffer rate applies;

(d) the date from which the buffer rate applies; and

(e) any exceptional circumstances justifying a date of application of less than twelve months after the date of publication.

CHAPTER 4

Institution-specific countercyclical capital buffers

Calculation of buffer before 1st January 2016

19.—(1) The appropriate regulator must require institutions to calculate their institution-specific countercyclical capital buffers in accordance with Article 140 of the capital requirements directive, subject to the modifications set out in paragraph (2)(**3**).

(2) The countercyclical buffer rate for exposures located in an EEA State other than the United Kingdom is—

(a) the buffer rate recognised or set for that EEA State by the FPC under regulation 13; or

(b) 0% otherwise.

Exemption for small and medium-sized investment firms

20.—(1) The FCA may exempt a small or medium-sized investment firm, or small or medium-sized investment firms of a specified description, from the requirement to maintain an institution-specific countercyclical capital buffer where such an exemption does not threaten the stability of the financial system of the United Kingdom.

(2) Where the FCA decides to grant such an exemption, its decision must—

(a) contain an exact definition of the small and medium-sized investment firms which are exempted;

(b) be fully reasoned; and

(c) explain why the exemption does not threaten the stability of the financial system of the United Kingdom.

(3) The FCA must notify a decision to grant an exemption to the European Commission, the ESRB, EBA and the competent authorities of other EEA States which are responsible for the exercise of the duties of a competent authority under the capital requirements directive and capital requirements regulation.

(**3**) This regulation ceases to have effect on 1st January 2016. See regulation 1(5).