



Financial Services Act 2021

2021 CHAPTER 22

Prudential regulation of credit institutions and investment firms

1 Exclusion of certain investment firms from the Capital Requirements Regulation

- (1) Article 4(1) of the Capital Requirements Regulation (definitions) is amended in accordance with subsections (2) to (6).
- (2) In point (2) (definition of “investment firm”), for the words from “excluding” to the end substitute “other than a credit institution”.
- (3) In point (2A) (definition of “CRR firm”), in paragraph (a)(ii), for “an investment firm” substitute “a designated investment firm”.
- (4) After point (2A) insert—
 - “(2AA) ‘*designated investment firm*’ means an investment firm that is for the time being designated by the PRA under article 3 of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 (S.I. 2013/556), but is not—
 - (a) a commodity and emission allowance dealer,
 - (b) a collective investment undertaking, or
 - (c) an insurance undertaking;
 - (2AB) ‘*FCA investment firm*’ means an investment firm that—
 - (a) is an authorised person within the meaning of section 31(1)(a) of FSMA, and
 - (b) is not a designated investment firm;”.
- (5) In point (3) (definition of “institution”), for “an investment firm” substitute “a designated investment firm”.
- (6) At the end insert—

“(150) ‘*commodity and emission allowance dealer*’ means an undertaking the main business of which consists exclusively of the provision of investment services or activities in relation to—

- (a) commodity derivatives or commodity derivative contracts referred to in paragraphs 5, 6, 7, 9 and 10 of Part 1 of Schedule 2 to the Regulated Activities Order,
- (b) derivatives of emission allowances referred to in paragraph 4 of that Part of that Schedule, or
- (c) emission allowances referred to in paragraph 11 of that Part of that Schedule.”

(7) In Schedule 1—

- (a) Part 1 contains consequential amendments of the Capital Requirements Regulation, and
- (b) Part 2 contains consequential amendments of the Capital Requirements (Country-by-Country Reporting) Regulations 2013 (S.I. 2013/3118).

2 Prudential regulation of certain investment firms by FCA rules

In Schedule 2—

- (a) Part 1 inserts Part 9C of the Financial Services and Markets Act 2000 (prudential regulation of FCA investment firms),
- (b) Part 2 contains minor and consequential amendments of the Financial Services and Markets Act 2000, and
- (c) Part 3 contains transitional provision.

3 Transfer of certain prudential regulation matters into PRA rules

(1) The Treasury may by regulations revoke provisions of the Capital Requirements Regulation relating to the matters listed in subsection (2).

(2) The matters are—

- (a) deductions from Common Equity Tier 1 items;
- (b) the following aspects of the standardised approach to credit risk—
 - (i) exposure value;
 - (ii) risk weights for exposures to institutions;
 - (iii) exposures to corporates;
 - (iv) exposures secured by mortgages on immovable property;
 - (v) retail exposures;
 - (vi) subordinated debt and equity exposures;
 - (vii) the use of credit assessments;
 - (viii) exposures with particularly high risk;
 - (ix) exposures in the form of units or shares in collective investment undertakings;
- (c) classification of off-balance sheet items;
- (d) the following aspects of the internal ratings based approach to credit risk—
 - (i) the advanced internal ratings based approach for asset classes that cannot be modelled in a robust and prudent manner;
 - (ii) input parameters;

- (iii) the requirement to use the internal ratings based approach for all significant exposure classes;
 - (iv) the 1.06 scaling factor for estimating risk-weighted assets;
 - (v) exposures in the form of units or shares in collective investment undertakings;
 - (vi) risk-weighted exposure amounts for equity exposures;
 - (vii) the treatment of expected loss amounts by exposure types;
 - (e) the use of credit risk mitigation techniques for exposures risk-weighted under the standardised approach to credit risk or the internal ratings based approach to credit risk;
 - (f) the following aspects of own funds requirements for counterparty credit risk—
 - (i) requirements to use particular methods for calculating the exposure value;
 - (ii) the mark-to-market method;
 - (iii) the original exposure method;
 - (iv) the standardised method;
 - (v) own funds requirements for exposures to a central counterparty;
 - (g) own funds requirements for operational risk;
 - (h) the following aspects of own funds requirements for market risk—
 - (i) the approaches for calculating the own funds requirements for market risk;
 - (ii) the scope and structure of the alternative standardised approach;
 - (iii) foreign exchange risk factors in the alternative standardised approach;
 - (iv) the scope and structure of the alternative internal model approach, including the use of alternative internal models;
 - (v) regulatory back-testing requirements and multiplication factors in the alternative internal model approach;
 - (vi) requirements relating to risk measurement in the alternative internal model approach;
 - (i) own funds requirements relating to—
 - (i) derogations for small trading book business;
 - (ii) the trading book;
 - (j) own funds requirements for credit valuation adjustment risk;
 - (k) large exposures;
 - (l) liquidity requirements;
 - (m) the leverage ratio;
 - (n) reporting requirements;
 - (o) disclosure requirements;
 - (p) any other matter which is the subject of a CRR Basel standard.
- (3) The Treasury may by regulations revoke a provision of the Capital Requirements Regulation where—
- (a) the provision is connected with provision relating to a matter listed in subsection (2), and
 - (b) the Treasury consider the revocation necessary or desirable in order to maintain or improve the coherence of the prudential regime comprised in, and in provision made under, the Capital Requirements Regulation and in general rules made by the Prudential Regulation Authority.

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- (4) The Treasury may only make regulations under subsection (1) or (3) revoking a provision if they consider that—
- (a) the provision has been, or will be, adequately replaced by general rules made, or to be made, by the Prudential Regulation Authority, or
 - (b) it is appropriate for the provision not to be replaced.
- (5) The Treasury may by regulations make consequential, supplementary, incidental, transitional, transitory and saving provision in connection with the revocation of provisions under subsection (1) or (3), including provision amending, repealing or revoking provisions of the Capital Requirements Regulation or another enactment.
- (6) Regulations under this section may make different provision for different purposes.
- (7) Regulations under this section are subject to the affirmative procedure.
- (8) Where the Treasury make regulations in reliance on subsection (2)(p), the Treasury must, when laying a draft of the regulations before Parliament, also lay before Parliament a statement explaining which provisions are made in reliance on that paragraph and identifying the relevant CRR Basel standard.
- (9) The reference in subsection (2)(p) to a matter that is the subject of a CRR Basel standard includes such a matter as it relates to any CRR firm (even where the standard in question does not apply to all CRR firms).
- (10) In this section—
- “CRR Basel standard” has the meaning given in section 4;
 - “general rules” has the same meaning as in the Financial Services and Markets Act 2000 (see section 417 of that Act).
- (11) Terms used in this section and in the Capital Requirements Regulation have the same meaning in this section as they have in that Regulation (or any part of it).

4 CRR Basel standards

- (1) For the purposes of section 3, “CRR Basel standard” means—
- (a) a standard recommended in a document issued by the Basel Committee on Banking Supervision listed in subsection (2), or
 - (b) a standard recommended in another document issued by that Committee where the recommended date for implementation of the standard falls on or before the date described in subsection (3),
- subject to subsection (4).
- (2) The documents referred to in subsection (1)(a) are the documents entitled (and issued) as follows—
- (a) Capital requirements for banks’ equity investments in funds (December 2013);
 - (b) The standardised approach for measuring counterparty credit risk exposures (March 2014);
 - (c) Capital requirements for bank exposures to central counterparties (April 2014);
 - (d) Supervisory framework for measuring and controlling large exposures (April 2014);
 - (e) Basel III: the net stable funding ratio (October 2014);

- (f) Revised Pillar 3 disclosure requirements (January 2015);
 - (g) Pillar 3 disclosure requirements — consolidated and enhanced framework (March 2017);
 - (h) Implementation of net stable funding ratio and treatment of derivative liabilities (October 2017);
 - (i) Basel III: Finalising post-crisis reforms (December 2017);
 - (j) Technical Amendment — Basel III: Treatment of extraordinary monetary policy operations in the Net Stable Funding Ratio (June 2018);
 - (k) Pillar 3 disclosure requirements — regulatory treatment of accounting provisions (August 2018);
 - (l) Pillar 3 disclosure requirements — updated framework (December 2018);
 - (m) Minimum capital requirements for market risk (January 2019);
 - (n) Targeted revisions to the credit valuation adjustment risk framework (July 2020).
- (3) The date referred to in subsection (1)(b) is whichever is the latest of the dates recommended by the Basel Committee on Banking Supervision in a document listed in subsection (2) for the implementation of a standard (or, where implementation is recommended to take place in phases, for the full implementation of a standard).
- (4) A recommended standard is not a CRR Basel standard to the extent that, immediately before the day on which this section comes into force, provision giving effect to the recommendation is included in an enactment.
- (5) References in this section to a document issued by the Basel Committee on Banking Supervision are to such a document as it has effect from time to time.

5 Prudential regulation of credit institutions etc by PRA rules

- (1) In Schedule 3—
- (a) Part 1 inserts Part 9D of the Financial Services and Markets Act 2000 (prudential regulation of credit institutions etc),
 - (b) Part 2 amends the Prudential Regulation Authority’s powers under Part 12B of that Act (approval of certain holding companies),
 - (c) Part 3 contains minor and consequential amendments, and
 - (d) Part 4 contains transitional provision.
- (2) Subsections (3) to (5) apply where a provision of the Capital Requirements Regulation, or of an instrument made under that Regulation, has been revoked by regulations under section 3.
- (3) In the Capital Requirements Regulation and in other enactments, except as otherwise provided—
- (a) pre-revocation references to the revoked provision are to be treated as references to the corresponding CRR rule, and
 - (b) pre-revocation references to the Capital Requirements Regulation or the instrument, or to a division of that Regulation or instrument that included the revoked provision, are to be treated as including the corresponding CRR rule.
- (4) The Prudential Regulation Authority must—
- (a) prepare a document setting out whether and, if so, how CRR rules correspond to the revoked provision,

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- (b) update the document from time to time, and
 - (c) publish the document, and any update, in the manner best calculated to bring it to the attention of those likely to be affected by the Capital Requirements Regulation and CRR rules.
- (5) For the purposes of subsection (3), whether a CRR rule corresponds to a revoked provision is to be determined by reference to the document published under subsection (4), as updated from time to time.
- (6) In this section, references to instruments made under the Capital Requirements Regulation include EU tertiary legislation made under that Regulation which forms part of retained EU law.
- (7) In this section—
- “CRR rules” has the same meaning as in the Financial Services and Markets Act 2000 (see section 144A of that Act, inserted by Schedule 3 to this Act);
 - “EU tertiary legislation” has the same meaning as in the European Union (Withdrawal) Act 2018 (see section 20 of that Act);
 - “pre-revocation reference” means, in connection with the revocation of a provision described in subsection (2), a reference contained in an enactment immediately before the revocation (whether or not the reference is in force at that time).

6 Power to amend the Credit Rating Agencies Regulation

- (1) The Treasury may by regulations amend the Credit Rating Agencies Regulation by making provision related to the issuing and use of credit ratings which it considers necessary or desirable having regard to a CRR Basel standard.
- (2) Regulations under this section may—
- (a) make different provision for different purposes, and
 - (b) make consequential, supplemental, incidental, transitional, transitory and saving provision.
- (3) Regulations under this section are subject to the affirmative procedure.
- (4) The power under subsection (1) includes power to make provision in relation to any CRR firm (even where the CRR Basel standard to which the Treasury have regard does not apply to all CRR firms).
- (5) In this section—
- “CRR Basel standard” has the meaning given in section 4;
 - “CRR firm” has the same meaning as in the Capital Requirements Regulation;
 - “the Credit Rating Agencies Regulation” means Regulation (EC) No. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies;
 - “credit rating” has the same meaning as in the Credit Rating Agencies Regulation (see Article 3(1)(a) of that Regulation).

7 Amendments of the Capital Requirements Regulation

Schedule 4 contains amendments of the Capital Requirements Regulation.