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## STATUTORY INSTRUMENTS

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# 2013 No. 3115

## The Capital Requirements Regulations 2013

### PART 7

#### Exercise of supervision by the PRA and FCA

##### Supervisory powers: own funds

34.—(1) The PRA and FCA must require an institution to hold own funds in excess of—

- (a) the requirements of [<sup>F1</sup>Directive 2013/36/EU UK law which implemented] Chapter 4 of Title 7 of the capital requirements directive; and
- (b) the requirements of the capital requirements regulation relating to risks or elements of risks not covered by Article 1 of the capital requirements regulation;

in the circumstances mentioned in paragraph (2).

(2) The circumstances referred to in paragraph (1) are—

- (a) an institution does not meet the requirements set out in [<sup>F2</sup>Directive 2013/36/EU UK law which implemented] Articles 73 and 74 of the capital requirements directive or in Article 393 of the capital requirements regulation;
- (b) risks or elements of risks are not covered by the own funds requirements set out in [<sup>F2</sup>Directive 2013/36/EU UK law which implemented] Chapter 4 of Title 7 of the capital requirements directive or in the capital requirements regulation;
- (c) the sole application of other administrative measures is unlikely to improve the institution's arrangements, processes, mechanisms and strategies sufficiently within an appropriate timeframe;
- (d) [<sup>F3</sup>either a SREP or an internal model review] reveals that non-compliance with the requirements for the [<sup>F4</sup>applicable internal approaches] will likely lead to inadequate own funds requirements;
- (e) the risks are likely to be underestimated despite compliance with the applicable requirements of [<sup>F5</sup>Directive 2013/36/EU UK law or the capital requirements regulation]; or
- (f) an institution reports to the competent authority in accordance with Article 377(5) of the capital requirements regulation that the stress test results referred to in that Article materially exceed its own funds requirement for the correlation trading portfolio.

(3) For the purposes of determining the appropriate level of own funds on the basis of [<sup>F6</sup>a SREP], the PRA and FCA must assess whether any imposition of an additional own funds requirement in excess of the own funds requirement is necessary to capture risks to which an institution is or might be exposed, taking into account the following:

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- (a) the quantitative and qualitative aspects of the institution's assessment process referred to in [<sup>F7</sup>Directive 2013/36/EU UK law which implemented] Article 73 of the capital requirements directive;
- (b) the institution's arrangements, processes and mechanisms referred to in [<sup>F7</sup>Directive 2013/36/EU UK law which implemented] Article 74 of the capital requirements directive; [<sup>F8</sup>and]
- (c) the outcome of [<sup>F9</sup>the SREP or internal model review]; <sup>F10</sup> ...

<sup>F11</sup>(d) .....

[<sup>F12</sup>(3A) In making the assessment required by paragraph (3), the FCA must also take into account their assessment of systemic risk.]

[<sup>F13</sup>(4) In this Part—

“internal model review” means a review carried out under regulation 34B;

“SREP” means the supervisory review and evaluation process detailed in regulation 34A.]

<b>F1</b>	Words in reg. 34(1)(a) inserted (31.12.2020) by The Capital Requirements (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1401), regs. 1(3), <b>20(a)</b> (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
<b>F2</b>	Words in reg. 34(2)(a)(b) inserted (31.12.2020) by The Capital Requirements (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1401), regs. 1(3), <b>20(b)</b> (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
<b>F3</b>	Words in reg. 34(2)(d) substituted (31.12.2020) by The Capital Requirements (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1401), regs. 1(3), <b>20(c)(i)</b> (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
<b>F4</b>	Words in reg. 34(2)(d) substituted (31.12.2020) by The Capital Requirements (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1401), regs. 1(3), <b>20(c)(ii)</b> (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
<b>F5</b>	Words in reg. 34(2)(e) substituted (31.12.2020) by The Capital Requirements (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1401), regs. 1(3), <b>20(d)</b> (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
<b>F6</b>	Words in reg. 34(3) substituted (31.12.2020) by The Capital Requirements (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1401), regs. 1(3), <b>20(e)</b> (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
<b>F7</b>	Words in reg. 34(3)(a)(b) inserted (31.12.2020) by The Capital Requirements (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1401), regs. 1(3), <b>20(f)</b> (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
<b>F8</b>	Word in reg. 34(3)(b) inserted (29.12.2020) by The Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1406), regs. 1(4), <b>7(a)(i)</b>
<b>F9</b>	Words in reg. 34(3)(c) substituted (31.12.2020) by The Capital Requirements (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1401), regs. 1(3), <b>20(g)</b> (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
<b>F10</b>	Word in reg. 34(3)(c) omitted (29.12.2020) by virtue of The Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1406), regs. 1(4), <b>7(a)(ii)</b>
<b>F11</b>	Reg. 34(3)(d) omitted (29.12.2020) by virtue of The Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1406), regs. 1(4), <b>7(a)(iii)</b>

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- F12** Reg. 34(3A) inserted (29.12.2020) by The Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1406), regs. 1(4), **7(b)**
- F13** Reg. 34(4) inserted (31.12.2020) by virtue of The Capital Requirements (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1401), regs. 1(3), **20(h)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

#### [<sup>F14</sup>Supervisory review and evaluation process

**34A.**—(1) The competent authority must review the arrangements, strategies, processes and mechanisms implemented by an institution to comply with Directive 2013/36/EU UK law and the capital requirements regulation and evaluate—

- (a) in the case of the PRA—
  - (i) risks to which that institution is or might be exposed, and
  - (ii) risks revealed by stress testing, taking account of the nature, scale and complexity of that institution's activities;
- (b) in the case of the FCA—
  - (i) the risks referred to in paragraph (a), and
  - (ii) the risks that institution poses to the UK financial system.

(2) On the basis of the review and evaluation referred to in paragraph (1), the competent authority must determine whether the arrangements, strategies, processes and mechanisms implemented by an institution and the own funds and liquidity held by it ensures a sound management and coverage of its risks.

(3) The competent authority must establish the frequency and intensity of the review and evaluation referred to in paragraph (1) having regard to the size, systemic importance, nature, scale and complexity of the activities of the institution concerned.

- F14** Regs. 34A, 34B inserted (31.12.2020) by The Capital Requirements (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1401), regs. 1(3), **21** (with savings in S.I. 2019/680, **reg. 11**) (as amended by S.I. 2020/1406, regs. 1(2), **11**, 12); 2020 c. 1, **Sch. 5 para. 1(1)**

#### Ongoing review of the permission to use internal approaches

**34B.**—(1) The competent authority must review on a regular basis, and at least every 3 years, an institution's compliance with the requirements regarding internal approaches that require permission by the competent authorities before using such internal approaches for the calculation of own funds requirements in accordance with Part 3 of the capital requirements regulation.

(2) In its review the competent authority must have particular regard to changes in an institution's business and to the implementation of those approaches to new products.

(3) Where material deficiencies are identified in risk capture by an institution's internal approaches, the competent authority must ensure these are rectified, or take appropriate steps to mitigate their consequences, including by imposing higher multiplication factors, or imposing capital add-ons, or taking other appropriate and effective measures.

(4) The competent authority must in particular review and assess whether the institution uses well developed and up-to-date techniques and practices for its internal approaches.

(5) If for an internal market risk model numerous overshootings referred to in Article 366 of the capital requirements regulation indicate that the model is not or is no longer sufficiently accurate, the

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competent authority must revoke the permission for using the internal model or impose appropriate measures to ensure that the model is improved promptly.

(6) If an institution has received permission to apply an approach that requires permission by the competent authority before using such an approach for the calculation of own funds requirements in accordance with Part 3 of the capital requirements regulation but no longer meets the requirements imposed as part of the grant of permission for applying that internal approach, the competent authority must require the institution either to satisfy the competent authority that the effect of non-compliance is immaterial where applicable in accordance with the capital requirements regulation or to present a plan for the timely restoration of compliance with the requirements and set a deadline for its implementation.

(7) The competent authority must require improvements to that plan if it is unlikely to result in full compliance or if the deadline is inappropriate.

(8) If the institution is unlikely to be able to restore compliance within an appropriate deadline and, where applicable, has not satisfactorily demonstrated that the effect of non-compliance is immaterial, the permission to use the internal approach must be revoked or limited to compliant areas or those where compliance can be achieved within an appropriate deadline.]

**F14** Regs. 34A, 34B inserted (31.12.2020) by [The Capital Requirements \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1401\)](#), regs. 1(3), **21** (with savings in S.I. 2019/680, **reg. 11**) (as amended by S.I. 2020/1406, regs. 1(2), **11**, 12); 2020 c. 1, **Sch. 5 para. 1(1)**

### Specific liquidity requirements

**35.** For the purposes of determining the appropriate level of liquidity requirements on the basis of [F15a SREP], the appropriate regulator must assess whether the imposition of a specific liquidity requirement is necessary to capture liquidity risks to which an institution is or might be exposed, taking into account the following—

- (a) the particular business model of the institution;
- (b) the institution's arrangements, processes and mechanisms (as referred to in [F16Directive 2013/36/EU UK law which implemented] Section 2 of Chapter 2 of Title 7 to the capital requirements directive, in particular in Article 86);
- (c) the outcome of [F17the SREP]; and
- (d) any systemic liquidity risk that threatens the integrity of the financial markets of the United Kingdom.

**F15** Words in **reg. 35** substituted (31.12.2020) by [The Capital Requirements \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1401\)](#), regs. 1(3), **22(a)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

**F16** Words in **reg. 35(b)** inserted (31.12.2020) by [The Capital Requirements \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1401\)](#), regs. 1(3), **22(b)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

**F17** Words in **reg. 35(c)** substituted (31.12.2020) by [The Capital Requirements \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1401\)](#), regs. 1(3), **22(c)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

### [F18Application of supervisory measures to institutions with similar risk profiles

**35A.** Where the FCA determines that institutions with similar risk profiles such as similar business models or geographical location of exposures, are or might be exposed to similar risks or

pose similar risks to the UK financial system, it may apply a SREP to those institutions in a similar or identical manner.

**F18** Regs. 35A-35C inserted (31.12.2020) by [The Capital Requirements \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1401\)](#), regs. 1(3), **23** (with savings in S.I. 2019/680, [reg. 11](#)) (as amended by S.I. 2020/1406, regs. 1(2), **12**); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

### Supervisory powers

**35B.** For the purposes of a SREP, an internal model review, and in order to address a situation where an institution does not meet the requirements of the Capital Requirements Regulation or Directive 2013/36/EU UK law, or where the competent authority has evidence that an institution is likely to breach such requirements within the following twelve months, the competent authorities may at least—

- (a) require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with Directive 2013/36/EU UK law which implemented Articles 73 and 74;
- (b) require institutions to present a plan to restore compliance with supervisory requirements and set a deadline for its implementation, including improvements to that plan regarding scope and deadline;
- (c) require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;
- (d) to restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution;
- (e) require the reduction of the risk inherent in the activities, products and systems of institutions;
- (f) require institutions to limit variable remuneration as a percentage of net revenues where it is inconsistent with the maintenance of a sound capital base;
- (g) require institutions to use net profits to strengthen own funds;
- (h) restrict or prohibit distributions or interest payments by an institution to shareholders, members or holders of Additional Tier 1 instruments (which meets the requirements of Article 52 of the capital requirements regulation) where the prohibition does not constitute an event of default of the institution;
- (i) impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions;
- (j) impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;
- (k) require additional disclosures.

**F18** Regs. 35A-35C inserted (31.12.2020) by [The Capital Requirements \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1401\)](#), regs. 1(3), **23** (with savings in S.I. 2019/680, [reg. 11](#)) (as amended by S.I. 2020/1406, regs. 1(2), **12**); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

### Specific publication requirements

**35C.—(1)** The competent authorities may require institutions to—

- (a) publish information referred to in Part 8 of the capital requirements regulation more than once per year, and to set deadlines for publication

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- (b) use specific media and locations for publications other than the financial statements and
- (2) The competent authorities may require parent undertakings to publish annually, either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure of the group of institutions.]

**F18** Regs. 35A-35C inserted (31.12.2020) by [The Capital Requirements \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1401\)](#), regs. 1(3), **23** (with savings in S.I. 2019/680, **reg. 11**) (as amended by S.I. 2020/1406, regs. 1(2), **12**); 2020 c. 1, **Sch. 5 para. 1(1)**

### Employee remuneration

**36.**—<sup>F19</sup>(1) The appropriate regulator must—

- (a) collect the information disclosed by institutions in accordance with the criteria for disclosure set out at points (g), (h) and (i) of Article 450(1) of the capital requirements regulation and use it to benchmark remuneration trends and practices;
- <sup>F20</sup>(b) collect information on the number of employees in each institution that are remunerated 1 million euros or more per financial year, in pay brackets of 1 million euros, including their job responsibilities, the business area involved and the main elements of salary, bonus, long-term award and pension contribution;]
- (c) collect the information disclosed by institutions about any decisions taken by their shareholders, owners or members to approve a higher ratio between the fixed and variable components of remuneration approved in accordance with <sup>F21</sup>applicable remuneration rules] and use it to benchmark practices in relation to the level of such ratios; <sup>F22</sup>...

<sup>F22</sup>(d) .....

<sup>F23</sup>(2) In paragraph (1)(c) “applicable remuneration rules” means—

- (a) in the case of PRA-authorized persons, rule 15.10 of the Remuneration Part of the PRA's Rulebook and rule 19D.3.49 of the FCA's Senior management arrangements, Systems and Controls sourcebook;
- (b) in the case of FCA-authorized persons, rule 19A.3.44A of the FCA's Senior management arrangements, Systems and Controls sourcebook.]

**F19** [Reg. 36](#) renumbered as [reg. 36\(1\)](#) (31.12.2020) by [The Capital Requirements \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1401\)](#), regs. 1(3), **24(a)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

**F20** [Reg. 36\(1\)\(b\)](#) substituted (31.12.2020) by [The Capital Requirements \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1401\)](#), regs. 1(3), **24(b)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

**F21** Words in [reg. 36\(1\)\(c\)](#) substituted (31.12.2020) by [The Capital Requirements \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1401\)](#), regs. 1(3), **24(c)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

**F22** [Reg. 36\(1\)\(d\)](#) and word omitted (31.12.2020) by virtue of [The Capital Requirements \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1401\)](#), regs. 1(3), **24(d)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

**F23** [Reg. 36\(2\)](#) inserted (31.12.2020) by [The Capital Requirements \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1401\)](#), regs. 1(3), **24(e)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

## Diversity practices

37. The appropriate regulator must—

- (a) collect the information disclosed by institutions in accordance with Article 435(2)(c) of the capital requirements regulation and use it to benchmark diversity practices; <sup>F24</sup>...

<sup>F24</sup>(b) .....

**F24** Reg. 37(b) and word omitted (31.12.2020) by virtue of [The Capital Requirements \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1401\)](#), regs. 1(3), **25** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## Consultation with EBA: supervisory benchmarking of internal approaches for calculation own funds requirements

<sup>F25</sup>38. ....

**F25** Reg. 38 omitted (31.12.2020) by virtue of [The Capital Requirements \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1401\)](#), regs. 1(3), **26** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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