



HM Treasury

Implementation of the Investment Firms Prudential Regime and Basel 3 standards Consultation

February 2021

Implementation of the Investment Firms Prudential Regime and Basel 3 standards Consultation



© Crown copyright 2021

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at: www.gov.uk/official-documents.

Any enquiries regarding this publication should be sent to us at public.enquiries@hmtreasury.gov.uk

ISBN: 978-1-911680-32-1 PU 3072

Contents

Chapter 1	Introduction	2
Chapter 2	Implementing the Basel 3 standards: Exercise of the Clause 3 revocation power	8
Chapter 3	Fundamental Review of the Trading Book	13
Chapter 4	Amendments to ensure the macro-prudential framework is consistent with the new regime	15
Chapter 5	Exercise of powers 143B(2) FSMA: Definitions in Part 9C	16
Chapter 6	Consequential amendments to the PRA RAO reflecting new initial capital levels for investment firms	17
Chapter 7	Application of the UK resolution regime to FCA investment firms	20

Chapter 1

Introduction

1.1 On 21 October 2020, HM Treasury introduced the Financial Services Bill (FS Bill) to Parliament. Once the Bill receives Royal Assent, it will enable the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) to introduce the Investment Firms Prudential Regime (IFPR), and the outstanding Basel 3 prudential standards for credit institutions, respectively. The latter includes those standards which make up the UK equivalent to the outstanding elements of the EU's 2nd Capital Requirements Regulation (CRR2).

1.2 On 16 November 2020, the Government, the FCA and the PRA announced their intentions to target an implementation date of 1 January 2022 for these regimes. The PRA and the FCA will be consulting on the key elements of the new regimes in the first half of 2021. The FCA published its first IFPR consultation paper on 14 December 2020.

1.3 The matters being consulted on in this document will inform secondary legislation, to be made once the FS Bill once it receives Royal Assent.

Implementing the Basel 3 standards for credit institutions and PRA-designated investment firms

1.4 The FS Bill will enable the PRA to implement requirements in line with the outstanding Basel 3 standards – those contained in the EU's CRR2 – which credit institutions and PRA-designated investment firms must comply with.

1.5 To do this, HM Treasury needs to revoke the sections of the Capital Requirements Regulation (CRR) on which the PRA will be implementing requirements themselves. Chapter 2 is a statement of how HM Treasury intends to exercise its revocation power (clause 3(1) of the Bill), including its policy approach to two issues where HM Treasury will not be taking the same approach as the EU's CRR2.

1.6 Chapter 3 seeks respondents' views on HM Treasury's approach to applying the Standardised Approach reporting requirements in relation to the Fundamental Review of the Trading Book (FRTB).

1.7 Chapter 4 outlines the need for amendments to ensure the macroprudential framework is consistent with the new regime.

Introducing the Investment Firms Prudential Regime

1.8 The FS Bill also includes a legislative framework and provides the FCA with the powers to introduce the UK's IFPR. Investment firms provide a range of services which give investors access to securities and derivatives markets.

1.9 Investment firms differ from credit institutions in that they do not typically accept deposits or grant traditional loans; instead, investment firms provide investment services and perform investment activities. This means that, whilst there is some overlap, the risks posed and faced by investment firms, and the impact of those risks, are different from those of credit institutions. That is why HM Treasury introduced the obligations for the FCA to create a new prudential regime for investment firms in the FS Bill.

1.10 Within the IFPR FS Bill legislation, there are a limited number of delegated powers for HM Treasury to exercise to ensure the effective implementation of the regime. As such, Chapter 5 seeks respondents' views on the suggested exercise of these powers, with a particular focus on definitions regarding the entities within a group structure to whom the rules may apply on a consolidated basis.

1.11 In Chapter 6, this consultation also seeks respondents' views on consequential changes to the statute book, in particular to the PRA RAO, as a result of changes to the level of initial minimum capital for investment firms, which will be set in FCA rules.

1.12 Finally, Chapter 7 aims to gather respondents' views on the applicability of the UK resolution regime in part 1 of the Banking Act 2009 to FCA investment firms. This will inform potential decisions relating to the scope of application of the UK resolution regime as it applies to those investment firms being carved out from the CRR framework.

1.13 Many other transitional and consequential changes will be needed to the statute book in order to properly transfer the UK over to the new IFPR. This will include consequential changes to UK primary legislation, secondary legislation and retained EU law. HM Treasury plans to make these other changes at the same time as the changes discussed in this consultation. However, HM Treasury does not plan to consult on these changes as they are not expected to be substantive.

Responding to the consultation

1.14 Responses are requested by 1 April 2021. The government cannot guarantee that responses received after this date will be considered.

1.15 This document is available electronically at www.gov.uk/treasury. You may make copies of this document without seeking permission. Printed copies of the document can be ordered on request from the address below.

1.16 Responses can be sent by email to PrudentialConsultation@hmtreasury.gov.uk. Alternatively, they can be posted to:

Prudential Banking Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

1.17 When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an

organisation, please make clear who the organisation represents and, where applicable, how the views of members were assembled.

Processing of personal data and confidentiality

1.18 This notice sets out how we will use your personal data, and your rights under the Data Protection Act 2018 (DPA).

Your data (Data Subject Categories)

1.19 The personal information relates to you as either a member of the public, parliamentarians, and representatives of organisations or companies.

The data we collect (Data Categories)

1.20 Information may include the name, address, email address, job title, and employer of the correspondent, as well as their opinions. It is possible that respondents will volunteer additional identifying information about themselves or third parties.

Purpose

1.21 The personal information is processed for the purposes of obtaining the opinions of members of the public and representatives of organisations and companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

Legal basis of processing

1.22 The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the HM Treasury. For the purpose of this consultation the task is consulting on departmental policies or proposals, or obtaining opinion data, in order to develop good effective policies.

Who we share your responses with (Recipients)

1.23 Information provided in response to a consultation may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).

1.24 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.

1.25 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

1.26 Where someone submits special category personal data or personal data about third parties, we will endeavor to delete that data before publication takes place.

1.27 Where information about respondents is not published, it may be shared with officials within other public bodies involved in this consultation process to

assist us in developing the policies to which it relates. Examples of these public bodies appear at: <https://www.gov.uk/government/organisations>.

1.28 As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor NTT. NTT will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we will hold your data (Retention)

1.29 Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.

1.30 Personal information in responses that is not published will be retained for three calendar years after the consultation has interest.

Special data categories

1.31 Any of the categories of special category data may be processed if such data is volunteered by the respondent.

Legal basis for processing special category data

1.32 Where special category data is volunteered by you (the data subject), the legal basis relied upon for processing it is: The processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department.

1.33 This function is consulting on departmental policies or proposals, or obtaining opinion data, to develop good effective policies.

Your rights

1.34 You have the right to:

- request information about how your personal data are processed, and to request a copy of that personal data.
- request that any inaccuracies in your personal data are rectified without delay.
- request that your personal data are erased if there is no longer a justification for them to be processed.
- in certain circumstances (for example, where accuracy is contested) request that the processing of your personal data is restricted.
- object to the processing of your personal data where it is processed for direct marketing purposes
- you have the right to data portability, which allows your data to be copied or transferred from one IT environment to another.

How to submit a data subject access request (DSAR)

1.35 To request access to personal data that HM Treasury holds about you, contact:

HM Treasury Data Protection Unit

G11 Orange

1 Horse Guards Road
London
SW1A 2HQ
dsar@hmtreasury.gov.uk

Complaints

1.36 If you have any concerns about the use of your personal data, please contact us via this mailbox: privacy@hmtreasury.gov.uk

1.37 If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

0303 123 1113
casework@ico.org.uk

Contact details

1.38 The data controller for your personal data is HM Treasury. The contact details for the data controller are:

HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

020 7270 5000
public.enquiries@hmtreasury.gov.uk

1.39 The contact details for the data controller's Data Protection Officer (DPO) are:

DPO
1 Horse Guards Road

London
SW1A 2HQ

privacy@hmtreasury.gov.uk

Chapter 2

Implementing the Basel 3 standards: Exercise of the Clause 3 revocation power

2.1 The FS Bill allows HM Treasury to revoke provisions from the CRR so that the PRA can introduce updated prudential rules for credit institutions and PRA-designated investment firms equivalent to the EU's CRR2.

2.2 Clause 3(1) of the FS Bill gives HM Treasury the power to revoke provisions of the CRR relating to the matters listed in Clause 3(2). Secondary legislation is required for HM Treasury to revoke those specific provisions.

2.3 The PRA will consult in due course on its proposed rules to replace the space left by these revocations. The full list of revocations HM Treasury intends to make through secondary legislation is below:

Table 2.A: CRR revocations

Article or Part to be revoked from the CRR
Article 4(1)(149) [revoked as a consequential amendment as it relates to a definition/s that will no longer be used in the CRR]
Article 6(3) – (5)
Article 8
Article 11(4)
Article 13
Article 18(1) – last sentence of first subparagraph
Article 22
Article 36
Article 94
Chapters 2 and 3 of Title I of Part Three (Articles 99 to 106)
Article 128

Articles 132 (partially, to leave the second sub-paragraph of Art 132(3) – HM Treasury’s ability to make equivalence regulations) and 132a

Article 152

Article 158

Article 272 (partially, those definitions which are only to be used in CRR rules) [revoked as a consequential amendment as it relates to a definition/s that will no longer be used in the CRR]

Sections 2, 3, 4, 5 and 9 of Chapter 6, Title II, Part Three (Articles 273-282 and 300-311)

Article 316

Article 385

Part Four (Articles 387 to 403) (except second paragraph of Art 391 – HM Treasury’s ability to make equivalence regulations)

Parts Six, Seven, Seven A and Eight (Articles 411 to 455)

Article 460

Article 469

Article 492 and 493

Article 499

Article 500b

Article 500d

Article 501b

2.4 These revocations relate to, or are connected to, the following matters specified in Clause 3(2) of the Bill:

- deductions from Common Equity Tier 1 items (Clause 3 (2)(a));
- exposures with particularly high risk (standardized approach to credit risk ((2)(b)(viii)));
- exposures in the form of units or shares in collective investment undertakings (standardized approach to credit risk) ((2)(b)(ix));
- the treatment of expected loss amounts by exposure types (internal ratings-based approach to credit risk) ((2)(d)(vii));
- the following aspects of own funds requirements for counterparty credit risk ((2)(f)(i-v)):
 - a) requirements to use particular methods for calculating the exposure value
 - b) the mark-to-market method
 - c) the original exposure method

- d) the standardised method;
- own funds requirements for operational risk ((2)(g));
- own funds requirements relating to derogations for small trading book business ((2)(i)(i));
- own funds requirements relating to the trading book ((2)(i)(ii));
- own funds requirements for credit valuation adjustment risk ((2)(j));
- large exposures ((2)(k));
- liquidity requirements ((2)(l));
- leverage ratio ((2)(m));
- reporting requirements ((2)(n)); and
- disclosure requirements ((2)(o)).

2.5 As per the table above, HM Treasury will amend the level of application requirements in Title II of Part One of the CRR so that those requirements will only apply to obligations laid down in provisions which will remain in the CRR. For obligations which are now to be set out in CRR rules made by the PRA, the PRA will make equivalent provision for the level of application in the CRR rules.

2.6 HM Treasury will also use the powers provided for in the Bill to make amendments to legislation which are needed as a consequence of the revocations to ensure a coherent and effective regime.

2.7 The CRR allows firms to apply to the PRA for specific treatment of their capital requirements, referred to as ‘permissions’ (for example, to use the Internal Ratings Based (IRB) approach to calculate risk-weighted exposure amounts for credit risk). Some of the provisions containing permissions of this kind will be revoked using the power in Clause 3(1). HM Treasury intends to include a savings provision in secondary legislation so that firms do not need to reapply for existing permissions that are replicated in PRA rules.

Statement of policy on two issues which depart from the EU’s CRR2 approach

Eligible Liabilities

2.8 Article 88a of the EU’s CRR2 allows Globally Systemically Important Institutions (G-SIIs) to include eligible liabilities, issued by one of its subsidiaries, to meet its Total Loss Absorbing Capacity (TLAC) requirements, where the eligible liabilities are bought by an existing shareholder that is not part of the same resolution group. Similar provision is made for smaller banks in the EU’s 2nd Bank Recovery and Resolution Directive (BRRDII).

2.9 HM Treasury does not intend to legislate to replicate Article 88a through the FS Bill nor transpose this element of BRRDII as communicated in the Government’s response to the BRRDII consultation. This is to reflect the UK’s intention to remain closely aligned with the Financial Stability Board (FSB) standards in this area. According to the FSB’s TLAC Term Sheet “External TLAC must be issued and

maintained directly by resolution entities”.¹ This is in alignment with the Bank of England’s (“the Bank”) Minimum Requirement for Own Funds and Eligible Liabilities (MREL) Statement of Policy.²

Exposures to units or shares of a collective investment undertaking

2.10 Article 132 of the CRR relates to exposures that banks have in units or shares of a collective investment undertaking (CIU). At present, Article 132 sets out several different approaches that banks can use to risk-weight investments in funds, including conditions for use of each approach. Two options allow firms to determine risk-weights based on information available about the underlying funds, where they are able to understand their composition and the associated risk. These options – known as the ‘look-through’ and ‘mandate-based’ approaches - only apply to funds that are managed in either the EU or in a third country that has been deemed equivalent by the EU.

2.11 The EU’s CRR2 implements the latest Basel reforms for these investments, which includes a default 1250% risk-weight for funds where the bank cannot use either of these approaches. The EU’s CRR2 also applies this 1250% risk-weight to investments in overseas funds who are not deemed equivalent.

2.12 The EU’s CRR2 also removes the existing equivalence regime in Article 132 – which allows for a standalone equivalence assessment specifically for this Article - and instead attaches equivalence to the provision of the third-country passport contained in the Alternative Investment Fund Managers Directive (AIFMD) (i.e. if a third-country has been granted access via the AIFMD third-country passport, they are also deemed equivalent for Article 132 of the CRR).

2.13 HM Treasury considers that it would be disproportionate to introduce the AIFMD third country passport for these purposes on the grounds that the third-country passport is designed for funds accessing investors (including retail investors) in another market, rather than banks investing in overseas funds. Instead, HM Treasury intends to maintain the existing equivalence provision that is currently in Article 132 of the CRR. This approach is consistent with the UK’s position as a world leading financial services hub that is open to cross-border activity. It will ensure that banks can invest in overseas funds, but only where the financial services regulators are content with the regulatory regime in that country and therefore that the ‘look-through’ and ‘mandate-based’ approaches are able to adequately capture the risks that banks face.

2.14 This statement should be read in parallel with the PRA’s forthcoming consultation on implementing the Basel 3 reforms, which will set out further detail on its approach to implementing the changes to investments in CIUs. HM Treasury has set out its intention to introduce a Gibraltar Authorisation Regime (GAR). HMT is also considering whether further options to mitigate the impact on UK firms regarding their exposures to investments in funds in Gibraltar ahead of the introduction of the GAR would be necessary.

¹ <https://www.fsb.org/wp-content/uploads/TLAC-Principles-and-Term-Sheet-for-publication-final.pdf>

² <https://www.bankofengland.co.uk/paper/2018/boes-approach-to-setting-mrel-2018>

Box 2.A: Implementing the Basel 3 standards: Exercise of the Clause 3 revocation power

- 1 Do you have any comments on the value of keeping this equivalence provision in Article 132 of the UK CRR?

Chapter 3

Fundamental Review of the Trading Book

3.1 The FRTB is a new framework developed by the Basel Committee on Banking Supervision (BCBS) to replace the current market risk framework. This new framework intends to improve trading book capital requirements and promote consistent implementation to ensure comparable levels of capital across jurisdictions. The required implementation date of this framework has been postponed twice, first to January 2022 and then recently to January 2023.

3.2 Considering the implementation delay to FRTB, the EU's CRR2 contains only FRTB reporting requirements. This includes a requirement that all institutions in scope report on their capital requirements under the FRTB Standardised Approach (SA). In order to implement the reporting requirements, the European Banking Authority (EBA) is required to draft Regulatory Technical Standards, which implement the final Basel updates to the FRTB framework. The EU Commission is then empowered to adopt these standards as a delegated act.¹

3.3 The CRR allows HM Treasury to make regulations, equivalent in function to the EU's delegated act, in order to bring in the final Basel updates to the FRTB framework. These regulations will give effect to the FRTB SA reporting requirement. The PRA will be responsible for collecting the reporting data and specifying the form this collection will take.

3.4 The UK is committed to the full and timely implementation of the Basel standards and, accordingly, these regulations will help ensure the effective implementation of the final suite of Basel updates to the FRTB.

3.5 HM Treasury is proposing to make these regulations to come into force in January 2022, in line with the PRA's CRR rules. The reporting exercise will then take place during the first quarter of 2022.

Box 3.A: Fundamental Review of the Trading Book

- 2 Do you have any comments on HM Treasury's proposed timeline for the implementation of these regulations?

¹ The delegated act as adopted by the EU Commission- <https://ec.europa.eu/transparency/regdoc/rep/3/2019/EN/C-2019-9068-F1-EN-MAIN-PART-1.PDF>

3 The EU Commission adopted the delegated act referred to above on 17 December 2019. Do you have any comments on the form these regulations should take in the UK?

Chapter 4

Amendments to ensure the macro-prudential framework is consistent with the new regime

4.1 The Financial Policy Committee (FPC) may give a direction to the FCA or the PRA to act to implement certain macro-prudential measures, as set out in the Bank of England Act 1998.

4.2 The macro-prudential measures to which this power applies are prescribed in secondary legislation. These instruments are listed below; the FPC currently has no outstanding directions under these instruments:

- a) The Bank of England Act 1998 (Macro-prudential Measures) Order 2013/644
- b) The Bank of England Act 1998 (Macro-prudential Measures) (No.2) Order 2015/905
- c) The Bank of England Act 1998 (Macro-prudential Measures) Order 2016/1240
- d) The Bank of England Act 1998 (Macro-prudential Measures) Order 2015 /909

4.3 The expected enactment of the FS Bill and associated secondary legislation means certain elements of the macro-prudential legislative framework, in relation to the FPC's powers of direction, will require amendments to reflect the new regime. This will include seeking to ensure the macro-prudential measures appropriately reflect clauses introduced under the FS Bill in relation to holding companies, and that relevant references in legislation are appropriately updated. For example, the Government intends to amend Order 2015/905, which gives the FPC powers of direction over the leverage ratio, so that the "total exposure measure" is no longer defined by reference to the CRR.

Chapter 5

Exercise of powers 143B(2) FSMA: Definitions in Part 9C

5.1 The FS Bill inserts new Part 9C into the Financial Services and Markets Act 2000 (FSMA), which creates a new definition of “FCA investment firm”. Part 9C sets out the FCA’s new duties to make rules in relation to FCA investment firms and their parent undertakings, using their general rule-making power. Part 9C also gives the FCA a new duty to make rules in relation to unauthorised parent undertakings of FCA investment firms where necessary or expedient to advance one or more its operational objectives.

5.2 New section 143B(1) defines “on a consolidated basis” as “if all members of an FCA investment firm’s group are a single FCA investment firm”. This definition further relies on “group” as defined in section 421 of FSMA. Section 421 lists the different relationships which constitute a group.

5.3 The CRR is currently applicable to FCA investment firms and their groups. Section 421 covers a slightly different list of relationships to the ones in scope of the CRR, for example, section 421 does not cover situations where a parent exercises a significant influence over an entity without holding a participant interest.

5.4 It is appropriate that investment firm groups are regulated and supervised in a prudent way. This will ensure proper management of the risks FCA investment firms are exposed to by virtue of their group membership. When prudential consolidation is exercised, it is therefore important to ensure the whole group is treated as a single investment firm.

5.5 HM Treasury therefore intends to use its delegated powers in section 143B(2) to ensure the definitions applicable to Part 9C of FSMA reflect the scope of relationships currently covered under Article 18 CRR. It is not the intention to go beyond what is currently applicable (or indeed go beyond the scope of the EU’s Investment Firms Regulation (IFR), which also mirrors Article 18 CRR). For the avoidance of doubt, this wider definition of group would not affect existing definitions of group in any other part of FSMA or elsewhere in the statute book.

Box 5.A: Exercise of power 143B(2) FSMA: Definitions in Part 9C

- 4 Do you have any comments on the Government’s intention to exercise its delegated powers in section 143B(2) to ensure the definitions applicable to Part 9C cover all the relationships currently in scope of prudential consolidation under the CRR?

Chapter 6

Consequential amendments to the PRA RAO reflecting new initial capital levels for investment firms

6.1 The EU Investment Firms Directive (IFD) amends the levels of initial capital requirements (ICR) for authorisation of investment firms, previously contained in the Capital Requirements Directive (CRD). There are currently three ICR levels, which account for an increasing level of risk related to the investment activities performed. The levels are:

- a) EUR 50,000
- b) EUR 125,000
- c) EUR 730,000

6.2 These ICR levels have been implemented in the FCA Handbook and the PRA Rulebook.

6.3 As these levels have been in place since 1993, the EU sought to increase the ICR for investment firms in the EU IFD to:

- EUR 75,000, which applies to firms which only provide the following Markets in Financial Instruments Directive (MiFID) investment services and activities, without permission to hold client money or securities:
 - a) reception and transmission of orders
 - b) execution of orders on behalf of clients
 - c) portfolio management
 - d) investment advice
 - e) placing of financial instruments without a firm commitment basis;
- EUR 750,000, which applies to firms that deal on own account and/or underwrite or place financial instruments on a firm commitment basis; including OTF operators which deal on own account in illiquid sovereign debt instruments or on a matched principal basis; or
- EUR 150,000, which applies to all other investment firms.

6.4 The FCA is currently consulting on whether to include the same or similar ICR levels in its rules as part of the introduction of the UK's IFPR.¹ These new rules are intended to replace the current ICR levels implemented in the FCA Handbook.

Consequential amendments to the statute book

6.5 As the current ICR levels in paragraph 6.1 will no longer exist following the FCA's planned introduction of the IFPR, this needs to be reflected in the statute book.

6.6 In particular, there are references to the EUR 730,000 ICR level in the Financial Services and Markets Act (PRA-Regulated Activities) Order 2013, ("PRA RAO"), and the Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014, ("Banking Act Order 2014").

6.7 This chapter addresses proposed changes to the PRA RAO, while Chapter 7 will address wider questions relating to how the Banking Act Order 2014 may be amended.

6.8 The Government intends to delete references to the EUR 730,000 ICR level in statute. This is appropriate as the EUR 730,000 ICR level will become obsolete once new initial capital requirements are set by the FCA in its rules (the FCA is currently consulting on proposals to set the corresponding updated ICR level at GBP 750,000).

PRA designation of investment firms

6.9 Changes are needed to the PRA RAO, which allows the PRA to designate certain investment firms for prudential supervision by the PRA. The conditions for designation are set out in articles 3(2) and 3(3) of the PRA RAO, which are that a firm:

- a) has, or has applied for, permission to deal in investments as principal; and
- b) has, or would be required to have if it were authorised, an initial capital requirement of EUR 730,000, or is established in a country other than the United Kingdom, but would meet the initial capital requirement specified if it were established in the UK and had obtained the necessary authorisation in the UK for its business.

6.10 If these conditions are met, the PRA may designate a firm if it 'considers that it is desirable that the activity of dealing in investments as principal, when carried on by the firm, should be a PRA-regulated activity'.² In doing so, the PRA must, among other things, have regard to its statutory objectives and the matters set out in article 3(4) of the PRA RAO.³

¹ See FCA's CP20/24: A new UK prudential regime for MiFID investment firms, December 2020.

² Financial Services and Markets Act (PRA-Regulated Activities) Order 2013, (PRA RAO).

³ The PRA has set out more detail on its designation policy, see [PRA Statement of policy on designation of investment firms](#), March 2013.

6.11 The FS Bill clarifies that the following types of firms cannot be designated investment firms for the purposes of the CRR: a commodity and emission allowance dealer, a collective investment undertaking, or an insurance undertaking.⁴

6.12 As a result of the FCA's planned introduction of the IFPR, condition b) in paragraph 6.8 becomes obsolete, as there will no longer be a subset of firms with an initial capital requirement of EUR 730,000. HM Treasury intends to revoke the existing reference to the ICR level of EUR 730,000 in the PRA RAO and does not intend to set any new ICR in legislation. The FCA and the PRA will instead set, or continue to set, the levels of ICR for investment firms in their rules.

6.13 Therefore, HM Treasury is seeking views on its intention to amend Article 3 of the PRA RAO so it includes all firms that are authorised to deal as principal under Part 4A of FSMA (given the FCA's consultation proposals will generally make all such investment firms subject to a capital requirement of GBP 750,000), or firms that have applied for such permission.

6.14 Notwithstanding paragraph 6.10, this will include those firms that deal as principal which are currently exempt from the EUR 730,000 ICR and therefore are not currently in scope of the PRA RAO. This includes 'local' firms and exempt matched principal firms. This means those firms will be brought into the scope of firms that can be designated for prudential supervision by the PRA. The PRA's Statement of Policy sets out its approach to the designation of investment firms for prudential supervision under the PRA RAO.⁵

Box 6.A: Consequential amendments to the PRA RAO reflecting new initial capital levels for investment firms

- 5 Do you have any comments on the Government's intention to delete references to initial capital requirements (ICR) in the PRA RAO, and on the impact of doing so?
- 6 Do you have any comments on the Government's intention to amend the scope of firms that may be subject to PRA designation to include all FCA investment firms which are authorised to deal as principal under Part 4A of FSMA, or are seeking such permission?

⁴ See clause 1(4) of [the Financial Services Bill](#) as amended in public Bill committee, December 2020.

⁵ [Designation of investment firms for prudential supervision by the Prudential Regulation Authority](#), Prudential Regulation Authority, March 2013

Chapter 7

Application of the UK resolution regime to FCA investment firms

7.1 As outlined in paragraph 6.6, the changes to the EUR 730,000 ICR require consequential changes to the Banking Act Order 2014, which relates to resolution.

7.2 The UK resolution regime provides the financial authorities with powers to manage the failure of financial institutions in an orderly way that protects depositors and maintains financial stability, while maintaining the critical functions of a firm and limiting the risk to public funds.

7.3 These powers were legislated for when the UK resolution regime was created in response to the global financial crisis. They are set out in Part 1 of the Banking Act 2009.¹

7.4 The UK resolution regime was amended in 2014 to transpose EU Directive 2014/59/EU establishing a framework for recovery and resolution (commonly referred to as the Bank Recovery and Resolution Directive (BRRD)).

7.5 The Bank is the UK Resolution Authority and is responsible for planning and executing a resolution. The Bank plans for the resolution of every firm subject to the UK resolution regime, reviews those plans annually, and works with firms to improve resolvability.

7.6 Firms subject to the UK resolution regime are banks, building societies, and some investment firms.² The requirements firms are subject to depends on their resolution strategy. For a more detailed overview of the resolution regime as set out in the Banking Act, see the Bank's "Purple Book".³

7.7 Specifically, investment firms with a EUR 730,000 ICR, by virtue of that ICR, are subject to the UK resolution regime.⁴ Some of these firms are considered systemic and so are designated by the PRA, while the rest are regulated by the FCA.

7.8 Investment firms that are not subject to a EUR 730,000 ICR are regulated by the FCA and are not directly in scope of the UK resolution regime, although the FCA

¹ [The Special Resolution Regime Code of Practice](#), issued in accordance with sections 5 and 6 of the Act, supports the legal framework of the SRR, and provides guidance as to how and in what circumstances the authorities will use the special resolution tools.

² Central counterparties (CCPs) are also subject to a resolution regime set out in the Banking Act, but that regime is not derived from the BRRD. The approach to CCP resolution differs to the approach to the resolution of a firm, reflecting CCP's specific characteristics.

³ [The Bank of England's Approach to Resolution](#), October 2017.

⁴ This is implemented through the Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014 which is mentioned in Chapter 6.

has set expectations regarding wind-down planning for its wider population of firms.⁵

7.9 PRA-designated investment firms will continue to be regulated and supervised under the banking prudential regime, the CRR.

7.10 However, the changes to legislation that will be made as a result of the IFPR, including changes to ICR levels, present an opportunity to consider the scope of the UK resolution regime in relation to FCA investment firms.

The UK resolution regime and FCA investment firms

7.11 As noted above, FCA investment firms with a EUR 730,000 ICR are currently subject to this regime.

7.12 Each year, the Bank is required to review its preferred resolution strategy for firms in scope of the resolution regime.⁶ Currently, the Bank's preferred resolution strategy for all in-scope FCA investment firms is insolvency (i.e. no exercise of stabilisation powers). As a result, these FCA investment firms have not been subject to the requirements of the Resolvability Assessment Framework,⁷ the valuation statement of policy,⁸ or MREL requirements above their own funds requirements.

7.13 However, FCA investment firms are subject to relevant requirements in FCA rules, in particular those set out in Chapter 11 of the Prudential Sourcebook for Investment Firms (IFPRU),⁹ including those which deal with:

- a) planning to help the recovery of firms in financial difficulty
- b) provision of information for resolution plans
- c) contractual recognition of bail-in

7.14 Certain FCA investment firms which are subject to 'simplified obligations' under criteria set out by the FCA (non-significant IFPRU firms) are permitted to submit simplified recovery plans.

7.15 In addition, all firms subject to the UK resolution regime, including FCA investment firms, are subject to the information provision requirements of the binding technical standards set out in Commission Delegated Regulation (EU) 2018/1624 as it forms part of retained EU law and is amended by instruments made by the Bank.¹⁰

7.16 Currently, certain investment firms which deal on own account are subject to exemptions or derogations from the existing EUR 730,000 ICR and so are not subject to the UK resolution regime. These are:

⁵ See [EG 20/1](#).

⁶ Please see the Bank's [Purple Book](#) and/or information related to the [MREL Statement of Policy](#) for indicative guidance on resolution strategies.

⁷ See information on the [Resolvability Assessment Framework overview](#).

⁸ [The Bank of England's policy on valuation capabilities to support resolvability](#), June 2018.

⁹ [Prudential Sourcebook for Investment Firms](#), January 2021.

¹⁰ Where the Bank applies simplified obligations in relation to a firm in accordance with Articles 7 and 8 of the Bank Recovery and Resolution (No 2) Order 2014, the Bank is able to notify those firms that certain information requirements under the binding technical standard are not required to be provided.

- a) firms with the benefit of the 'matched principal' exemption
- b) local firms
- c) exempt IFPRU commodity firms

Potential approaches

7.17 In the EU, the IFD amends the BRRD so that all investment firms with a new ICR of EUR 750,000 will come into scope of the resolution regime.

7.18 If the UK mirrored the EU approach to the BRRD, it is possible that significantly more FCA investment firms would be brought into scope of the UK resolution regime. This would have implications in particular for those firms listed in paragraph 7.16.

7.19 As such, the Government would like to gather respondents' views and relevant data on:

- a) the impact of the UK resolution regime and associated regulatory requirements on FCA investment firms currently in scope;
- b) assessments of the potential impact of being subject to the UK resolution regime and related regulatory requirements on FCA investment firms not currently in scope, if the UK resolution regime was expanded as a result of changes to the EUR 730,000 ICR level; and
- c) the scope of application of the UK resolution regime in relation to FCA investment firms, particularly in light of the introduction of the IFPR by the FCA.

7.20 Responses will inform HM Treasury's policy approach to amendments of the Banking Act Order 2014 needed as a result of changed ICR levels, and any future changes to legislation and regulator rules which may be considered in this context.¹¹

Box 7.A: Application of the UK resolution regime to FCA investment firms

- 7 Do you have any comments on the scope of application of the UK resolution regime in relation to FCA investment firms?
- 8 For FCA investment firms currently in scope of the UK resolution regime: please share any relevant data and information on how the UK resolution regime impacts upon your operations.
- 9 For other FCA investment firms not currently in scope of the UK resolution regime: please share any relevant data and information related to your assessment of the potential impact of being subject

¹¹ For the avoidance of doubt, HM Treasury is not consulting on changing the Investment Bank Special Administration Regulations 2011 made under s233 of the Banking Act 2009. The scope of these regulations is not linked to ICR levels and therefore does not require consequential amendment.

to the UK resolution regime, if its scope of application was expanded as a result of the changes to ICR levels that the FCA is consulting on.

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gov.uk