STATUTORY INSTRUMENTS

2015 No.

FINANCIAL SERVICES AND MARKETS

The Bank of England Act 1998 (Macro-prudential Measures) (No.2) Order [2015]

Laid before Parliament	***
Made - - - -	***
Coming into force - -	

The Treasury make the following Order in exercise of the powers conferred by sections 9I(2) and 9L of the Bank of England Act 1998(**a**).

In accordance with section 9N of the Bank of England Act 1998(**b**), a draft of this Order has been laid before Parliament and approved by a resolution of each House.

Citation and Commencement

1. This Order may be cited as the Bank of England Act 1998 (Macro-prudential Measures)(No.2) Order 2015 and comes into force on [ ].

Interpretation

2.—(1) In this Order—

"Capital Requirements Directive" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49EC(**c**);

"Capital Requirements Regulation" means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012(**d**);

"CET1 capital" has the meaning given by Article 50 of the Capital Requirements Regulation;

"consolidated basis" means that the institution to which the measure applies and one or more other institution are to be treated as a single institution;

"countercyclical capital buffer rates" means the rate—

(**a**) Inserted by section 4 of the Financial Services Act 2012.
(**b**) 1998 c.11. Inserted by section 4 of the Financial Services Act 2012 (c.21).
(**c**) OJ L 176/338 27.06.2013.
(**d**) OJ L 176/1, 27.6.2013.

(a) expressed as a percentage of the total risk exposure amount set by the Financial Policy Committee, pursuant to the Part 3 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014, or an EEA countercyclical buffer authority pursuant to legislation introduced to give effect to point (7) of Article 128 of the Capital Requirements Directive; or

(b) expressed in terms equivalent to a percentage of total risk exposure amount set by a third country countercyclical buffer authority

that an institution must apply in order to calculate its countercyclical capital buffer pursuant to the Prudential Regulation Authority's Policy Statement PS3/14 Implementing CRD IV: Capital Buffers, as may be amended from time to time;

"EEA countercyclical buffer authority" means the authority or body of an EEA state other than the UK designated for the purposes of Article 136 of the Capital Requirements Directive with responsibility for setting the countercyclical buffer rate for that EEA state or the European Central Bank when it carries out the setting a countercyclical buffer rate for an EEA state conferred on it by Article 5(2) of Council Regulation (EU) No. 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions(**a**);

"excluded deposit taker" means—

(a) a credit union within the meaning of section 31 of the Credit Unions Act 1979(**b**), or

(b) a person with permission under Part 4A of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance as principal;

"Financial Policy Committee" has the meaning given by section 9B of the Bank of England Act 1998(**c**);

"G-SII" means a global systemically important institution, as identified by the PRA pursuant to Article 131 of the Capital Requirements Directive;

"G-SII additional leverage ratio" means the proportion, expressed as a percentage, of the G-SII buffer which the PRA requires a G-SII to maintain;

"G-SII buffer" has the meaning given by Article 128(3) of the Capital Requirements Directive;

"individual basis" means that a measure which applies to an institution applies only to that institution;

"investment firm" has the meaning given by section 42A of the Financial Services and Markets Act 2000;

"leverage ratio" means an institution's Tier 1 capital divided by its total exposure measure, with this ratio expressed as a percentage;

"PRA" has the meaning given in section 2A of the Financial Services and Markets Act 2000;

"PRA authorised person" has the meaning given in by section 2B of the Financial Services and Markets Act 2000(**d**);

"SRB institutions" has the meaning given by regulation 35 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014(**e**);

(**a**) OJ L 287/63 29.10.2013.
(**b**) 1979 c.34.

(**c**) Inserted by section 4 of the Financial Services Act 2012 (c.21).
(**d**) Inserted by section 6 of the Financial Services Act 2012.
(**e**) inserted by [ ].

"SRB institution additional leverage ratio" means the proportion, expressed a percentage, of the systemic risk buffers which the PRA requires an SRB institution to maintain pursuant to Chapter 2 of Part 6 of the Capital Requirements (Capital Buffers and Macro-prudential Measure) Regulations 2014(**a**);

"systemic risk buffer" has the meaning given by Part 6 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014(**b**);

"third country countercyclical buffer authority" means the authority of a third country empowered by law or regulation with the responsibility for setting the countercyclical buffer rate for that third country;

"Tier 1 capital" has the meaning given by Article 25 of the Capital Requirements Regulation;

"total exposure measure" has the meaning given by Article 429 (4) of the Capital Requirements Regulation;

"total risk exposure measure" means the total risk exposure of an institution calculated in accordance with Article 92(3) of the Capital Requirements Regulation;

"UK bank" means a UK institution which has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits but which is not an excluded deposit taker;

"UK institution" means a UK institution which is incorporated, or formed under any part of the law of, the United Kingdom; and

"UK investment firm" means a UK institution which—

(a) has permission under Part 4A of the Financial Services and Markets Act 2000,

(b) is a PRA authorised person by virtue of a designation under article 3 of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013(**c**), and

(c) is an investment firm.

Macro-prudential measures

3. Each of the measures set out in articles 4, 5, 6 and 7 may be applied on, or by reference to, an individual basis or on, or by reference to, a consolidated basis.

Minimum leverage requirement

4. (1) For the purposes of sections 9H(1) and 9L of the Bank of England Act 1998, a measure to require UK banks and UK investment firms to hold sufficient Tier 1 capital to satisfy a minimum leverage ratio specified by the Financial Policy Committee is prescribed in relation to the PRA.

(2) The Financial Policy Committee may specify a minimum proportion of CET 1 that shall be held for the purposes of the measure prescribed in paragraph 4(1).

SRB institution additional leverage buffer

5. (1) For the purposes of sections 9H(1) and 9L of the Bank of England Act 1998, a measure to expect SRB institutions to hold sufficient Tier 1 capital to satisfy a SRB institution additional leverage ratio specified by the Financial Policy Committee is prescribed in relation to the PRA.

(2) The Financial Policy Committee may specify a minimum proportion of CET1 that shall be held for the purposes of the measure prescribed in paragraph 5(1).

(**a**) SI 2014/894, inserted by [ ].
(**b**) Inserted by [ ].
(**c**) SI 2013/[ ].

G-SII additional leverage buffer

6. (1) For the purposes of sections 9H(1) and 9L of the Bank of England Act 1998, a measure to expect G-SIIs to hold sufficient Tier 1 capital to satisfy a G-SII additional leverage ratio specified by the Financial Policy Committee is prescribed in relation to the PRA.

(2) The Financial Policy Committee may specify a minimum proportion of CET 1 that shall be held for the purposes of the measure prescribed in paragraph 6(1).

Countercyclical leverage buffer

7. (1) For the purposes of sections 9H(1) and 9L of the Bank of England, a measure to expect UK banks and UK investment firms to hold sufficient Tier 1 capital to satisfy a countercyclical leverage buffer specified by the Financial Policy Committee is prescribed in relation to the PRA.

(2) The Financial Policy Committee may specify a minimum proportion of CET1 that shall be held for the purposes of the measure prescribed in paragraph 7(1).

(3) The Financial Policy Committee may include in a direction relating to the countercyclical leverage buffer a method of calculating the countercyclical leverage buffer by reference to the prevailing countercyclical capital buffer rates.

(4) Paragraph (5) applies if—

(a) The Financial Policy Committee has given a direction to the PRA under section 9H of the Bank of England Act 1998 which specifies a counter-cyclical leverage buffer which includes a method of calculation the countercyclical leverage buffer by reference to the prevailing countercyclical capital buffer rates pursuant to article 6(3) ("the first direction");

(b) The Financial Policy Committee subsequently revokes the first direction; and

(c) Immediately after that revocation the Financial Policy Committee gives another direction to the PRA under section 9H of the Bank of England Act 1998 ("the subsequent direction") which is in substance identical to the first direction except in relation to the values specified in the direction.

(5) To the extent that the PRA is implementing the subsequent direction—

(a) section 138J of the Financial Services and Markets Act 2000 does not apply,

(b) the PRA must undertake a cost benefit analysis of the measure and publish it at the same time as it publishes the rules which give effect to the subsequent direction.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order prescribes macro-prudential measures for the purposes of section 9H of the Bank of England At 1998 (c.11) ("the 1998 Act") (power of the Financial Policy Committee of the Bank of England to direct the Financial Conduct Authority and the Prudential Regulation Authority).

This Order prescribes four macro-prudential measures requiring institutions to hold sufficient Tier 1 capital to satisfy certain leverage ratios. The first measure allows the Financial Policy Committee to specify a minimum leverage ratio which will apply to all UK banks and PRA regulated UK investment firms ("investment firms"). The second measure allows the Financial Policy Committee to issue a direction which will create an expectation that institutions which are subject to a systemic risk buffer will maintain an additional systemic risk leverage buffer. The third measure allows the Financial Policy Committee to issue a direction that will create an expectation that globally systemically important institutions will maintain an additional G-SII leverage buffer. Finally, the fourth measure allows the Financial Policy Committee to issue a direction which will create an expectation that UK banks and UK investment firms will maintain a countercyclical leverage buffer. The Financial Policy Committee may specify that the countercyclical leverage buffer can be calculated by reference to the countercyclical capital buffer rates. The Financial Policy Committee may prescribe that the capital which institutions will need to hold under each measure should contain a minimum amount of common equity tier 1 capital.

The measures may all be applied on an individual or a consolidated basis, which means that they may be applied either in relation to a single institution, or in relation to a group of institutions.

The procedural requirements required under section 138J of the Financial Services and Markets Act 2000 have, in relation to the countercyclical leverage buffer, been disapplied in certain, limited, circumstances.