

CAPITAL INSTRUMENTS (NOTIFICATION) INSTRUMENT 2011**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 150(2) (Actions for damages);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157(1) (Guidance).
- B. The rule making powers referred to above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 February 2012.

Amendments to the Handbook

- D. The modules of the Financial Services Authority’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
General Prudential sourcebook (GENPRU)	Annex B
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex C
Prudential sourcebook for Insurers (INSPRU)	Annex D

Citation

- E. This instrument may be cited as the Capital Instruments (Notification) Instrument 2011.

By order of the Board
2 November 2011

Annex A**Amendments to the Glossary of definitions**

In this Annex, underlining indicates new text and striking through indicates deleted text.

capital instrument (in *GENPRU*2 ~~and~~ *BIPRU* and *INSPRU* 6 and in relation to an *undertaking*)
any *security* issued by or loan made to that *undertaking* or any other investment in, or external contribution to the capital of, that *undertaking*.

Annex B

Amendments to the General Prudential sourcebook (GENPRU)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2.2.6 G This table belongs to *GENPRU 2.2.5G*

Topic	Location of text
...	
Capital used to meet the <i>base capital resources requirement</i> for <i>BIPRU firms</i> .	<i>GENPRU 2.2.60R to GENPRU 2.2.61G</i>
<u>Notification of issuance of <i>capital instruments</i>.</u>	<u><i>GENPRU 2.2.61AR to GENPRU 2.2.61HG</i></u>
...	

...

2.2.61 G ...

Notification of issuance of capital instruments

2.2.61A R This section applies to a *firm* intending to issue a *capital instrument* on or after 1 March 2012 for inclusion in its *capital resources*.

2.2.61B R A *firm* must notify the *FSA* in writing of its intention to issue a *capital instrument* which it intends to include within its *capital resources* at least one *month* before the intended date of issue, unless there are exceptional circumstances which make it impracticable to give such a period of notice, in which event the *firm* must give as much notice as is practicable in those circumstances. When giving notice, a *firm* must:

- (1) provide details of the amount of capital the *firm* is seeking to raise through the intended issue and whether the capital is intended to be issued to external investors or within its *group*;
- (2) identify the stage of the *capital resources table* the *capital instrument* is intended to fall within;
- (3) include confirmation from a *senior manager* of the *firm* responsible for authorising the intended issue that the *capital instrument* complies with the *rules* applicable to instruments included in the stage of the *capital resources table* identified in (2); and
- (4) provide a copy of the term sheet and details of any features of the *capital instrument* which are novel, unusual or different from a

capital instrument of a similar nature previously issued by the firm or widely available in the market or not specifically contemplated by GENPRU 2.2.

This rule does not apply to a firm which intends to issue a capital instrument listed in GENPRU 2.2.61ER

- 2.2.61C R A firm must provide a further notification to the FSA in writing including all the information required in GENPRU 2.2.61BR(1) to (4) as soon as it proposes any change to the intended date of issue, amount of issue, type of investors, stage of capital or any other feature of the capital instrument to that previously notified to the FSA.
- 2.2.61D R If a firm proposes to establish a debt securities program for the issue of capital instruments for inclusion within its capital resources, it must:
- (1) notify the FSA of the establishment of the program; and
 - (2) provide the information required by GENPRU 2.2.61BR(1) to (4) at least one month before the first proposed drawdown. Any changes must be notified to the FSA in accordance with GENPRU 2.2.61CR.
- 2.2.61E R The capital instruments to which GENPRU 2.2.61BR does not apply are:
- (1) ordinary shares which:
 - (a) are the most deeply subordinated capital instrument issued by the firm;
 - (b) meet the criteria set out in GENPRU 2.2.83R(2) and (3) and, for a BIPRU firm, GENPRU 2.2.83AR; and
 - (c) are the same as ordinary shares previously issued by the firm;
 - (2) debt instruments issued from a debt securities program, provided that program was notified to the FSA prior to its first drawdown, in accordance with GENPRU 2.2.61DR; and
 - (3) capital instruments which are not materially different in terms of their characteristics and eligibility for inclusion in a particular tier of capital to capital instruments previously issued by the firm.
- 2.2.61F R A firm must notify the FSA in writing, no later than the date of issue, of its intention to issue a capital instrument listed in GENPRU 2.2.61ER which it intends to include within its capital resources. When giving notice, a firm must:
- (1) provide the information set out at GENPRU 2.2.61BR(1) to (3); and
 - (2) confirm that the terms of the capital instrument have not changed since the previous issue by the firm of that type of capital instrument.

2.2.61G **G** GENPRU 2.2.61BR provides that, in exceptional circumstances, a *firm* may provide less than one *month*'s notice of the intended issue. The *FSA* is unlikely to consider circumstances to be exceptional unless they are such that there is a risk of a *firm*'s *capital resources* falling below its *capital resources requirement* if a one-month notification period is observed. In such circumstances, a *firm* should notify the *FSA* as soon as it has resolved to issue further capital, and provide details of its circumstances and why it is not possible to provide one *month*'s notice of the intended issue.

2.2.61H **G** Details of the notification to be provided by a *BIPRU firm* in relation to *capital instruments* issued by another *undertaking* in its *group* for inclusion in its *capital resources* or the *consolidated capital resources* of its *UK consolidation group* or *non-EEA sub-group* are set out in *BIPRU 8.6.1AR* to *BIPRU 8.6.1FR*. Details of the notification to be provided by an *insurer* in relation to *capital instruments* issued by another *undertaking* in its *group* for inclusion in its *group capital resources* are set out in *INSPRU 6.1.43AR* to *INSPRU 6.1.43FR*.

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Sch 2 Notification and reporting requirements

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Handbook reference	Matter to be notified	Contents of notification	Trigger events	Time allowed
...				
<i>GENPRU 2.2.19R</i>	...			
<u><i>GENPRU 2.2.61BR</i></u>	<u>Intention to issue a <i>capital instrument</i> for inclusion in <i>capital resources</i></u>	<u>Fact of intention and details of intended amount, issue date, type of investor, stage of capital, features of instrument and confirmation of compliance with <i>rules</i></u>	<u>Intention to issue</u>	<u>One <i>month</i> prior to issue, unless exceptional circumstances prevent a <i>firm</i> adhering to a <i>one-month</i> period</u>
<u><i>GENPRU 2.2.61CR</i></u>	<u>Proposed changes to details of the issue of a <i>capital instrument</i> notified under</u>	<u>Proposed change and all information required under <i>GENPRU 2.2.61BR(1)</i> to</u>	<u>Intention to change any details of the issue previously notified to the</u>	<u>As soon as the changes are proposed</u>

	<u>GENPRU 2.2.61BR</u>	<u>(4)</u>	<u>FSA</u>	
<u>GENPRU 2.2.61DR</u>	<u>Proposed establishment of a debt securities program</u>	<u>All information required under GENPRU 2.2.61BR(1) to (4)</u>	<u>Intention to establish</u>	<u>One month prior to first drawdown</u>
<u>GENPRU 2.2.61FR</u>	<u>Issue of capital instruments for inclusion in capital resources where instrument or facility previously notified to the FSA</u>	<u>All information required under GENPRU 2.2.61BR(1) to (3) and confirmation no changes have been made to the terms of the instrument since a previous similar issue</u>	<u>Intention to issue</u>	<u>No later than date of issue</u>

Annex C

**Amendments to the Prudential sourcebook for Banks, Building Societies and
Investment Firms (BIPRU)**

In this Annex, underlining indicates new text.

General

8.6.1 R ...

Notification of issuance of capital instruments

8.6.1A R This section applies to a *firm* if another member of its *group* intends to issue a *capital instrument* on or after 1 March 2012 for inclusion in the *firm's capital resources* or *consolidated capital resources* of its *UK consolidation group* or *non-EEA sub-group*.

8.6.1B R A *firm* must notify the *FSA* in writing of the intention of another member of its *group* which is not a *firm* to issue a *capital instrument* which the *firm* intends to include within its *capital resources* or the *consolidated capital resources* of its *UK consolidation group* or *non-EEA sub-group* as soon as it becomes aware of the intention of the *group undertaking* to issue the *capital instrument*. When giving notice, a *firm* must:

- (1) provide details of the amount of capital to be raised through the intended issue and whether the capital is intended to be issued to external investors or within its *group*;
- (2) identify the stage of the *capital resources table* the *capital instrument* is intended to fall within;
- (3) include confirmation from a *senior manager* of the *firm* responsible for authorising the inclusion of the issue within *capital resources* or *consolidated capital resources* that the *capital instrument* complies with the *rules* applicable to instruments included in the stage of the *capital resources table* identified in (2); and
- (4) provide details of any features of the *capital instrument* which are novel, unusual or different from a *capital instrument* of a similar nature previously issued by the *firm* or widely available in the market or not specifically contemplated by *GENPRU 2.2*.

This rule does not apply to a *firm* if a *group undertaking* intends to issue a *capital instrument* listed in *BIPRU 8.6.1ER*.

8.6.1C R A *firm* must provide a further notification to the *FSA* in writing including all the information required in *BIPRU 8.6.1BR(1)* to (4) as soon as it becomes aware of any changes that are proposed to the intended date of issue, amount of issue, type of investors, stage of capital or any other feature of the *capital instrument* previously notified to the *FSA*.

- 8.6.1D R If a group undertaking proposes to establish a debt securities program for the issue of capital instruments which the firm intends to include within its capital resources or the consolidated capital resources of its UK consolidation group or non-EEA sub-group, it must:
- (1) notify the FSA of the establishment of the program; and
 - (2) provide the information required by BIPRU 8.6.1BR(1) to (4);
- as soon as it becomes aware of the proposed establishment. The FSA must be notified of any changes, in accordance with BIPRU 8.6.1CR.
- 8.6.1E R The capital instruments to which BIPRU 8.6.1BR does not apply are:
- (1) ordinary shares issued by a group undertaking which:
 - (a) are the most deeply subordinated capital instrument issued by that group undertaking;
 - (b) meet the criteria set out in GENPRU 2.2.83R(2) and (3) and GENPRU 2.2.83AR; and
 - (c) are the same as ordinary shares previously issued by that group undertaking;
 - (2) debt instruments issued from a debt securities program established by a group undertaking, provided the program was notified to the FSA prior to its first drawdown, in accordance with BIPRU 8.6.1DR; and
 - (3) capital instruments which are not materially different in terms of their characteristics and eligibility for inclusion in a particular tier of capital to capital instruments previously issued by a group undertaking for inclusion in the firm's capital resources or consolidated capital resources of its UK consolidation group or non-EEA sub-group.
- 8.6.1F R A firm must notify the FSA in writing, no later than the date of issue, of the intention of a group undertaking to issue a capital instrument listed in BIPRU 8.6.1ER which the firm intends to include within its capital resources or the consolidated capital resources of its UK consolidation group or non-EEA sub-group. When giving notice a firm must:
- (1) provide the information set out at BIPRU 8.6.1BR(1) to (3); and
 - (2) confirm that the terms of the capital instrument have not changed since the previous issue of that type of capital instrument by that group undertaking.

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Sch 2 Notification and reporting requirements

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Handbook reference	Matter to be notified	Contents of notification	Trigger events	Time allowed
...				
<i>BIPRU</i> 8.5.9R	...			
<u><i>BIPRU</i></u> <u>8.6.1BR</u>	<u>Intention of a group undertaking to issue a capital instrument for inclusion in capital resources or consolidated capital resources</u>	<u>Fact of intention and details of intended amount, issue date, type of investor, stage of capital, features of instrument and confirmation of compliance with rules</u>	<u>Intention to issue</u>	<u>As soon as proposed issue becomes known to firm</u>
<u><i>BIPRU</i></u> <u>8.6.1CR</u>	<u>Proposed changes to details of the issue of a capital instrument notified under <i>BIPRU</i> 8.6.1BR</u>	<u>Proposed change and all information required under <i>BIPRU</i> 8.6.1BR(1) to (4)</u>	<u>Intention to change any details of the issue previously notified to the FSA</u>	<u>As soon as the changes are proposed</u>
<u><i>BIPRU</i></u> <u>8.6.1DR</u>	<u>Proposed establishment of a debt securities program by a group undertaking</u>	<u>All information required under <i>BIPRU</i> 8.6.1BR(1) to (4)</u>	<u>Intention to establish</u>	<u>As soon as proposed establishment becomes known to firm</u>
<u><i>BIPRU</i></u> <u>8.6.1FR</u>	<u>Issue of capital instruments by a group undertaking under <i>BIPRU</i> 8.6.1ER</u>	<u>All information required under <i>BIPRU</i> 8.6.1BR(1) to (3) and confirmation no changes have been made to</u>	<u>Intention to issue</u>	<u>No later than the date of issue</u>

		<u>the terms of the instrument from a previous similar issue</u>		
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Annex D

Amendments to the Prudential sourcebook for Insurers (INSPRU)

In this Annex, underlining indicates new text.

6.1 Application

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Calculation of GCR

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6.1.43 R ...

Notification of issuance of capital instruments

6.1.43A R This section applies to a firm if another member of its group intends to issue a capital instrument on or after 1 March 2012 for inclusion in the group capital resources of the firm or its ultimate EEA insurance parent undertaking.

6.1.43B R A firm must notify the FSA in writing of the intention of another member of its group which is not a firm to issue a capital instrument which it intends to include within its group capital resources, or the group capital resources of its ultimate EEA insurance parent undertaking, as soon as it becomes aware of the intention of the group undertaking. When giving notice, a firm must:

- (1) provide details of the amount of capital to be raised through the intended issue and whether the capital is intended to be issued to external investors or within its group;
- (2) identify the stage of the capital resources table the capital instrument is intended to fall within;
- (3) include confirmation from a senior manager of the firm responsible for authorising the inclusion of the issue within group capital resources that the capital instrument complies with the rules applicable to instruments included in the stage of the capital resources table identified in (2); and
- (4) provide details of any features of the capital instrument which are novel, unusual or different from a capital instrument of a similar nature previously issued by the firm or widely available in the market or not specifically contemplated by GENPRU 2.2.

This rule does not apply to a firm if a group undertaking intends to issue a capital instrument listed in INSPRU 6.1.43ER.

- 6.1.43C R A firm must provide a further notification to the FSA in writing including all the information required in INSPRU 6.1.43BR(1) to (4) as soon as any changes are proposed to the intended date of issue, amount of issue, type of investors, stage of capital or any other feature of the capital instrument to that previously notified to the FSA.
- 6.1.43D R If a group undertaking proposes to establish a debt securities program for the issue of capital instruments which the firm intends to include within its group capital resources or the group capital resources of its ultimate EEA insurance parent undertaking, it must:
- (1) notify the FSA of the establishment of the program; and
 - (2) provide the information required by INSPRU 6.1.43BR(1) to (4)
as soon as it becomes aware of the proposed establishment. The FSA must be notified of any changes, in accordance with INSPRU 6.1.43CR.
- 6.1.43E R The capital instruments to which INSPRU 6.1.43BR does not apply are:
- (1) ordinary shares issued by a group undertaking which
 - (a) are the most deeply subordinated capital instrument issued by that group undertaking;
 - (b) meet the criteria set out in GENPRU 2.2.83R(2) and (3); and
 - (c) are the same as ordinary shares previously issued by that group undertaking;
 - (2) debt instruments issued from a debt securities program established by a group undertaking, provided that program was notified to the FSA prior to its first draw down in accordance with INSPRU 6.1.43DR; and
 - (3) capital instruments which are not materially different in terms of their characteristics and eligibility for inclusion in a particular tier of capital to capital instruments previously issued by that group undertaking and included in the group capital resources of the firm or the group capital resources of its ultimate EEA insurance parent undertaking.
- 6.1.43F R A firm must notify the FSA in writing, no later than the date of issue, of the intention of a group undertaking to issue a capital instrument listed in INSPRU 6.1.43ER which the firm intends to include within its group capital resources or the group capital resources of its ultimate EEA insurance parent undertaking. When giving notice a firm must
- (1) provide the information set out at INSPRU 6.1.43BR(1) to (3); and
 - (2) confirm that the terms of the capital instrument have not changed

since the previous issue of that type of *capital instrument* by that *group undertaking*.

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Sch 2 Notification and reporting requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger events	Time allowed
...				
<i>INSPRU</i> 3.1.65R	...			
<u><i>INSPRU</i> 6.1.43BR</u>	<u>Intention of a <i>group undertaking</i> to issue a <i>capital instrument</i> for inclusion in <i>group capital resources</i></u>	<u>Fact of intention and details of intended amount, issue date, type of investor, stage of capital, features of instrument and confirmation of compliance with <i>rules</i></u>	<u>Intention to issue</u>	<u>As soon as proposed issue becomes known to <i>firm</i></u>
<u><i>INSPRU</i> 6.1.43CR</u>	<u>Proposed changes to details of the issue of a <i>capital instrument</i> notified under <i>INSPRU</i> 6.1.43BR</u>	<u>Proposed change and all information required under <i>INSPRU</i> 6.1.43BR(1) to (4)</u>	<u>Intention to change any details of the issue previously notified to the <i>FSA</i></u>	<u>As soon as the changes are proposed</u>
<u><i>INSPRU</i> 6.1.43DR</u>	<u>Proposed establishment of a debt securities program by a <i>group undertaking</i></u>	<u>All information required by <i>INSPRU</i> 6.1.43BR(1) to (4)</u>	<u>Intention to establish</u>	<u>As soon as proposed establishment becomes known to <i>firm</i></u>
<u><i>INSPRU</i> 6.1.43FR</u>	<u>Issue of <i>capital instruments</i> by a <i>group undertaking</i> under <i>INSPRU</i> 6.1.43ER</u>	<u>All information required under <i>INSPRU</i> 6.1.43BR(1) to (3) and confirmation that no changes have been made</u>	<u>Intention to issue</u>	<u>No later than date of issue</u>

		<u>to the terms of the instrument since the previous issue of a similar instrument</u>		
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