Prudential Standard APS 111

Capital Adequacy: Measurement of Capital

Objectives and key requirements of this Prudential Standard

This Prudential Standard sets out the characteristics that an instrument must have to qualify as regulatory capital for an authorised deposit-taking institution (ADI) and the various deductions to be made to determine total regulatory capital on both a Level 1 and Level 2 basis.

The ultimate responsibility for ensuring that an ADI's regulatory capital meets the requirements of this Prudential Standard rests with its Board of directors.

The key requirements of this Prudential Standard are that an authorised deposit-taking institution must:

- include in the appropriate category of regulatory capital (i.e. Common Equity Tier 1 Capital, Additional Tier 1 Capital or Tier 2 Capital) only those capital instruments that meet the detailed criteria for that category;
- ensure all regulatory capital instruments are capable of bearing loss on either a 'going-concern' basis (Tier 1 Capital) or a 'gone-concern' basis (Tier 2 Capital); and
- make certain deductions from capital, mainly from Common Equity Tier 1 Capital, to determine total regulatory capital.

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Attachments

Authority

1. This Prudential Standard is made under section 11AF of the *Banking Act 1959* (the Banking Act).

Interpretation

2. Except where otherwise defined in this Prudential Standard, expressions in bold are defined in *Prudential Standard APS 001 Definitions*.

Application

3. This Prudential Standard applies to all authorised deposit-taking institutions (**ADIs**) under the Banking Act subject to paragraph 4.

4. This Prudential Standard does not apply to a **foreign ADI**. A foreign ADI must, however, be subject to comparable capital adequacy standards in its home country.

5. A reference to an ADI in this Prudential Standard, unless otherwise indicated, is a reference to:

   (a) an ADI on a **Level 1** basis; and

   (b) a group of which an ADI is a member on a **Level 2** basis.

6. If an ADI to which this Prudential Standard applies is:

   (a) the holding company for a group of bodies corporate, the ADI must ensure that the requirements in this Prudential Standard are met on a Level 2 basis, where applicable; or

   (b) a subsidiary of an authorised non-operating holding company (**authorised NOHC)**, the authorised NOHC must ensure that the requirements in this Prudential Standard are met on a Level 2 basis, where applicable**.**

Regulatory capital

7. For the purposes of this Prudential Standard:

   (a) a *component of capital* is any form of capital defined in this Prudential Standard as eligible for inclusion in regulatory capital; and

   (b) a *category of capital* is a group of components of capital.

8. Total regulatory capital (Total Capital) consists of the following categories:

(a) Tier 1 Capital (going-concern capital[1]), which comprises:

(i) Common Equity Tier 1 Capital; and

(ii) Additional Tier 1 Capital; and

(b) Tier 2 Capital (gone-concern capital).[2]

9. An ADI must ensure that any component of capital included in its Total Capital satisfies, in both form and substance, all applicable requirements in this Prudential Standard for the particular category of capital in which it is included.

10. An ADI must not include a component of capital in a particular category of regulatory capital if that component, when considered in conjunction with other related transactions that affect its overall economic substance, could be reasonably considered not to satisfy fully the requirements of this Prudential Standard for that category of capital.

11. An ADI must ensure that the category of capital in which a component of capital is included, when measured at an individual group member level (e.g. Level 1 or equivalent), is not upgraded to a higher category of capital when that component is captured in the measure of an ADI's regulatory capital at Level 2. Any such component of capital must be reclassified to the appropriate lower category of capital when measured at Level 2.

12. An ADI must not assign a capital instrument to a category of capital based on a future event, such as the future sale or issuance of a higher quality capital instrument, until such time as:

(a) the future event irrevocably occurs, and

(b) the proceeds have been irrevocably received by the ADI.

13. APRA may, in writing, require an ADI to:

(a) exclude from its regulatory capital any component of capital that APRA has reasonable grounds to believe does not represent a genuine contribution to the financial strength of the ADI; or

(b) reallocate to a lower category of capital any component of capital that APRA has reasonable grounds to believe does not fully satisfy the requirements of this Prudential Standard for the category of capital to which it was originally allocated.

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1 'Going-concern capital' refers to capital against which losses can be written off while an ADI continues to operate. Going-concern capital will also absorb losses should the ADI ultimately fail.

2 'Gone-concern capital' refers to capital that would not absorb losses until such time as an ADI is wound up or the capital is otherwise written off or converted into ordinary shares.

14. An ADI must provide APRA, as soon as practicable, with copies of documentation associated with the issue of Tier 1 and Tier 2 capital instruments.

15. Where the terms of an instrument depart from established precedent, an ADI must consult with APRA on the eligibility of the capital instrument for inclusion in the ADI's Total Capital in advance of the issuance of the capital instrument, and provide APRA with all information it requires to assess the eligibility of the capital instrument.

16. An ADI must seek APRA's written approval prior to any subsequent modification of the terms or conditions of an instrument that may affect its eligibility to continue to qualify as regulatory capital.

Application of fair values

17. An ADI may measure its financial instruments at fair value for capital adequacy purposes provided it complies with the requirements of Attachment A and the requirements in **Australian Accounting Standards**.

Common Equity Tier 1 Capital

18. Common Equity Tier 1 Capital comprises the highest quality components of capital that fully satisfy all of the following characteristics:

    (a) provide a permanent and unrestricted commitment of funds;

    (b) are freely available to absorb losses;

    (c) do not impose any unavoidable servicing charge against earnings; and

    (d) rank behind the claims of depositors and other creditors in the event of winding-up of the issuer.

19. Common Equity Tier 1 Capital consists of the sum of:

    (a) paid-up ordinary shares issued by an ADI that meet the criteria in Attachment B;

    (b) retained earnings;

    (c) undistributed current year earnings (refer to paragraphs 20 to 23);

    (d) accumulated other comprehensive income and other disclosed reserves (refer to paragraphs 24 and 25);

(e) minority interests (calculated in accordance with Attachment C) arising from the issue of ordinary shares to **third parties** by a fully consolidated subsidiary[3] included in the Level 2 group where:

(i) the shares giving rise to the minority interest would, if issued by the ADI, meet the criteria in Attachment B; and

(ii) the subsidiary issuing the shares is itself an ADI or an overseas deposit-taking institution that is subject to equivalent minimum prudential requirements and level of supervision as an ADI; and

(f) regulatory adjustments applied in the calculation of Common Equity Tier 1 Capital under this Prudential Standard.

20. Current year earnings must take into account:

(a) negative goodwill;

(b) the unwinding of any discount on credit loss provisions (refer to **AGN 220.1**);

(c) expected tax expenses; and

(d) dividends when declared in accordance with Australian Accounting Standards.

21. Current year earnings also include the full value of upfront fee income provided that:

(a) the fee income has either been received in cash or has been debited to a customer's account or otherwise forms part of the upfront fees owed by a customer;

(b) outstanding amounts of fee income debited to customer accounts must be claimable in full in the event of default by the customer, or capable of being sold to a third party as part of outstanding debts;

(c) the provider of the income has no recourse for repayment in part or full of any prepaid income;

(d) the customer cannot cancel any fees debited to the customer's account for which they were otherwise obliged to pay upfront; and

(e) there is no requirement for the provision of continuing additional services or products associated with the fee income concerned.

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[3] This must also be read to refer to any holding company that heads the Level 2 group and is fully consolidated in the Level 2 group.

22. Fee income can include net positive amounts arising from the netting of deferred income and capitalised expenses associated with a product class provided the conditions in paragraph 21 are satisfied.

23. Current year earnings and retained earnings may include fair value adjustments provided these adjustments satisfy the requirements for the recognition of fair values set out in paragraph 26(g) and Attachment A.

24. Accumulated other comprehensive income and other disclosed reserves include, but are not limited to:

    (a) unrealised gains or losses recognised on the balance sheet;

    (b) reserves from equity-settled share-based payments (share or share options) granted to employees as part of their remuneration package provided that:

        (i) the share or share options granted relate only to the ordinary shares of the ADI itself;

        (ii) the ordinary shares represent only new ordinary shares to be issued by the ADI, or new ordinary shares already issued by the ADI for this specific purpose; and

        (iii) there are no circumstances under which such remuneration can be converted into another form (e.g. cash).

    Any other reserves associated with share-based payments must be excluded from capital;

    (c) cumulative unrealised gains or losses on hedges[4] offsetting gains or losses included in Common Equity Tier 1 Capital (such as movements in the currency value of foreign-currency-denominated hedging instruments that offset movements in foreign-currency-denominated items recognised in the foreign currency translation reserve). This includes fair value gains or losses on derivatives representing effective economic hedges of assets; and

    (d) any other gains and losses in accumulated comprehensive income and other disclosed reserves that may be specified by APRA in writing.

25. Revaluation of property holdings may only be included as part of other disclosed reserves if:

    (a) the property is owned by the ADI or a member of the Level 2 group at Level 2;

    (b) the property represents only land and buildings;

[4] This includes cumulative unrealised gains or losses on effective cash flow hedges as defined in Australian Accounting Standards.

(c) the property is readily available to be sold. A property need not be scheduled for sale, nor need a sale be intended. However, such a property must be capable of being readily sold within six months were a decision made to sell the property;

(d) the reserves are shown as a component of equity in the audited published financial accounts of the ADI (and the group that it heads);

(e) the revaluations are reliable, in accordance with Australian Accounting Standards, and subject to audit or review consistent with **Australian Auditing and Assurance Standards**. An investment property must be measured at fair value in accordance with Australian Accounting Standards;

(f) the amount of reserves incorporates the full effect of any fair value gains or losses and any gains or losses on hedges offsetting revaluations of the property (owner-occupied property and investment property) included in the reserves.

Regulatory adjustments to Common Equity Tier 1 Capital

26. Unless otherwise indicated, an ADI must deduct the following items in calculating Common Equity Tier 1 Capital at both Level 1 and Level 2:

Asset impairment

(a) any identified impairment of an asset where the impairment has not already been taken into account in profit and loss;

Cash flow hedge reserve

(b) the amount of the cash flow hedge reserve that relates to the hedging of items that are not recorded at fair value on the balance sheet (including projected cash flows);[5]

Covered bonds excess assets in cover pools

(c) the total value of assets in Australia held in cover pools securing the issue of covered bonds by the ADI that are in excess of eight per cent of the ADI's assets in Australia;

Deferred tax

(d) deferred tax assets net of deferred tax liabilities[6] (refer to Attachment J);

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5 Any gains on hedges are to be deducted and any losses on hedges added back.

6 Excluding any deferred tax liabilities that have already been netted off elsewhere in accordance with this Prudential Standard.

Equity holdings and other capital support provided to financial institutions[7]

(e) direct, indirect[8] and synthetic equity exposures (as defined in paragraphs 47 to 50 of **APS 113)**, guarantees and other forms of capital support (refer to Attachment J) (other than holdings of Additional Tier 1 Capital and Tier 2 Capital instruments) in ADIs and overseas deposit-taking institutions and their subsidiaries, insurance companies and other financial institutions. This includes:

(i) equity exposures, guarantees and other forms of capital support (other than holdings of Additional Tier 1 Capital and Tier 2 Capital instruments) held in the banking book;

(ii) net long positions[9] in equity held in the trading book (refer to **APS 116**); and

(iii) underwriting positions in equity held for more than five working days.

An ADI is not required to deduct:

(iv) equity exposures in ADIs and equivalent overseas deposit-taking institutions[10] and their subsidiaries, insurance companies and other financial institutions held under a legal agreement on behalf of a third party, even if held in the name of the ADI (or other members of the Level 2 group), where the third party derives exclusively and irrevocably all the gains and losses of such exposures and investments;

(v) underwriting positions in equities held for five working days or less. Such exposures must be risk-weighted at 300 per cent if listed and at 400 per cent if unlisted; and

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7 At Level 1, this includes all financial institutions that are affiliates of the ADI at Level 1. An affiliate for these purposes is defined as a company that controls, or is controlled by, or is under common control with, the ADI. Control of a company is defined as (i) ownership, control, or holding power to vote 20 per cent or more of a class of voting securities of the company; or (ii) consolidation of the company with the ADI for financial reporting purposes.

8 For the purposes of this Prudential Standard, indirect holdings represent exposures, or parts of exposures that, if a direct holding loses its value, will result in a loss to the ADI substantially equivalent to the loss in the direct holding.

9 ‘Net long positions’ are the gross long positions net of the short positions in the same underlying exposures where the maturity of the short positions either match the maturity of the long positions or have residual maturities of at least one year. They include netting positions in physical instruments and derivatives over the same underlying exposure (including those associated with looking through holdings of index securities).

10 An ‘overseas deposit-taking institution’ in this Prudential Standard refers to an overseas financial institution that is subject to equivalent minimum prudential standards and level of supervision as an ADI.

(vi) at Level 1, equity exposures held in other ADIs or overseas deposit-taking institutions and their subsidiaries, and insurance companies that are subsidiaries of the ADI. Such exposures, after deduction of any intangibles component, must be risk-weighted at 300 per cent if listed and 400 per cent if unlisted;

Equity holdings and other capital support provided to commercial (non-financial) entities[11]

(f) direct, indirect and synthetic equity exposures (as defined in paragraphs 47 to 50 of APS 113) guarantees and other forms of capital support (refer to Attachment J) provided to commercial (non-financial) institutions. This includes:

(i) equity exposures, guarantees and other forms of capital support (other than holdings of Additional Tier 1 Capital and Tier 2 Capital instruments) held in the banking book; and

(ii) underwriting positions in equities held for more than five working days.

An ADI is not required to deduct:

(iii) equity exposures in the ADI's trading book. Such exposures must be treated in accordance with the provisions of APS 116;

(iv) underwriting positions of equities held for five working days or less. Such exposures must be risk-weighted at 300 per cent if listed and at 400 per cent if unlisted; or

(v) equity exposures held under a legal agreement on behalf of a third party, even if held in the name of the ADI (or other member of the Level 2 group), where the third party derives exclusively and irrevocably all the gains and losses of such exposures and investments.

Fair value gains and losses arising from changes in own creditworthiness

(g) all unrealised gains and losses that have resulted from changes in the fair value of liabilities due to changes in the ADI's own creditworthiness;

[11] See footnote 7

Goodwill and other intangibles

The following are to be deducted net of any associated deferred tax liability that would be extinguished if the assets involved become impaired or derecognised under Australian Accounting Standards:

(h) goodwill and any other intangible assets arising from an acquisition, net of adjustments to profit or loss reflecting any changes arising from 'impairment' of goodwill;

(i) other intangible assets net of adjustments to profit or loss reflecting amortisation and impairment. Intangible assets are as defined in Australian Accounting Standards plus any other assets designated in this Prudential Standard to be intangibles. Intangible assets include capitalised expenses (refer to Attachment J) and mortgage servicing rights. At Level 1, intangibles also include the intangible components of investments in subsidiaries that could arise after or outside of acquisitions;

Guarantees

(j) any guarantee, or credit derivative covering a credit exposure of the ADI, that provides for a materiality threshold below which no payment will be made in the event of a loss (refer to **APS 112** and **APS 113** for limits on the amounts an ADI is required to deduct);

Industry support schemes

(k) any non-repayable loans advanced by an ADI under APRA's certified industry support arrangements;

Own equity holdings

(l) (i) holdings of the ADI's own ordinary shares, whether held directly or indirectly, unless otherwise exempted in writing by APRA or eliminated through the application of Australian Accounting Standards. This includes any own ordinary shares that the ADI (or other members of the Level 2 group) could be contractually obliged to purchase, regardless of whether the holdings are recorded in the banking or trading book. An ADI must also deduct any unutilised trading limit in such shares determined by APRA in writing (refer to Attachment J);

(ii) the gross long positions of own ordinary shares may be deducted net of short positions in own ordinary shares only if the short positions involve no counterparty risk. An ADI must look through holdings of index securities to determine exposures of own ordinary shares to be deducted[12];

Securitisation

(m) the value of securitisation exposures subject to capital deduction under **APS 120**;

(n) any increase in Common Equity Tier 1 Capital arising from any **gain on sale;**

(o) any capitalised expected future income relating to securitisation activities prior to it being irrevocably received;

(p) the difference between the book value and the value realised for transfers of exposures to a special purpose vehicle (SPV**)** where the realised value is less than the book value, unless the difference has been written off to the ADI's profit and loss (refer to APS 120);

Shortfall in provisions for credit losses

(q) the shortfall in the stock of eligible provisions under the **IRB** approach (refer to APS 113);

Specific provisions

(r) specific provisions (refer to **APS 220**), including that portion of collective provisions deemed to be a specific provision for regulatory purposes and any prescribed provisions that have not already resulted in a charge to profit and loss by way of establishment of a provision in audited published financial accounts;

Superannuation funds

(s) any surplus in a defined benefit fund, of which an ADI is an employer-sponsor, unless otherwise approved in writing by APRA. The surplus must be net of any associated deferred tax liability that would be extinguished if the assets involved become impaired or derecognised under Australian Accounting Standards (refer to Attachment J);

(t) any deficit in a defined benefit superannuation fund of which an ADI (or at Level 2 any member of the Level 2 group) is an employer-sponsor and that is not already reflected in Common Equity Tier 1 Capital; and

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12 Gross long positions in own ordinary shares resulting from holdings of index securities may be netted against short positions in own ordinary shares resulting from short positions in the same underlying index. In such cases, short positions may involve counterparty risk (which will be subject to the relevant counterparty credit risk charges outlined in APS 112 and APS 113)

Other adjustments

(u) any other deductions required under any other **ADI Prudential Standard**.

27. APRA may require an ADI to deduct from Common Equity Tier 1 Capital at Level 2 an amount to cover undercapitalisation of a non-consolidated subsidiary (or subsidiaries). An ADI may be required to provide to APRA details of, amongst other things, the:

(a) size and scale of the operations of the non-consolidated subsidiary;

(b) materiality of the subsidiary's operations to group income and strategic outlook;

(c) level of net tangible assets of the subsidiary;

(d) risk profile of the subsidiary;

(e) level of exposure of the ADI on a Level 1 basis and of the Level 2 group to the subsidiary; and

(f) size of any identified capital shortfall and the likelihood of such a shortfall being remedied within a reasonable period of time.

Additional Tier 1 Capital

28. Additional Tier 1 Capital comprises high quality components of capital that satisfy the following essential characteristics:

(a) provide a permanent and unrestricted commitment of funds;

(b) are freely available to absorb losses;

(c) rank behind the claims of depositors and other more senior creditors in the event of winding up of the issuer; and

(d) provide for fully discretionary capital distributions.

29. Additional Tier 1 Capital consists of:

(a) instruments issued by an ADI that are not included in Common Equity Tier 1 Capital and which meet:

(i) the criteria for inclusion in Additional Tier 1 Capital set out in Attachment D;

(ii) for instruments classified as liabilities under Australian Accounting Standards, the loss absorption requirements set out in Attachment E;

(iii) the requirements for loss absorbency at the point of non-viability set out in Attachment I;

(b) instruments issued by a fully consolidated subsidiary[13] of the Level 2 group and held by third parties (calculated in accordance with Attachment C) where:

(i) the instruments would, if issued by the ADI, meet the criteria in Attachment D;

(ii) the subsidiary issuing the instruments is itself an ADI or an overseas deposit-taking institution that is subject to equivalent minimum prudential requirements and level of supervision as an ADI;

(iii) instruments classified as liabilities under Australian Accounting Standards meet the loss absorption requirements set out in Attachment E:

(iv) the instruments meet the requirements for loss absorption at the point of non-viability set out in Attachment I; and

(c) regulatory adjustments applied in the calculation of Additional Tier 1 Capital under this Prudential Standard.

Instruments may also be included in Additional Tier 1 Capital in accordance with APS 160.

30. An Additional Tier 1 Capital instrument may be a stapled security structure provided the structure meets the criteria in Attachment F.

Regulatory adjustments to Additional Tier 1 Capital

31. Unless otherwise indicated, an ADI must deduct the following items in calculating Additional Tier 1 Capital at both Level 1 and Level 2:

Capital investments in financial institutions

(a) direct, indirect and synthetic holdings of Additional Tier 1 Capital instruments[14] in ADIs and overseas deposit-taking institutions and their subsidiaries, insurance companies and other financial institutions. This includes:

(i) holdings of Additional Tier 1 Capital instruments (or equivalent overseas instruments) held in the banking book;

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13 Refer to footnote 3.

14 A reference to investments in Additional Tier 1 Capital and Tier 2 Capital instruments issued by overseas deposit-taking institutions, insurance companies and other financial institutions includes instruments of corresponding quality to Additional Tier 1 and Tier 2 Capital instruments defined in this Prudential Standard.

(ii) net long positions[15] in Additional Tier 1 Capital instruments[16] held in the trading book (refer to APS 116); and

(iii) underwriting positions in Additional Tier 1 Capital instruments (or equivalent overseas instruments) held for more than five working days.

An ADI is not required to deduct:

(iv) Additional Tier 1 Capital instruments of ADIs and overseas deposit-taking institutions and their subsidiaries, insurance companies and other financial entities held under a legal agreement on behalf of a third party, even if held in the name of the ADI (or other members of the Level 2 group), where the third party derives exclusively and irrevocably all the gains and losses of such exposures and investments;

(v) underwriting positions in Additional Tier 1 Capital instruments held for five working days or less. Such exposures must be risk-weighted at 300 per cent if listed or at 400 per cent if unlisted; and

(vi) at Level 1, Additional Tier 1 Capital instruments held in other ADIs or overseas deposit-taking institutions and their subsidiaries, and insurance companies that are subsidiaries of the ADI. Such exposures, after deduction of any intangibles component, must be risk-weighted at 300 per cent if listed or at 400 per cent if unlisted;

Own Additional Tier 1 Capital holdings

(b) (i) holdings of the ADI's own Additional Tier 1 Capital instruments, whether held directly or indirectly unless otherwise exempted in writing by APRA or unless eliminated under Australian Accounting Standards. This includes any Additional Tier 1 Capital instruments that the ADI or other members of the Level 2 group could be contractually obliged to purchase, regardless of whether the holdings are recorded in the banking or trading book. An ADI must also deduct any unutilised trading limit in such Additional Tier 1 Capital instruments determined by APRA in writing (refer to Attachment J);

(ii) the gross long positions of an ADI's own Additional Tier 1 Capital instruments may be deducted net of short positions in an ADI's own Additional Tier 1 Capital instruments only if the short positions

[15] Refer to footnote 9.

[16] This includes investments in capital instruments resulting from the holdings of index securities. ADIs are permitted to net long short positions in the same index security subject to maturity matching provisions.

involve no counterparty risk[17]. An ADI must look through holdings of index securities to determine exposures to its own Additional Tier 1 Capital instruments.

Tier 2 Capital

37. Tier 2 Capital includes other components of capital that, to varying degrees, fall short of the quality of Tier 1 Capital but nonetheless contribute to the overall strength of an ADI and its capacity to absorb losses.

38. Tier 2 Capital consists of:

    (a) instruments issued by the ADI at Level 1 that meet:

        (i) the criteria for inclusion in Tier 2 Capital set out in Attachment G; and

        (ii) the requirements for loss absorbency at the point of non-viability set out in Attachment I;

    (b) instruments issued by a fully consolidated subsidiary[18] of the Level 2 group and held by third parties (calculated in accordance with Attachment C) where:

        (i) the instruments would, if issued by the ADI, meet the criteria in Attachment G;

        (ii) the subsidiary issuing the instruments is itself an ADI or an overseas deposit-taking institution that is subject to equivalent minimum prudential requirements and level of supervision as an ADI; and

        (iii) the instruments meet requirements for loss absorbency at the point of non-viability set out in Attachment I;

    (c) a **General Reserve for Credit Losses** (**GRCL**) (refer to APS 220), unless APRA determines otherwise in writing; and

    (d) regulatory adjustments applied in the calculation of Tier 2 Capital under this Prudential Standard.

    Instruments may also be included in Tier 2 Capital in accordance with APS 160.

39. The GRCL may be included in Tier 2 Capital gross of tax effects up to the following limits:

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17 Gross long positions in own Additional Tier 1 instruments resulting from holdings of index securities may be netted against short positions in own Additional Tier 1 instruments resulting from short positions in the same underlying index. In such cases, short positions may involve counterparty risk (which will be subject to the relevant counterparty credit risk charges outlined in APS 112 and APS 113).

18 Refer to footnote 3.

(a) for an ADI using the **Standardised Approach** to credit risk: a maximum of 1.25 per cent of total credit risk-weighted on-balance sheet and off-balance sheet assets calculated under APS 112;

(b) for an ADI using the IRB approach to credit risk: a maximum of 0.6 per cent of total credit risk-weighted assets for non-defaulted exposures, to the extent that total eligible provisions exceed total expected losses;

(c) for an ADI using a partial IRB approach to credit risk: the sum of reserves proportionately based on the limits in (a) and (b); or

(d) where it is not possible for the ADI to determine whether the GRCL relates to assets under the standardised or IRB approaches to credit risk: allocation on a basis that is reasonable and consistent.

40. If the establishment of the GRCL has not already resulted in a charge to profit or loss (e.g. by way of establishment of a general reserve or provision in audited published financial accounts), a GRCL reported for capital purposes must be matched by a corresponding reduction in an ADI's Common Equity Tier 1 Capital.

Regulatory adjustments to Tier 2 Capital

41. Unless otherwise indicated, an ADI must deduct the following items in calculating Tier 2 Capital at both Level 1 and Level 2:

Capital investments in financial institutions

(a) direct, indirect and synthetic holdings of Tier 2 Capital instruments in ADIs and overseas deposit-taking institutions and their subsidiaries, insurance companies and other financial entities. This includes:

(i) holdings of Tier 2 Capital instruments (or the equivalent overseas instruments) held in the banking book;

(ii) the net long positions[19] in Tier 2 Capital instruments (or the equivalent overseas instruments) held in the trading book (see APS 116); and

(iii) all underwriting positions in Tier 2 Capital instruments (or the equivalent overseas instruments) held for more than five working days.

An ADI is not required to deduct:

(iv) Tier 2 Capital instruments of ADIs and overseas deposit-taking institutions and their subsidiaries, insurance companies and other financial entities held under a legal agreement on behalf of a third

[19] Refer to footnote 9.

party, even if held in the name of the ADI (or other members of the Level 2 group), where the third party derives exclusively and irrevocably all the gains and losses of such exposures and investments;

(v) underwriting positions in Tier 2 Capital instruments held for five working days or less. Such exposures must be risk-weighted at 300 if listed and at 400 per cent if unlisted; and

(vi) at Level 1, Tier 2 Capital instruments held in other ADIs or overseas deposit-taking institutions and their subsidiaries, and insurance companies that are subsidiaries of the ADI. Such Tier 2 Capital exposures, after deduction of any intangibles component, must be risk-weighted at 300 per cent if listed and at 400 per cent if unlisted; and

Own Tier 2 Capital holdings

(b) (i) holdings of the ADI's own Tier 2 Capital instruments, whether held directly or indirectly unless otherwise exempted in writing, by APRA or unless eliminated under Australian Accounting Standards. This includes any Tier 2 Capital instruments that the ADI or other members of the Level 2 group could be contractually obliged to purchase, regardless of whether the holdings are recorded in the banking or trading book. An ADI must also deduct any unutilised trading limit in such Tier 2 Capital instruments determined by APRA in writing (refer to Attachment J); and

(ii) the gross long[20] positions of an ADI's Tier 2 Capital instruments may be deducted, net of short positions in an ADI's own Tier 2 Capital instruments, only if the short positions involve no counterparty risk[21]. An ADI must look through holdings of index securities to determine exposures to own Tier 2 Capital instruments to be deducted.

Additional Tier 1 or Tier 2 Capital issued overseas by ADIs or subsidiaries

32. Additional Tier 1 Capital instruments and Tier 2 Capital instruments may be issued by an ADI, or a consolidated subsidiary in the Level 2 group, either in its country of incorporation or through a branch in another country, provided the instrument:

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[20] Refer to footnote 9.

[21] Gross long positions in own Tier 2 Capital instruments resulting from holdings of index securities may be netted against short positions in own Tier 2 Capital instruments resulting from short positions in the same underlying index. In such cases, short positions may involve counterparty risk (which will be subject to relevant counterparty credit risk charges under APS 112 and APS 113).

(a) represents an obligation of the ADI or of the consolidated subsidiary itself at all times;

(b) is freely available to absorb losses on a going concern basis across all of the operations of the ADI, or the consolidated subsidiary that issued the instrument; and

(c) meets all of the requirements of this Prudential Standard for inclusion in Additional Tier 1 or Tier 2 Capital.

Use of Special Purpose Vehicles to issue Additional Tier 1 and Tier 2 Capital instruments

42. Capital instruments issued through a Special Purpose Vehicle (**SPV)** must satisfy the requirements of Attachment H to be eligible Additional Tier 1 Capital or Tier 2 Capital.

General rules for regulatory adjustments

43. In determining the size of deductions from regulatory capital, items must be valued on the same basis as an ADI's balance sheet valuations.

44. For the purposes of paragraphs 31 and 41:

    (a) where the amount of Additional Tier 1 Capital is insufficient to cover the amount of deductions required to be made from this category of capital, the shortfall must be deducted from Common Equity Tier 1 Capital; and

    (b) where the amount of Tier 2 Capital is insufficient to cover the amount of deductions required to be made from this category of capital, the shortfall must first be deducted from Additional Tier 1 Capital and, if Additional Tier 1 Capital is insufficient to cover the amount of the deductions required, the remaining amount must be deducted from Common Equity Tier 1 Capital.

45. Where a capital instrument is required to be deducted and it is not possible to determine whether it should be deducted from Common Equity Tier 1 Capital, Additional Tier 1 Capital or Tier 2 Capital, the regulatory adjustment must be made from Common Equity Tier 1 Capital. An ADI must consult APRA if there is uncertainty about the category of capital against which a deduction must be made.

46. For the purposes of paragraphs 26(e), 33(a) and 41(a), an ADI that finds it operationally difficult to look through and monitor the exact exposure to equity and other capital instruments they hold in institutions, including through holdings of indexed securities, may apply to APRA to use a proxy approach for determining the amount of exposures to deduct. APRA may allow an ADI to apply an annual estimate of the amount to be deducted where the ADI can demonstrate that it can obtain details, at least annually, of the proportion of

exposures to financial and commercial institutions (such as an indexed security) comprised of equity and other exposures of a capital nature. Where an ADI cannot meet this requirement, it must deduct the full value of its indirect exposures.

47. All amounts of assets corresponding to deductions from capital made at Level 1 and Level 2 must be excluded when calculating an ADI's total risk-weighted assets at the respective level (under APS 112 and APS 113). Notwithstanding that the changes in value of some hedges may be deducted from capital, the credit risk of these hedges must continue to be included in total risk-weighted assets in accordance with Attachment G of APS 112.

48. For the purposes of deducting:

    (a) equity exposures;

    (b) holdings of Additional Tier 1 Capital and Tier 2 Capital instruments; and

    (c) securitisation exposures,

    an ADI may net any specific provisions raised against the relevant exposures or holdings before making the necessary deductions from the relevant categories of capital. For ADIs using the IRB approach, the amount of any non-refundable purchase price discount on a defaulting asset, and any related specific provisions, may be applied to reduce the level of deductions.

Intra-group capital transactions

49. The matters APRA may consider in assessing whether a component of capital resulting from intra-group transactions does not represent a genuine contribution to financial strength include, but are not limited to, whether a component of capital:

    (a) is clearly supplied from debt raised by other group members;

    (b) results from intra-group transactions with no economic substance;

    (c) is contributed by a member of the group using funding sourced, directly or indirectly, from the ADI itself; or

    (d) is contributed by a group member and the funding of which contains cross-default clauses that would be triggered as a result of the ADI failing to meet any servicing obligations.

50. In assessing the overall strength of an ADI on a Level 2 basis, APRA will have regard to the ability of the ADI to readily extract capital from members of the Level 2 group should the need arise to recapitalise the ADI or other members of the group. APRA may require an ADI to adjust its Level 2 regulatory capital ratios to reflect any inability to readily extract capital and any limitations on the amount of capital that may be extracted.

51. In measuring regulatory capital at Level 2, an ADI must exclude any instrument issued by a member of the Level 2 group where that instrument is guaranteed by another group member. This does not apply to guarantees of capital that are issued by an SPV in accordance with Attachment H.

Holding of capital instruments in group members by other group members

52. Capital instruments[22] of an ADI, or a member of a group headed by an ADI at Level 2, that are held as direct investments by a vehicle[23] subject to consolidation within the ADI's financial statements in accordance with Australian Accounting Standards, may only be included in Common Equity Tier 1 Capital, Additional Tier 1 Capital and Tier 2 Capital (on both a Level 1 and Level 2 basis, as appropriate) if:

   (a) the ADI (or relevant vehicle) did not fund the acquisition of the capital instruments (i.e. acquisition of capital instruments is funded by third parties such as life insurance policyholders or other third-party investors);

   (b) the risk and rewards associated with the investments are borne primarily by third parties; and

   (c) the ADI can demonstrate to APRA, if required, that decisions to acquire or sell such capital instruments are made independently of the issuer of the capital instruments and in the interests of the third parties who primarily bear the risks and rewards of the investments in the instruments.

53. Direct investments in shares of an ADI by an SPV (e.g. a trust) established under a share-based employee remuneration scheme may only be included in the ADI's Common Equity Tier 1 Capital (on a Level 1 and Level 2 basis, as appropriate) where:

   (a) the shares issued to the SPV represent ordinary shares of the ADI;

   (b) the amount included in Common Equity Tier 1 Capital is matched by an equivalent charge to profit and loss of the ADI for expensing the issue or funding the acquisition of ordinary shares by the vehicle; and

   (c) the ordinary shares issued cannot be converted to payment in another form (e.g. cash).

   For the purposes of measuring regulatory capital at Level 2, the SPV holding such shares must be excluded from the consolidated group. As a consequence, any associated change in the fair value of the shares held by an SPV must be excluded from regulatory capital and risk-weighted assets at Level 2.

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22 Capital instruments include all capital instruments eligible to be included in Common Equity Tier 1 Capital, Additional Tier 1 Capital and Tier 2 Capital.

23 These vehicles exclude any SPV, such as a trust, involved with employee share-based remuneration schemes.

54. Where the requirements in paragraphs 52 and 53 are not satisfied, the relevant capital instruments must be treated as holdings of own capital instruments and deducted from Common Equity Tier 1 Capital, Additional Tier 1 Capital and Tier 2 Capital, as appropriate.

Adjustments and exclusions

55. APRA may, by notice in writing, adjust or exclude a specific prudential requirement in this Prudential Standard in relation to one or more specified ADIs or authorised NOHCs.[24]

[24] Refer to subsection 11AF(2) of the Banking Act.

Attachment A

Use of fair values

1. An ADI may measure its financial instruments at fair value for capital adequacy (both banking book and trading book) and other stated prudential purposes provided:

   (a) an ADI complies with the requirements of Australian Accounting Standards relating to the use of fair values;

   (b) valuations are reliable, including use of reasonable estimates of values;

   (c) the use of fair values and associated valuations are covered by the ADI's risk management systems, including related risk management policies, procedures and controls;

   (d) the ADI notifies APRA promptly whenever there is a material reclassification by the ADI of financial assets and liabilities from amortised cost to fair values or from fair values to amortised cost ; and

   (e) the ADI meets all requirements set out below, as applicable, with respect to measurement of financial instruments at fair values.

2. For the purposes of paragraph 1(c), an ADI must:

   (a) have clear and robust governance structures for the production, assignment, verification and oversight of the valuation of financial instruments;

   (b) have adequate capacity, including during periods of stress, to establish and verify valuations. This capacity must be commensurate with the importance, risk and size of exposures being valued in the context of the business profile of the ADI;

   (c) for exposures that represent a material risk, have a capacity to produce valuations using alternative methods in the event that primary valuation inputs and valuation approaches become unreliable, unavailable or not relevant due to market discontinuities or illiquidity;

   (d) test and review on a regular basis the performance of its valuations, including importantly under stress conditions, so that it understands the limitations of its valuations. This is of particular significance where an ADI makes use of models for valuation purposes; and

   (e) ensure adequate internal audit review of the implementation of policies and procedures for producing fair values and their application.

3. An ADI must advise APRA, if requested, of details of:

   (a) the ADI's use of fair values of financial instruments and the ADI's valuation policies and procedures;

(b) the relationship between the ADI's use of fair values and its risk management policies and procedures; and

(c) the ADI's assessment of the impact of the application of fair values on the value of financial instruments for capital adequacy purposes.

4. If APRA considers that an ADI's policies and procedures for the application of fair values, or the fair values recognised by an ADI, are not reliable, or adversely affect its safety and soundness, APRA may in writing require an ADI to amend its policies and procedures, to make adjustments to fair values of financial instruments included in the measurement of capital adequacy, to discontinue use of fair value measures for regulatory reporting or to hold higher levels of capital.

Systems and controls

5. An ADI's systems and controls used for valuation purposes must:

(a) include documented policies and procedures for the process of valuation. This must incorporate clearly defined responsibilities of the various areas involved in this process;

(b) ensure clear and independent reporting lines for the areas responsible for the valuation process;

(c) provide for the Board to receive reports from senior management on the valuation oversight and valuation performance issues that are notified to senior management for resolution, as well as all significant changes in valuation policies;

(d) be integrated with other risk management systems within the ADI;

(e) outline the assets and liabilities and other positions to be recognised at fair value and the processes for approving use of fair values for new items, products and transactions. New product approval processes must include all internal stakeholders relevant to risk measurement, risk control and, importantly, the assignment and verification of valuations of financial instruments involved;

(f) enable the ADI to make choices regarding the alternative treatments for categorising financial instruments using fair value measures under accounting practice[25] in a fully informed and disciplined manner;

(g) specify the relationship between the application of fair value measures and the ADI's risk management framework;

(h) detail the processes for ensuring that the use of fair values is being applied consistently across the ADI for both reporting and risk management purposes, including across similar instruments (risks) and business lines

25 'Accounting practice' means Australian Accounting Standards or, if these do not provide relevant guidance, it refers to a generally used accounting treatment.

(books). This must include the frequency at which fair values will be calculated and reported for those assets and liabilities and other positions recognised at fair value; and

(i) explicitly assess valuation uncertainties and ensure that assessments of material valuation uncertainties are included in the information provided to the Board and senior management.

Valuation methodologies

6. An ADI's policies and procedures governing the use of fair value measurement must:

   (a) outline the methods used for the selection and validation of valuation processes used in calculating and reporting fair values including, where appropriate, independent review, analysis of model stability and performance over a variety of conditions, use of back-testing and frequency of validation. The ADI must retain data and supporting documentation for these purposes;

   (b) include rigorous and independent validation and control processes in relation to the design and validation of methodologies used to produce valuations. These valuations must maximise the use of relevant and reliable inputs in a controlled and disciplined manner and incorporate all other important information so that fair value estimates are as reliable as possible;

   (c) maximise the use of relevant observable inputs, and minimise the use of unobservable inputs, when estimating fair values using a valuation technique; and

   (d) only mark-to-model where mark-to-market is not possible. The ADI must be able to demonstrate that any use of mark-to-model is prudent.

7. The relevance and reliability of valuations that an ADI makes are directly related to the quality and reliability of the inputs used in the valuation methodology applied. In determining whether a source of market prices or values used in the methodology applied is reliable, an ADI must consider, amongst other things:

   (a) accounting guidance provided in Australian Accounting Standards applicable to the determination of relevant market information and other factors likely to have a material effect on a financial instrument's fair value;

   (b) the frequency and availability of the prices/quotes utilised;

   (c) whether those prices/quotes represent, or are supported by, actual regularly occurring transactions on an arm's-length basis;

   (d) the breadth of the distribution of the price or value data and whether it is generally available to relevant participants in the market;

(e) the timeliness of the information relative to the frequency of valuations required to be undertaken;

(f) the number of independent sources that produce the quotes/prices; and

(g) the similarity between a financial instrument sold in a transaction and the actual instrument held by the ADI.

Mark-to-market valuation methodologies

8. An ADI must mark-to-market at least daily utilising readily available close-out prices in orderly transactions.

9. An ADI must ensure that prices utilised for mark-to-market valuation purposes are:

   (a) sourced independently; and

   (b) use the more prudent side of the bid/offer close-out prices unless the ADI can demonstrate it is a significant market maker in a particular position type and can close out at mid-market closing prices.

10. Observable inputs must be considered but need not be determinative in valuation processes where an ADI has reasonable grounds to believe that:

    (a) observable inputs or transactions may not be relevant, such as in forced liquidation or distressed sale scenarios; and

    (b) inputs or transactions may not be observable such as where markets are inactive.

Marking-to-model valuation methodologies

11. Marking-to-model means any valuation that has to be benchmarked, extrapolated or otherwise calculated from a market input, other than valuations calculated from market inputs using market-convention pricing formulae (where such inputs are generally considered to be marked-to-market equivalents).

12. An ADI may only use marking-to-model if:

    (a) marking-to-market is not possible;

    (b) use of marking-to-model valuation can be demonstrated to be prudent; and

    (c) the valuation procedure applies an extra degree of conservatism.

13. In order for a mark-to-model valuation process to be reliable:

    (a) senior management of the ADI must be aware of the elements of fair valued positions that are subject to mark-to-model and understand the materiality of the uncertainty this creates in the reporting of risk/reward of the business undertaken;

(b) market inputs in the model process must be sourced, to the extent possible, in line with market prices (refer to paragraphs 10 and 11 of this Attachment). The ADI must regularly review the appropriateness of market inputs used for the particular position being valued;

(c) where available, generally accepted valuation methodologies for particular products must be used as far as possible;

(d) where a model is developed by the ADI itself, it must be:

    (i) based on appropriate assumptions, which have been assessed and challenged by suitably qualified parties independent of the development process;

    (ii) developed or approved independently of the area within the ADI that will be utilising the model for its business activities; and

    (iii) tested independently, including validating the mathematics, the assumptions and the software implementation;

(e) there must be formal change control procedures in place and a secure copy of the model must be held and periodically used to check valuations;

(f) the ADI's risk management function must be aware of the weaknesses in the models and how best to address such weaknesses in the valuation output;

(g) the model must be subject to periodic review by the ADI to determine the accuracy of its performance, including:

    (i) assessment of the appropriateness of assumptions utilised; and

    (ii) analysis of profit and loss versus risk factors;

(h) comparison must be made between actual close-out values to model outputs; and

(i) valuation adjustments must be made, as appropriate, including to cover the uncertainty of model valuations (refer to paragraphs 14 to 20 of this Attachment).

Valuation adjustments

14. If an ADI uses fair value measurement, it may need to adjust the values produced by its mark-to-market and mark-to-model valuation methodologies. If an ADI seeks to make such adjustments it must:

(a) apply a rigorous and consistent process to determine valuation adjustments as appropriate;

(b) consider whether any valuation adjustments are necessary where third-party valuations are used in marking-to-market or marking-to-model;

(c) take into account, at a minimum, the following matters:

(i) close-out costs;

(ii) unearned credit spreads;

(iii) operational risks;

(iv) early termination;

(v) investing and funding costs;

(vi) any future administrative costs; and

(vii) as appropriate, model risk.

15. Valuation adjustments that need to be made must, unless otherwise provided for in this Prudential Standard, impact on Common Equity Tier 1 Capital and may exceed those made under financial reporting standards.

Illiquid positions

16. An ADI must have procedures in place, if needed:

(a) to adjust current fair value measurements to account for any illiquidity of positions;

(b) to calculate the necessary adjustments where positions are judged to be illiquid; and

(c) to review the appropriateness of those adjustments, or lack thereof, on a regular (at least monthly) basis.

This applies whether or not a position is marked-to-market using market prices, observable inputs or third-party valuations, or is marked-to-model.

17. Relevant factors an ADI must consider in determining valuation adjustments for illiquidity include, but are not limited to:

(a) the average volatility of bid/offer spreads;

(b) the availability of independent market quotes (number and identity of market makers);

(c) the average volatility (under normal market conditions and in periods of market stress) of trading volumes and volumes of assets and liabilities that are exchanged;

(d) market concentrations;

(e) ageing of positions;

(f) the amount of time it would take to hedge the position/risks within the position or to otherwise dispose of an asset or liability or other position;

(g) the extent to which the valuation relies on marking-to-model; and

(h) the impact of other model risks.

18. For complex products, including but not limited to securitisation exposures and n^{th}-to-default credit derivatives, an ADI must explicitly assess the need for valuation adjustments to reflect model risk associated with using:

(a) a possibly incorrect valuation methodology; and

(b) unobservable (and possibly incorrect) calibrations in the valuation model.

19. An adjustment to the current valuation of less liquid positions must, unless otherwise provided for in this Prudential Standard, impact on Common Equity Tier 1 Capital and may exceed valuation adjustments made under financial reporting standards and those other adjustments required to be made (refer to paragraph 14 of this Attachment).

Independent price verification

20. An ADI must arrange independent price verification to be performed at regular intervals so that market prices or model inputs used in valuation processes are verified for accuracy. Such verification must be performed by parties independent of dealing, trading or asset or liability origination areas.

21. Independent price verification entails a higher standard of accuracy than market prices or model inputs used for daily marking-to-market purposes. For independent price verification where pricing sources are more subjective, an ADI must consider whether prudent measures such as valuation adjustments (see above) may be appropriate and make such adjustments as necessary.

Own creditworthiness

22. An ADI must detail how it determines the fair value gains and losses arising from changes in the ADI's own creditworthiness and that of other group members at Level 2.

Attachment B

Criteria for classification as ordinary shares

1. To be classified as ordinary shares in Common Equity Tier 1 Capital, an instrument must satisfy the following criteria:

   (a) the instrument represents the most subordinated claim in liquidation of the issuer;

   (b) the instrument holder is entitled to a claim on the residual assets that is proportional to its share of issued capital, after all senior claims have been repaid in liquidation (i.e. there is an unlimited and variable claim, not a fixed or capped claim);

   (c) the principal amount of the instrument is perpetual (i.e. it has no maturity date) and is never repaid outside of liquidation (setting aside discretionary repurchases or other means of effectively reducing capital in a discretionary manner that is allowable under relevant law and approved by APRA and other relevant supervisors). Any issue documentation must give clear and prominent notice to prospective investors that the issuer's right to buy back an instrument is subject to the prior written approval of APRA (and other relevant supervisors);

   (d) the issuer, and any other member of a group to which the issuer belongs, does nothing to create an expectation at issuance that the instrument will be bought back, redeemed or cancelled and the statutory or contractual terms of the instrument do not include any feature that might give rise to such an expectation;

   (e) distributions on the instrument are paid out of distributable items (retained earnings included) of the issuer, and the instrument does not provide for payment to investors other than in the form of a cash payment. The level of distributions must not be tied or linked to the amount paid in at issuance, or to the credit stranding of the issuer, and must not be subject to a contractual cap, except to the extent that restrictions applied to the payment of distributions are in accordance with APS 110;

   (f) there are no circumstances under which the distributions are obligatory and the issuer is able to waive any distribution or to alter the timing of a distribution. Non-payment of a distribution does not trigger any restrictions on the issuer or any other member of the group to which the issuer belongs. Any waived distributions are non-cumulative (i.e. they are not required to be made up by the issuer at a later date). Non-payment of distributions must not be an event of default of the issuer or of any other member of the group to which the issuer belongs;

   (g) distributions are paid only after all legal and contractual obligations have been met and payments on more senior capital instruments have been made. This means that there are no preferential distributions, including in respect of other elements classified as Common Equity Tier 1 Capital;

(h) the instruments take the first and proportionately greatest share of any losses as they occur.[26] Within Common Equity Tier 1 Capital, each instrument absorbs losses on a going concern basis proportionately, and *pari passu*, with all the other instruments included in Common Equity Tier 1 Capital;

(i) only the paid-in amount of the instrument, irrevocably received by the issuer, is recognised as equity capital (i.e. it is not recognised as a liability) for determining balance sheet insolvency;

(j) the paid-in amount of the instrument is classified as equity under relevant accounting standards[27];

(k) the instrument is directly issued by the issuer, and, except where otherwise permitted in this Prudential Standard, the issuer, any other member of a group to which the issuer belongs, or any related party[28], cannot have purchased or directly or indirectly funded the purchase of the instrument;

(l) the paid-in amount of the instrument, or any future payments related to the instrument, is neither secured nor covered by a guarantee of the issuer or a related entity[29] or subject to any other arrangement that legally or economically enhances the seniority of the claim. The instrument may not be subject to netting or offset claims on behalf of the holder of the instrument;

(m) the instrument is only issued with the approval of the owners of the issuer, either given directly by the owners or, if permitted by applicable law, given by the Board or by other persons duly authorised by the owners; and

(n) the instrument is clearly and separately disclosed on the issuer's financial statements and, in any consolidated financial statements. Disclosure must be in line with the frequency with which an ADI, or group of which it is a member, publishes its financial results.

2. Where an instrument is subject to the laws of a jurisdiction other than Australia or its territories, the ADI must also ensure that the instrument satisfies all relevant qualifying criteria for Common Equity Tier 1 Capital under the laws of that jurisdiction. APRA may require the ADI to provide an independent expert opinion, addressed to APRA by a firm or practitioner of APRA's choice and at the expense of the ADI, confirming that the instrument meets all or any of the criteria applied to Common Equity Tier 1 Capital instruments in this Prudential Standard.

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26 In cases where capital instruments have a permanent write-off feature, this criterion is still deemed to be met by ordinary shares.

27 At Level 2, these must be Australian Accounting Standards.

28 A related entity is one over which an ADI or parent entity of the ADI exercises control or significant influence and can include a parent company, a sister company, a subsidiary or any other affiliate. A holding company is a related entity irrespective of whether it forms part of the Level 2 group

29 Refer to footnote 28.

Attachment C

Minority interest and other capital issued out of fully consolidated subsidiaries that is held by third parties

1. Common Equity Tier 1 Capital, Additional Tier 1 Capital and Tier 2 Capital issued to third parties by fully consolidated subsidiaries of a Level 2 group may be included in Total Capital at Level 2 to the extent set out in this Attachment and paragraphs 19(c), 29(b) and 38(b) of this Prudential Standard.

2. Where a fully-consolidated subsidiary of a Level 2 group has its own subsidiaries, all calculations of eligible regulatory capital attributable to third parties must be undertaken in respect of that subsidiary and its subsidiaries as a consolidated group.

3. An ADI may elect not to recognise, at Level 2, capital issued by a fully consolidated subsidiary to third parties. However, the ADI must continue to include all exposures of those subsidiaries when calculating its total risk-weighted assets for Level 2 capital adequacy purposes.

4. The amount that may be included in regulatory capital at Level 2 is the:

   (a) total amount of the capital attributable to third parties, less

   (b) any amount above the minimum regulatory requirements, as calculated in accordance with paragraphs 5, 6 and 7 below.

Common Equity Tier 1 Capital (minority interest)

5. Minority interest in Common Equity Tier 1 Capital[30] of a Level 2 subsidiary that is eligible to be included in the ADI's Common Equity Tier 1 Capital at Level 2 is calculated as:

   (a) the percentage of all Common Equity Tier 1 Capital of the subsidiary that is attributable to third parties; multiplied by

   (b) the amount of Common Equity Tier 1 Capital of the subsidiary that is used to satisfy the Common Equity Tier 1 PCR and capital conservation buffer requirements at Level 2 arising from exposures held by the subsidiary[31].

Additional Tier 1 Capital

6. The amount of Additional Tier 1 instruments issued by a subsidiary to third parties that may be included in an ADI's Additional Tier 1 Capital at Level 2 is calculated as:

   (a) Tier 1 Capital instruments of a subsidiary attributable to third parties which may be included in an ADI's Tier 1 Capital at Level 2, which in turn is calculated as:

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30 This includes third parties interest in ordinary shares issued by a subsidiary, current year and retained earnings and distributable reserves of a subsidiary.

31 Refer paragraphs 21(a) and 26 of APS 110.

i. the percentage of all Tier 1 Capital of subsidiaries attributable to third parties; multiplied by

ii. the amount of Tier 1 Capital of the subsidiary that is used to satisfy the ADI's Additional Tier 1 PCR and capital conservation buffer requirements at Level 2 arising from exposures held by the subsidiary[32]; less

(b) the minority interest in the subsidiary that is calculated in accordance with paragraph 5 above, or zero, whichever is greater.

Tier 2 Capital

7. The amount of Tier 2 instruments issued by a subsidiary to third parties that may be included in Tier 2 Capital at Level 2 is calculated as:

(a) Total Capital of a subsidiary attributable to third parties that may be included in an ADI's Total Capital at Level 2, which in turn is calculated as:

i. the percentage of all Total Capital of the subsidiary attributable to third parties; multiplied by

ii. the amount of Total Capital of the subsidiary that is used to satisfy the ADI's Total Capital PCR and capital conservation buffer requirements arising from exposures held by the subsidiary[33]; less

(b) Tier 1 Capital instruments of a subsidiary attributable to third parties that may be included in an ADI's Tier 1 Capital at Level 2, which is in turn calculated as:

i. the percentage of all Tier 1 Capital of the subsidiary attributable to third parties; multiplied by

ii. the amount of Tier 1 Capital that is used to satisfy the ADI's Additional Tier 1 PCR and capital conservation buffer arising from exposures held by the subsidiary.

[32] Refer paragraphs 21(b) and 26 of APS 110.

[33] Refer paragraph 21(c) and 26 of APS 110.

Attachment D

Criteria for inclusion in Additional Tier 1 Capital

1. To qualify as Additional Tier 1 Capital, an instrument must satisfy the following minimum criteria:

   (a) only the paid-up amount of the instrument, irrevocably received by the issuer, is included as Additional Tier 1 Capital;

   (b) the instrument represents, prior to any conversion to Common Equity Tier 1 Capital (refer to Attachment E and Attachment I), the most subordinated claim in liquidation of the issuer after Common Equity Tier 1 Capital instruments[34];

   (c) the paid-in amount of the instrument, or any future payments related to the instrument, is neither secured nor covered by a guarantee of the issuer or related entity[35] or subject to any other arrangement that legally or economically enhances the seniority of the holder's claim. The instrument may not be secured or otherwise subject to netting or offset claims on behalf of the holder of the instrument;[36]

   (d) the principal amount of the instrument is perpetual (i.e. it has no maturity date);

   (e) the instrument contains no incentives to redeem. The issuer and any other member of a group to which the issuer belongs must not create an expectation at issuance that the instrument will be bought back, redeemed or cancelled. The contractual terms of the instrument must not provide any feature that might give rise to such an expectation. This precludes any step-up or equivalent provisions[37].

   (f) the instrument may only be callable at the initiative of the issuer and only after a minimum of five years from the date on which the issuer irrevocably receives the proceeds of payment for the instrument. The issuer:

      (i) must receive prior written approval from APRA to exercise a call option. For instruments issued by subsidiaries not regulated by APRA included in a Level 2 group, prior written approval from APRA must also be obtained;

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34 Where an issuer is a holding company, the subordination applicable must apply to all general creditors of the holding company.

35 Refer to footnote 28.

36 This would preclude any provision of support (including contribution of reserves) to any SPV used to issue capital instruments that form part of an ADI or Level 2 group's issue of Additional Tier 1 and Tier 2 Capital instruments.

37 Conversion from a fixed rate to a floating rate (or vice versa) in combination with a call option without any increase in the credit spread is not considered an incentive to redeem. However, the ADI must not otherwise do anything to create an expectation that the call will be exercised.

(ii) must not do anything that creates an expectation that a call will be exercised; and

(iii) must not exercise a call unless:

(A) the issuer, prior to or concurrent with the exercise of the call, replaces the instrument with a capital instrument of the same or better quality and the replacement of the instrument is done under conditions that are sustainable for the income capacity of the issuer; or

(B) the ADI meets the requirements relating to reductions in capital in APS 110.

An instrument may provide for multiple call dates after five years. However, the specification of multiple call dates must not act to create an expectation that the instrument will be redeemed upon the first call date;

(g) issuers must not assume, or create market expectations, that supervisory approval will be forthcoming for the issuer to redeem, call or purchase an instrument;

(h) an issuer must have:

(i) full discretion at all times to cancel or alter the timing of distributions/payments on the instrument. Any waived distributions are non-cumulative (i.e. are not required to be made up by the issuer at a later date);

(ii) cancellation of discretionary distributions/payment must not be an event of default. Holders of the instruments must have no right to apply for the winding-up or administration of the issuer, or cause a receiver, or receiver and manager, to be appointed in respect of the issuer on the grounds that the issuer fails to make, or is or may become unable to make, a distribution on the instruments;

(iii) issuers must have full access to cancelled distributions/payments to meet obligations as they fall due; and

(iv) cancellation of distributions/payments must not impose restrictions on the issuer, or any other member of the group to which the issuer belongs, except in relation to distributions on Common Equity Tier 1 Capital instruments;

(i) distributions on the instrument are paid out of distributable items (retained earnings included) of the issuer, and the instrument must not provide for payments to investors other than in the form of a cash payment. The level of distributions must not be tied or linked to the credit standing of the issuer, and must not be subject to a contractual cap, except to the extent of:

(i) the restrictions applied to payment of distributions established under APS 110; and

(ii) the issuer is unable to pay distributions that exceed the level of distributable items of the issuer;

(j) the instrument cannot have a credit sensitive distribution/payment feature (i.e. a distribution/payment that is based in whole or part on the credit standing of the issuer or the group or any other member of the group to which it belongs). However, an instrument may utilise a broad index as a reference rate for distribution or payments calculation purposes. Where an issuer is a reference entity in the determination of the reference rate, the reference rate must not exhibit any significant correlation with the issuer's credit standing. APRA will not allow inclusion of an instrument as part of Additional Tier 1 Capital where it considers that the reference rate is sensitive to the credit standing of the issuer;

(k) the instrument cannot contribute to liabilities exceeding assets if such a balance sheet test forms part of any national insolvency law applying in the jurisdiction of issue. In such cases, the issue documentation must specify that the insolvency law that applies is the place of incorporation of the issuer;

(l) where instruments are classified as liabilities under relevant accounting standards[38], they must comply with the loss absorption requirements in Attachment E;

(m) except where otherwise permitted in this Prudential Standard, the issuer or a related party[39] cannot have purchased the instrument, nor directly or indirectly funded the purchase of the instrument;

(n) the instrument has no features that hinder recapitalisation of the issuer, or any other members of the group to which the issuer belongs. This includes features that require the issuer to compensate investors if a new instrument is issued at a lower price during a specified timeframe;

(o) the instrument does not contain any terms, covenants or restrictions that could inhibit the issuer's ability to be managed in a sound and prudent manner, particularly in times of financial difficulty, or restrict APRA's ability to resolve any problems encountered by the issuer;

(p) where an issue of an instrument involves the use of an SPV, the issue of the instrument is subject to Attachment H;

(q) the instrument includes provisions addressing loss absorbency at the point of non-viability as required by Attachment I;

(r) the instrument is clearly and separately disclosed in the issuer's financial statements and, at Level 2, in any consolidated financial statements; and

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38 Refer to footnote 27.

39 Refer to footnote 28.

(s) issue documentation clearly indicates:

(i) the subordinated nature of the instrument and that the exercise of any contractual rights of set-off between the instrument and any claims by the issuer on the holders of the instrument is precluded;

(ii) the application of provisions relating to loss absorption where required under Attachment E;

(iii) if relevant; the application of requirements for loss absorbency at the point of non-viability under Attachment I; and

(iv) where the instrument is classified for accounting purposes as a liability, it does not represent a deposit liability of an issuing ADI.

2. In accordance with paragraph (1(h) above, failure to make a distribution or payment must not trigger any restrictions on the issuer other than its ability to pay a distribution on Common Equity Tier 1 Capital instruments or to redeem such instruments. Such 'stopper' provisions must not:

(a) impede the full discretion of the issuer at all times to cancel distributions/payments on the instrument or act in a way that could hinder the recapitalisation of the issuer;

(b) prevent payment on another instrument where such payment was not fully discretionary;

(c) prevent distribution to holders of Common Equity Tier 1 Capital instruments for a period that extends beyond the point in time the distributions/payments on the Additional Tier 1 Capital instruments are resumed; or

(d) impede the normal operation of the issuer or any restructuring activity (including acquisitions or disposals).

A 'stopper' provision may, however, act to prohibit actions that are equivalent to payment of dividend or interest, such as an ADI undertaking discretionary buybacks of ordinary shares or Additional Tier 1 Capital instruments.

3. An instrument must not include any provision that permits an optional distribution or payment to be made. Any structuring of a distribution or payment as a bonus payment to make up for unpaid distributions or payments is also prohibited.

4. An incentive or expectation to call or otherwise redeem an Additional Tier 1 Capital instrument includes, but is not limited to:

(a) a call option combined with a requirement, or an investor option, to convert the instrument into ordinary shares if the call is not exercised; or

(b) a call option combined with a change in reference rate where the credit spread over the second reference rate is greater than the initial reference rate less the swap rate (i.e. the fixed rate paid to the call date to receive the second reference rate).

5. A call option and a provision to convert into ordinary shares will not constitute an incentive to redeem provided there is at least two years between the date upon which conversion may be exercised and the nearest date upon which the ADI may have an option to call the instrument.

6. Calling an instrument and replacing it with an instrument with a higher credit spread or that is otherwise more expensive will constitute an incentive to redeem on other outstanding Additional Tier 1 instruments with call options, unless the issuer can satisfy APRA as to the economic and prudential rationale and that such an action will not create an expectation that other instruments will be called in similar circumstances.

7. An instrument may only provide for a call within the first five years of issuance as a result of a tax or regulatory event. APRA will not permit such a call if it forms the view that the ADI was in a position to anticipate the taxation or regulatory event when the instrument was issued.

8. Where an instrument is drawn down in a series of tranches, it must meet the requirements in this Prudential Standard as if each tranche is a separate Additional Tier 1 Capital instrument in its own right.

9. There must be no cross-default clauses in the documentation of any debt or other capital instrument of the issuer linking the issuer's obligations under the instrument to default by the issuer under any of its other obligations, or default by another party, related or otherwise.

10. The instrument must be marketed in accordance with its prudential treatment and must not include any 'repackaging' arrangements that have the effect of compromising the permanency of the capital raised. If a prospectus or other offer documentation, or marketing of the instrument could be reasonably held to suggest to investors that the instrument has attributes of a lower level of capital than claimed by the issuer (or Level 2 group) for prudential purposes then the instrument will be ineligible to be included as part of the ADI's Additional Tier 1 or Tier 2 Capital.

11. Where the instrument is subject to the laws of a jurisdiction other than Australia or its territories, the ADI must also ensure that:

    (a) the instrument satisfies all relevant qualifying criteria for Additional Tier 1 Capital under the laws of that jurisdiction; and

    (b) any conversions or write-offs required in this Prudential Standard are capable of being implemented under the laws of that jurisdiction.

12. APRA may require the ADI to provide an independent expert opinion, addressed to APRA by a firm or practitioner of APRA's choice and at the ADI's expense, confirming that the instrument meets these requirements.

Attachment E

Loss absorption requirements: Additional Tier 1 Capital

1. An Additional Tier 1 Capital instrument classified as liabilities under Australian Accounting Standards must include a provision whereby it will be immediately and irrevocably:

   (a) converted into the ordinary shares of the ADI or its parent entity, which must be **listed** at the time the instrument is issued; or

   (b) written off;

   when the issuing ADI's Level 1 or Level 2 Common Equity Tier 1 Capital ratio falls to below 5.125 per cent of total risk-weighted assets (the loss absorption trigger point).

2. To qualify as eligible Additional Tier 1 Capital at Level 2, an instrument issued by an ADI or a fully consolidated subsidiary of a Level 2 group must provide for conversion or write-off of the instrument upon the Level 2 group reaching the loss absorption trigger point. An instrument may also provide for conversion or write-off should a host regulatory authority of an issuing subsidiary determine a loss absorption event in respect of the subsidiary.

3. The amount of an Additional Tier 1 Capital instrument that may be recognised in the ADI's Tier 1 and Total Capital is the minimum level of Common Equity Tier 1 Capital that would be generated by a full conversion or write-off of the instrument and must account for potential taxation liabilities or other potential offsets at the time of issuance. Adjustments must be updated over time to reflect the best estimates of the offset value.

4. Where an ADI's Level 1 or Level 2 Common Equity Tier 1 Capital reaches the loss absorption trigger point, the aggregate amount of Additional Tier 1 Capital outstanding to be converted or written down must be sufficient to return Common Equity Tier 1 Capital ratio of the ADI and Level 2 group to above 5.125 per cent of total risk-weighted assets, if possible.

5. Conversion or write-off must generate an unequivocal addition to Common Equity Tier 1 Capital under Australian Accounting Standards (or other relevant accounting standards applying to members of the Level 2 group).

6. Where an Additional Tier 1 Capital instrument provides for conversion into ordinary shares, the ADI must ensure that, at the time of issue and on a continuing basis, there are no legal or other impediments to issuing the relevant number of shares and all necessary authorisations have been obtained to effect conversion. Failure to satisfy these requirements will cause the instruments to cease to be eligible for inclusion in Additional Tier 1 Capital.

7. Where, following a trigger event, conversion of an Additional Tier 1 Capital instrument:

   (a) is not capable of being undertaken;

(b) is not irrevocable; and

(a) will not result in an immediate and unequivocal increase in Common Equity Tier 1 Capital of the ADI;

the amount of the instrument must immediately and irrevocably be written-down in the accounts and result in an unequivocal addition to Common Equity Tier 1 Capital.

8. Where an Additional Tier 1 Capital instrument provides for conversion into ordinary shares when the loss absorption trigger point is breached, the issue documentation must:

(c) specify the number of ordinary shares to be received upon conversion, or specify the conversion formula for determining the number of ordinary shares received;

(d) provide for the number of ordinary shares to be received under the formula specified in (a) to be fixed; and

(e) set the maximum number of ordinary shares received so as not to exceed the price of the Additional Tier 1 Capital instrument at the time of issue divided by 20 per cent of the ADI's[40] ordinary share price at that same time. In calculating the ordinary share price at time of issue, adjustments may be made for subsequent ordinary share splits and bonus issues.

9. In issuing Additional Tier 1 Capital instruments an ADI may, within each category of capital:

(a) differentiate between instruments as to whether an instrument is required to convert or be written-off in the first instance;

(b) provide for a ranking under which Additional Tier 1 Capital instruments will be converted or written off; and

(c) where a conversion or write-off of capital instruments is required at Level 2, the Level 2 group may provide for a ranking under which Additional Tier 1 Capital instruments issued by individual members of the group may need to be converted or written-off. This would be subject to any requirements for conversion or write-off of Additional Tier 1 Capital instruments required to be undertaken on a Level 1 basis.

10. Where issue documentation provides for a hierarchy of conversion or write-off, the terms attached to such a hierarchy must not impede the ability of the capital instrument to be immediately converted or be written-off as required.

11. For the purposes of conversion or write-off of an Additional Tier 1 Capital instrument, the amount to be converted or written off will be the face value of the instrument recorded in the books of the ADI or subsidiary, where relevant.

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[40] Reference to ADI captures any entity whose ordinary shares are issued as a result of conversion provisions.

13. Where an Additional Tier 1 Capital instrument provides for a write-off mechanism, this mechanism must be structured so that:

(a) the claim of the instrument on liquidation of the issuer is reduced to, or below, the value of the written-off instrument;

(b) the amount of the instrument that may be paid if a call is exercised is irrevocably reduced to the written-off amount of the instrument;

(c) there is an immediate and unequivocal addition to the Common Equity Tier 1 Capital of the ADI; and

(d) the distribution/payments payable on the instrument must be permanently reduced (i.e. distributions/payments must be calculated at no more than the rate set for the written off value of the instrument).

12. The contractual terms and conditions of an instrument must not provide for any residual claims on the issuer that are senior to ordinary shares of the ADI, or the listed parent entity, in the event that a trigger point is reached and a conversion or write off is undertaken.

Attachment F

Additional Tier 1 Capital: Stapled security structure

1. A stapled security structure consisting of the issue of a preference share and a stapled instrument of another form may be included in Additional Tier 1 Capital for both Level 1 and Level 2, subject to satisfying the following additional minimum criteria:

   (b) the preference share is issued directly by an ADI and is 'stapled' to securities issued directly by an overseas branch of the ADI. The stapled structure must not involve use of SPVs and must be simple and transparent;

   (c) either or both of the preference share and the security to which it is stapled must be fully paid-up. Any partly paid preference share or stapled security is eligible only to the extent that it has been paid-up;

   (d) the preference share and the instrument to which it is stapled must each individually satisfy the criteria in this Prudential Standard for an Additional Tier 1 Capital instrument;

   (e) the terms and conditions of the stapled security must substantially mirror those of the preference share such that the stapled security operates effectively as if it was a preference share;

   (f) the preference share and the instrument to which it is stapled must not be traded separately and are to remain stapled together until an 'unstapling event' occurs;

   (g) 'unstapling' at the option of the issuer is permitted. The instrument documentation must clearly stipulate the events that will cause the preference share to be 'unstapled' resulting in the stapled security being extinguished, leaving the holder of the stapled security holding the preference share instead. Unstapling must take place if:

      (i) a loss absorption trigger point is reached in accordance with Attachment E;

      (ii) a non-viability trigger event occurs in accordance with Attachment I;

      (iii) proceedings for the liquidation of the ADI have commenced;

      (iv) APRA issues a recapitalisation direction to the ADI in accordance with sub-section 13E(1) of the Banking Act; or

      (v) APRA appoints a statutory manager to the ADI pursuant to sub-section 13A(1) of the Banking Act;

   (h) to reduce the inherent legal risk associated with unstapling of the structure, the issue documentation must ensure the clarity, consistency and certainty with which the contractual terms and conditions are specified, and specifically that:

(i) all entities involved in the stapled structure have the capacity and power to issue the instruments and perform obligations under them;

(ii) the rights and obligations created by the preference share and the stapled security are legally valid, binding and enforceable on all parties in all jurisdictions where they are issued;

(iii) the stapled security will be extinguished and holders of the stapled security will hold the underlying preference share upon the occurrence of an unstapling event; and

(iv) the 'unstapling' mechanism will take effect as contemplated in the issue documentation even if the ADI or another entity has become, or is likely to become, insolvent, including where it is in administration, receivership, winding up or where a statutory manager has been appointed under the Banking Act.

Where necessary, APRA may require an ADI to obtain independent legal opinion confirming the above; and

(i) adequate internal policies and controls must be in place such that the unstapling procedures are correctly followed.

2. A preference share and instrument to which it is stapled must be issued by the same issuer but they need not be issued in the same jurisdiction.

Attachment G

Tier 2 Capital

1. To qualify as Tier 2 Capital, an instrument must satisfy the following minimum criteria:

   (a) only the paid-up amount of the instrument, irrevocably received by the issuer, is included in Tier 2 Capital;

   (b) the instrument represents, prior to any conversion to Common Equity Tier 1 Capital (refer to Attachment I), the most subordinated claim in liquidation of the issuer after Common Equity Tier 1 Capital instruments and Additional Tier 1 Capital instruments;[41]

   (c) the paid-in amount of the instrument, or any future payments related to the instrument, is neither secured nor covered by a guarantee of the issuer or related entity[42] or subject to any other arrangement that legally or economically enhances the seniority of the claim. The instrument may not be secured or otherwise subject to netting or offset of claims on behalf of the holder of the instrument;

   (d) the principal amount of the instrument:

      (i) has a minimum maturity of at least five years; and

      (ii) is only recognised as part of Tier 2 Capital (and so in Total Capital) in the five years prior to maturity on a straight-line amortised basis (refer to paragraph 2 of this Attachment);

   (e) the instrument contains no incentives to redeem. The issuer and any other member of a group to which the issuer belongs must not create an expectation at issuance that the instrument will be bought back, redeemed or cancelled before its contractual maturity. The contractual terms of the instrument must not provide any feature that might give rise to such an expectation. This precludes any step-up or equivalent provisions[43].

   (f) a call option and a provision to convert into ordinary shares included in an instrument will not constitute an incentive to redeem provided there is at least two years between the date on which conversion may be exercised and the nearest date on which the ADI can call the instrument.;

   (g) the instrument may only be callable at the initiative of the issuer and only after five years from issuance. The issuer:

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41 Where an issuer is a holding company the subordination applicable must apply to all general creditors of the holding company.

42 A related entity can include a parent company, a sister company, a subsidiary or any other affiliate. A holding company is a related entity irrespective of whether it forms part of the consolidated banking group.

43 Conversion from a fixed rate to a floating rate (or vice versa) in combination with a call option without any increase in the credit spread is not considered an incentive to redeem. However, the ADI must not otherwise do anything to create an expectation that the call will be exercised.

(i) must receive prior written approval from APRA to exercise a call option;

(ii) must not do anything that creates an expectation that a call will be exercised; and

(iii) must not exercise a call unless:

(A) the issuer, prior to or concurrent with the exercise of the call, replaces the instrument with a capital instrument of the same or better quality, and the replacement of the instrument is done at conditions that are sustainable for the income capacity of the issuer; or

(B) the ADI meets the requirements relating to reductions in capital in APS 110.

An instrument may provide for multiple call dates after five years. However, the specification of multiple call dates must not act to create an expectation that the instrument will be redeemed upon the first call date;

(h) issuers must not assume, or create market expectations, that supervisory approval will be forthcoming for the issuer to redeem, call or purchase an instrument;

(i) the instrument must confer no rights on holders to accelerate the repayment of future scheduled payments (coupon or principal) except in bankruptcy and liquidation. Wind-up of the ADI must be irrevocable (that is, either by way of a court order or an effective resolution by shareholders or members). The making of an application to wind-up or the appointment of a receiver, administrator, or official with similar powers, including the exercise of APRA's powers under section 13A(1) of the Banking Act, are not sufficient to accelerate repayment of the instrument;

(j) the instrument must not provide for payment to investors other than in the form of a cash payment;

(k) the instrument cannot have a credit sensitive distribution/payment feature (i.e. a distribution/payment that is based in whole or part on the credit standing of the issuer or the group or any other member of the group to which it belongs). However, an instrument may utilise a broad index as a reference rate for distribution or payments calculation purposes. Where an issuer is a reference entity in the determination of the reference rate, the reference rate must not exhibit any significant correlation with the issuer's credit standing. APRA will not allow inclusion of an instrument as part of Tier 2 Capital where it considers that the reference rate is sensitive to the credit standing of the issuer;

(l) except where otherwise permitted in this Prudential Standard, the issuer or a related party over which the issuer or a parent entity of the issuer exercises control or significant influence cannot have purchased the instrument or directly or indirectly funded the purchase of the instrument;

(m) the instrument has no features that hinder recapitalisation of the issuer, or any other members of the group to which the issuer belongs. This includes features that require the issuer to compensate investors if a new instrument is issued at a lower price during a specified timeframe;

(n) the instrument does not contain any terms, covenants or restrictions that could inhibit the issuer's ability to be managed in a sound and prudent manner, particularly in times of financial difficulty, or restrict APRA's ability to resolve any problems encountered by the issuer;

(o) where an issue of an instrument involves the use of an SPV, the issue of the instrument is subject to Attachment H;

(p) the instrument is clearly and separately disclosed in the issuer's financial statements and, at Level 2, in any consolidated financial statements;

(q) the instrument includes provisions addressing loss absorption at the point of non-viability in accordance with Attachment I;

(r) issue documentation clearly indicates:

    (i) the subordinated nature of the instrument, and the exercise of any contractual rights of set-off between the instrument and any claims by the issuer on the holders of the instrument is precluded;

    (ii) the application of provisions relating to loss absorption at the point of non-viability under Attachment I; and

    (iii) the instrument does not represent a deposit liability of an issuing ADI.

2. The amount of the instrument eligible for inclusion in Tier 2 Capital is to be amortised on a straight-line basis at a rate of 20 per cent per annum over the last four years to maturity as follows:

Years to Maturity	**Amount Eligible for Inclusion in Tier 2 Capital**
More than 4	100 per cent
Less than and including 4 but more than 3	80 per cent
Less than and including 3 but more than 2	60 per cent
Less than and including 2 but more than 1	40 per cent
Less than and including 1	20 per cent

3. Where an instrument is drawn down in a series of tranches, it must meet the requirements in this Prudential Standard as if each tranche is a separate Tier 2 Capital instrument in its own right and the minimum original maturity of each tranche must be five years from the time proceeds of the issue are irrevocably received by the issuer.

4. An instrument may only provide for a call within the first five years of issuance as a result of a tax or regulatory event. APRA will not permit such a call if it forms the view that the ADI was in a position to anticipate the taxation or regulatory event when the instrument was issued.

5. The rate of dividend or interest on the instrument, or the formulae for calculating dividend or interest payments, must be predetermined and set out in the issue documentation.

6. Where an issuer defaults under the terms of the instrument, remedies available to the holders must be limited to actions for specific performance, recovery of amounts currently outstanding or the winding-up of the issuer. The amounts that may be claimed in the event that the issuer defaults may include any accrued unpaid dividends and interest, including payment of market interest on these unpaid amounts. All such unpaid dividends and interest must be subordinated to the claims of depositors and other creditors of the issuer.

7. There must be no cross-default clauses in the documentation of any debt or other capital instrument of the issuer linking the issuer's obligations under the instrument to default by the issuer under any of its other obligations, or default by another party, related or otherwise.

8. The instrument must be marketed in accordance with its prudential treatment and must not include any 'repackaging' arrangements that have the effect of compromising the permanency of the capital raised. If a prospectus or other offer documentation or marketing of the instrument could be reasonably held to suggest to investors that the instrument has attributes of a lower level of capital than claimed for prudential purposes, the instrument is ineligible to be included in the ADI's Tier 2 Capital.

9. Where the instrument is subject to the laws of a jurisdiction other than Australia or its territories, the ADI must also ensure that:

   (a) the instrument satisfies all relevant qualifying criteria for Tier 2 Capital under the laws of that jurisdiction; and

   (b) any conversions or write-offs required in this Prudential Standard are capable of being implemented under the laws of that jurisdiction.

   APRA may require the ADI to provide an independent expert opinion, addressed to APRA by a firm or practitioner of APRA's choice and at the ADI's expense, confirming that the instrument meets these requirements.

Attachment H

Criteria for capital issues involving special purpose vehicles

1. In order for capital instruments issued through an SPV to qualify as regulatory capital, the following requirements must be fully satisfied:

   (a) the SPV issuing the instrument is a single purpose non-operating entity established for the sole purpose of raising capital for the ADI[44] and the SPV would, in accordance with Australian Accounting Standards, be fully consolidated in the Level 2 group;

   (b) the capital instruments issued by the ADI to the SPV, and the capital instruments issued by the SPV to investors, must meet the requirements of this Prudential Standard for Additional Tier 1 and Tier 2 Capital set out in Attachment D and Attachment G of this Prudential Standard, as appropriate;

   (c) the capital instruments issued by the SPV have not been funded, directly or indirectly, by the ADI or any other member of a group to which the ADI belongs. Similarly, the ADI or other member of a group to which it belongs may not provide any funding to the SPV itself, other than to cover administrative expenses associated with the operation of the SPV;

   (d) the only asset[45] of the SPV is its investment in capital instruments issued by the ADI associated with the SPV. The SPV has no other material liabilities outside of the capital instruments which it issues;

   (e) the instruments issued by the ADI to the SPV, and by the SPV to third party investors, must be of the same category of regulatory capital (e.g. both Additional Tier 1 Capital instruments, or both Tier 2 Capital instruments). Tier 2 Capital instruments issued by the ADI to the SPV and by the SPV to investors must have the same maturity. The terms and conditions of the instrument issued by the ADI to the SPV must be substantially mirrored in the terms and conditions of the instrument issued by the SPV to investors;

   (f) the proceeds from the issue of the capital instrument by the SPV must be immediately and directly invested in and available without limitation to the ADI.

   (g) where a loss absorption trigger point is reached (Attachment E) or a non-viability trigger event occurs (Attachment I), the instruments issued to the SPV, and by the SPV to investors, must be subject to a write-off or conversion into listed ordinary shares in accordance with the requirements in those Attachments. In such circumstances, investors in instruments

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[44] In this Attachment reference to an ADI includes a standalone ADI, a ultimate holding company or an operating subsidiary included n the Level 2 group.

[45] Assets that relate to the operation of the SPV may be excluded from this assessment if they are *de minimis*.

issued by the SPV irrevocably cease to have any claims on the SPV or the ADI;

(h) where capital instruments issued by an SPV are converted into ordinary shares of the ADI or ultimate holding company, such conversions are subject to the requirements (including limits) covering conversion set out in Attachments D, E, G and I;

(i) the main features of the instrument issued by the SPV and the structure of the issue are transparent and capable of being understood by investors. An issue is not eligible for inclusion in an ADI's Additional Tier 1 Capital or Tier 2 Capital, at Level 1 or Level 2, where the complexity of its structure raises doubt over the legal and regulatory risk associated with it.

2. An SPV may be established to issue tranches of one instrument where the only change in the terms and conditions of the tranches is a variation in distribution or payments to be made on the instrument. An SPV may not issue different forms of an instrument even if they belong to the same category of capital instruments.

3. The amount of capital issued by consolidated subsidiaries to third parties through an SPV that may be included in Tier 1 Capital or Total Capital is to be determined in accordance with Attachment C of this Prudential Standard.

Attachment I

Loss absorbency at the point of non-viability: Additional Tier 1 and Tier 2 Capital instruments

1. An Additional Tier 1 Capital or Tier 2 Capital, instrument must include a provision under which, on the occurrence of a non-viability trigger event (as defined in paragraphs 3 and 4 of this Attachment), it will be immediately and irrevocably:

   (a) converted into the ordinary shares of the ADI or its parent entity, which must be listed at the time the instrument is issued; or

   (b) written off.

2. The amount of an instrument that may be recognised in the ADI's Tier 1 and Total Capital on the occurrence of a non-viability trigger event is the minimum level of Common Equity Tier 1 Capital that would be generated by a full conversion or write-off of the instrument and must account for potential taxation liabilities or other potential offsets at the time of issuance. Adjustments must be updated over time to reflect the best estimates of the offset value.

3. A non-viability trigger event in relation to an ADI is the earlier of:

   (a) the issuance of a notice in writing by APRA to the ADI that conversion or write-off of capital instruments is necessary because, without it, APRA considers that the ADI would become non-viable; or

   (b) a determination by APRA, notified to the ADI in writing, that without a public sector injection of capital, or equivalent support, the ADI would become non-viable.

4. A non-viability trigger event in relation to a fully consolidated subsidiary of an ADI is the earlier of:

   (a) the issuance of a notice by an host regulator of an overseas subsidiary that conversion or write-off of capital instruments is necessary because, without it, the host regulator considers that the subsidiary would become non-viable;

   (b) a determination by the host regulator, that without a public sector injection of capital, or equivalent support, the overseas subsidiary would become non-viable; or

   (c) a non-viability loss absorption event occurs in relation to a parent ADI in accordance with paragraph 3.

5. A non-viability trigger event in relation to a locally incorporated subsidiary ADI of a foreign bank is the earlier of:

   (a) the issuance of a notice by the home regulator of the foreign bank to the foreign bank that conversion or write-off of capital instruments is necessary because, without it, the foreign bank or its subsidiary ADI would become non-viable;

(b) a determination by the home regulator of the foreign bank, that without a public sector injection of capital, or equivalent support, the foreign bank or its subsidiary ADI would become non-viable.

6. Conversion or write off need only occur to the extent necessary to enable APRA to conclude that the ADI is viable without further conversion or write-off. In such circumstances, conversion or write-off would need to fully exhaust Additional Tier 1 Capital instruments before involving Tier 2 Capital instruments.

7. The amount of conversion or write off of capital instruments undertaken in accordance with this Attachment will be subject to the requirements applied by the relevant regulator.

8. An ADI may provide for Additional Tier 1 Capital instruments to be converted or written-off prior to any conversion or write-off of Tier 2 Capital instruments. In these circumstances, conversion or write-off of Tier 2 Capital instruments will only be necessary to the extent that conversion of Additional Tier 1 Capital instruments has not resulted in APRA withdrawing the notice issued to the ADI under paragraph 3 of this Attachment.

9. In the event that an ADI's Level 1 or Level 2 Common Equity Tier 1 Capital breaches the non-viability trigger point, the aggregate amount of Additional Tier 1 Capital and Tier 1 Capital outstanding that must be converted or written off, at a minimum, is an amount that would return the Common Equity Tier 1 Capital ratio of the ADI and Level 2 group to a level so that it no longer breaches the non-viability triggers. Issue documentation may, however, provide for a greater level of conversion or write-off than is necessary to achieve this.

12. Conversion or write-off must generate an unequivocal addition to Common Equity Tier 1 Capital under Australian Accounting Standards and other relevant accounting standards in relation to members of the Level 2 group.

14. Where an Additional Tier 1 or Tier 2 Capital instrument provides for conversion into ordinary shares, the ADI must ensure that:

(a) at the time of issue, there are no legal or other impediments to issuing the relevant number of shares and all necessary authorisations have been obtained to effect conversion; and

(b) on a continuing basis, all necessary authorisations for the required conversions are maintained.

15. Where, following a trigger event, conversion of a capital instrument:

(a) is not capable of being undertaken;

(b) is not irrevocable; or

(c) will not result in an immediate and unequivocal increase in Common Equity Tier 1 Capital of the ADI,

the amount of the instrument must immediately and irrevocably be written-off in the accounts of the ADI and result in an unequivocal addition to Common Equity Tier 1 Capital.

16. Where an Additional Tier 1 or Tier 2 Capital instrument provides for conversion into ordinary shares when the non-viability trigger point is breached, the issue documentation must:

(a) specify the number of ordinary shares to be received upon conversion, or specify the conversion formula for determining the number of ordinary shares received;

(b) provide for the number of ordinary shares to be received under the formula specified in (a) to be fixed; and

(c) set the maximum number of ordinary shares received so as not to exceed the price of the Additional Tier 1 or Tier 2 Capital instrument at the time of its issue divided by 20 per cent of the ADI's[46] ordinary share price at the same time. In calculating the ordinary share price at time of issue, adjustments may be made for subsequent ordinary share splits and bonus issues.

17. Where issue documentation provides for a hierarchy of conversion or write-off, the terms attached to such a hierarchy must not impede the ability of the capital instrument to be immediately converted or written-off as required.

18. Issuing Additional Tier 1 or Tier 2 Capital instruments may, within each category of capital:

(a) differentiate between instruments as to whether an instrument is required to convert or be written-off in the first instance;

(b) provide for a ranking under which Additional Tier 1 and Tier 2 Capital instruments will be converted or written off; and

(c) where a conversion or write-off of capital instruments is required at Level 2, the Level 2 group may provide for a ranking under which capital Additional Tier 1 and Tier 2 Capital instruments issued by individual members of the group may need to be converted or written-off. This would be subject to any requirements for conversion or write-off of capital instruments required to be undertaken on a Level 1 basis.

19. For the purposes of conversion or write-off of an Additional Tier 1 or Tier 2 Capital instrument, the amount to be converted or written off will be the face value of the instrument recorded in the books of the ADI or subsidiary, where relevant.

[46] Reference to ADI captures any entity whose ordinary shares are issued as a result of conversion provisions.

20. Where an Additional Tier 1 or Tier 2 Capital instrument provides for a write-off mechanism, this mechanism must be structured so that:

(a) the claim of the instrument on liquidation of the issuer is reduced to, or below, the value of the written-off instrument;

(b) the amount of the instrument that may be paid if a call is exercised is irrevocably reduced to the written-off amount of the instrument;

(c) there is an immediate and unequivocal addition to the Common Equity Tier 1 Capital of the ADI; and

(d) the distribution/payments payable on the instrument must be permanently reduced (i.e. distributions/payments must be calculated at no more than the rate set for the written off value of the instrument).

21. The contractual terms and conditions of the issue of an instrument must not provide for any residual claims on the issuer that are senior to ordinary shares of the ADI, or the listed parent entity, in the event that a trigger point is reached and a conversion or write off is undertaken.

Attachment J

Adjustments to regulatory capital

Deferred tax assets and deferred tax liabilities

1. An ADI must deduct from its Common Equity Tier 1 Capital the net amount of its:

   (a) deferred tax assets; less

   (b) deferred tax liabilities.

   An ADI must net these items on a consistent basis for the purposes of this Prudential Standard. In the event that deferred tax liabilities exceed the amount of deferred tax assets, the excess cannot be added to Common Equity Tier 1 Capital (i.e. the net deduction is zero).

2. Netting of deferred tax assets and deferred tax liabilities must only be applied where:

   (a) an ADI or member of a group that the ADI heads has a legally enforceable right to set-off current tax assets against current tax liabilities where they relate to income taxes levied by the same taxation authority and the taxation authority permits the ADI or group members to make or receive a single net payment; and

   (b) the deferred tax assets and deferred tax liabilities relate to income taxes levied by the same authority on either:

      (i) the same taxable member of a group; or

      (ii) different taxable members of a group for which group policies and procedures have been established that provide for the relevant group members to settle current tax assets and liabilities on a net basis, or to realise the assets and liabilities simultaneously, in each future period in which significant amounts of deferred tax assets or liabilities are to be settled or recovered; and

      (iii) for direct or indirect subsidiaries of the ADI incorporated outside Australia for which:

         (A) it is claimed current tax assets and liabilities will be settled on a net basis; and

         (B) netting may have a material impact on any amount of deferred tax assets, an ADI may be required to deduct from its capital;

      the group headed by the ADI must have written opinions from relevant external auditors and legal advisors that the relevant tax authorities allow, or would allow, netting of deferred tax assets and deferred tax liabilities. An ADI must provide relevant written auditor or legal opinions to APRA, if requested.

3. An ADI must:

   (a) have procedures in place to monitor changes in relevant laws and taxation practices that may affect the written opinions it is required to obtain covering netting of deferred tax assets and deferred tax liabilities; and

   (b) ensure that the written opinions are updated in the event of changes in laws or taxation practices overseas that could materially impact on overseas taxation authorities continuing to allow netting of deferred tax assets and deferred tax liabilities.

4. Where deferred tax liabilities exceed deferred tax assets, the excess of deferred liabilities must not be included in Common Equity Tier 1 Capital.

Equity holdings and other capital support

5. Equity holdings include:

   (a) equity exposures (as defined in paragraphs 47 to 50 of APS 113) and, in the case of an APRA-regulated institution or an overseas equivalent, holdings of debt instruments issued by the entity or other facilities that qualify as regulatory capital. Investments include indirect holdings such as holdings of units in a trust; and

   (b) equity exposures including any portion of current year earnings or retained earnings that represents any amount deriving from the ADI's share of undistributed profit or loss in an associate under equity accounting that is reflected in the value of equity investments in associates.

6. For the purposes of this Prudential Standard, the amount of equity exposures (as defined in paragraphs 47 to 50 of APS 113) and any other capital support that must be deducted from capital is the book value of the equity exposure or other capital support, including any amount by which they have been revalued. Any intangible component (particularly goodwill) included in the valuation of equity exposures or other capital support must be deducted from Common Equity Tier 1 Capital. In the case of equity, or other capital support provided to a subsidiary, this would be calculated as the excess of the book value over the net tangible assets of the subsidiary.

7. Where any equity holdings and other capital support in non-consolidated subsidiaries, including minority interests, have been incorporated for accounting purposes into the ADI's consolidated group accounts, the consolidation of these entities must, unless the value of such equity holdings and capital support is otherwise required to be deducted from Common Equity Tier 1 Capital under this Prudential Standard, be reversed prior to the calculation of risk-based capital ratios at Level 2; that is, any retained earnings, other reserves or minority interests of these entities included in Common Equity Tier 1 Capital, and any

other items impacting on any other Level 2 category of capital as a result of the accounting consolidation, must be removed from that category for capital adequacy purposes. Goodwill and any other intangible component of the investments in non-consolidated subsidiaries must be deducted from the ADI's Common Equity Tier 1 Capital at Level 2.

8. In considering whether a facility, including a guarantee, provided to a related party constitutes capital support, APRA will have regard to, amongst other things, whether:

   (a) the facility represents a recognised capital instrument or is otherwise accepted as standing in place of capital required to be held by a related entity; or

   (b) the provider of the facility, in terms of either repayment or maturity, ranks below other senior unsecured or unsubordinated creditors; or

   (c) the facility is provided by an ADI or other member of a Level 2 group and the funding provided flows through one member of the group (including any SPV) to another member of the group and the funding received by the second entity meets either (a) or (b).

9. In considering whether a facility (including a guarantee) provided to an unrelated party[47] represents capital support, APRA will have regard to, amongst other things, whether:

   (a) the facility represents a recognised capital instrument or is otherwise accepted as standing in place of capital required to be held by the entity; or

   (b) the provider of the facility is subordinated to other creditors, and the facility is not otherwise captured by provisions in APS 112 or APS 113 that consider the level of subordination in determining capital requirements for such facilities.

10. In the event that a facility covered in paragraphs 8 or 9 represents a form of capital support, it must be considered for the purposes of this Prudential Standard to form part of an ADI's equity holdings. In the event that such investments are not deducted from Common Equity Tier 1 Capital, they must be risk-weighted at 400 per cent.

Holdings of own capital instruments

11. For the purposes of this Prudential Standard, an ADI or member of a group headed by an ADI may, as a result of membership of a dealer panel, trading or other activities agreed with APRA, undertake limited purchases of its own Common Equity Tier 1 Capital instruments, Additional Tier 1 Capital instruments and Tier 2 Capital instruments or capital instruments issued by

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47 This does not apply to guarantees provided to non-related Registrable Superannuation Entities (RSEs) or RSE licensees.

other members of the Level 2 group to which it belongs. Such purchases are subject to a limit as agreed with APRA, and the amount equal to the limit (or alternatively any actual holdings plus unused limit) must be deducted from Common Equity Tier 1 Capital, Additional Tier 1 Capital and Tier 2 Capital as appropriate, both at Level 1 and Level 2. This requirement does not apply to holdings of capital instruments by members of a group on behalf of third parties.

Capitalised expenses

12. Intangible assets include capitalised expenses and capitalised transaction costs. These expenses must be deducted from Common Equity Tier 1 Capital at both Level 1 and Level 2, and include:

    (a) loan/lease origination/broker fees and commissions that are capitalised as an asset which are to be set off against the balance of upfront loan/lease fees associated with the lending portfolios that are treated as deferred income and recognised as a liability. The positive balance of the net loan/lease origination fees and commissions must be deducted from Common Equity Tier 1 Capital. A negative balance may be added to Common Equity Tier 1 Capital provided the net deferred income satisfies the criteria in this Prudential Standard. Otherwise, a negative balance must not be added to capital;

    (b) costs associated with debt raisings and other similar transaction-related costs that are capitalised as an asset;

    (c) costs associated with issuing capital instruments if not already charged to profit and loss;

    (d) capitalised information technology software costs;

    (e) start-up and other establishment costs of a securitisation that are capitalised as an asset, and are to be set-off against the balance of fee income relating to securitisation schemes recognised and deferred as a liability. Any positive net balance must be deducted from Common Equity Tier 1 Capital (refer to APS 120). Any up-front fee income received in excess of the capitalised securitisation establishment cost may be added to Common Equity Tier 1 Capital provided it meets the criteria in this Prudential Standard; and

    (f) other capitalised expenses including capitalised expenses of a general nature such as strategic business development initiatives. These also include, in addition to the above listed items, other forms of transaction costs and like costs that are required to be deferred/capitalised and amortised as part of the measurement of assets and liabilities under Australian Accounting Standards.

13. The balance of any transaction costs and like items that are capitalised and deferred as an asset must be netted off against the balance of any income deferred as a liability relating to the products giving rise to the capitalised transaction costs (i.e. only deferred costs and income in particular product

portfolios may be netted). Any positive net balance of capitalised transaction costs must be deducted from Common Equity Tier 1 Capital in accordance with this Prudential Standard. Any surplus of up-front fee income received over deferred costs may be added to Common Equity Tier 1 Capital provided the up-front fee income received satisfies the criteria set in this Prudential Standard. Otherwise, up-front fee income received must not be added to capital.

Surpluses on employer-sponsored defined benefit superannuation funds

14. An ADI must deduct from Common Equity Tier 1 Capital any surplus in an ADI (or member of the ADI's group) employer-sponsored defined benefit superannuation fund unless it has already been excluded from Common Equity Tier 1 Capital or unless otherwise agreed with APRA. An ADI may make representations to APRA to include a surplus as an asset for capital adequacy purposes where the ADI (or member of the ADI's group) employer-sponsor is able to demonstrate unrestricted and unfettered access to a fund surplus in a timely manner. Where APRA is satisfied that the ADI can demonstrate such access, an ADI may include the surplus in its risk-weighted assets at a 100 per cent risk weight. This surplus will no longer be required to be deducted from Common Equity Tier 1 Capital.