

## ANNEX V

## OWN FUNDS

1. The own funds of investment firms and credit institutions shall be defined in accordance with Directive 89/299/EEC.

For the purposes of this Directive, however, investment firms which do not have one of the legal forms referred to in Article 1 (1) of the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies<sup>(1)</sup> shall nevertheless be deemed to fall within the scope of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions<sup>(2)</sup>.

2. [F<sup>1</sup>Notwithstanding paragraph 1, the competent authorities may permit those institutions which are obliged to meet the own-funds requirements laid down in Annexes I, II, III, IV, VI, VII and VIII to use an alternative definition when meeting those requirements only.] No part of the own funds thus provided may be used simultaneously to meet other own-funds requirements. This alternative definition shall include the following items (a), (b) and (c) less item (d), the deduction of that item being left to the discretion of the competent authorities:

**Textual Amendments**

- F1** Substituted by [Directive 98/31/EC of the European Parliament and of the Council of 22 June 1998 amending Council Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions](#).

- (a) own funds as defined in Directive 89/299/EEC excluding only items (12) and (13) of Article 2 (1) of the same Directive for those investment firms which are required to deduct item (d) of this paragraph from the total of items (a), (b) and (c) of this paragraph;
  - (b) an institution's net trading-book profits net of any foreseeable charges or dividends, less net losses on its other business provided that none of those amounts has already been included in item (a) of this paragraph under item 2 or 11 of Article 2 (1) of Directive 89/299/EEC;
  - (c) subordinated loan capital and/or the items referred to in paragraphs 5, subject to the conditions set out in paragraphs 3 to 7;
  - (d) illiquid assets as defined in paragraph 8.
3. The subordinated loan capital referred to in paragraph 2 (c) shall have an initial maturity of at least two years. It shall be fully paid up and the loan agreement shall not include any clause providing that in specified circumstances other than the winding up of the institution the debt will become repayable before the agreed repayment date, unless the competent authorities approve the repayment. Neither the principal nor the interest on such subordinated loan capital may be repaid if such repayment would mean that the own funds of the institution in question would then amount to less than 100 % of the institution's overall requirements.

In addition, an institution shall notify the competent authorities of all repayments on such subordinated loan capital as soon as its own funds fall below 120 % of its overall requirements.

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- [<sup>F14</sup>4. The subordinated loan capital referred to in paragraph 2(c) may not exceed a maximum of 150 % of the original own funds left to meet the requirements laid down in Annexes I, II, III, IV, VI, VII, and VIII and may approach that maximum only in particular circumstances acceptable to the relevant authorities.]
5. The competent authorities may permit institutions to replace the subordinated loan capital referred to in paragraphs 3 and 4 with items 3 and 5 to 8 of Article 2 (1) of Directive 89/299/EEC.
- [<sup>F16</sup>6. The competent authorities may permit investment firms to exceed the ceiling for subordinated loan capital prescribed in paragraph 4 if they judge it prudentially adequate and provided that the total of such subordinated loan capital and the items referred to in paragraph 5 does not exceed 200 % of the original own funds left to meet the requirements imposed in Annexes I, II, III, IV, VI, VII and VIII or 250 % of the same amount where investment firms deduct item 2(d) referred to in paragraph 2 when calculating own funds.
7. The competent authorities may permit the ceiling for subordinated loan capital prescribed in paragraph 4 to be exceeded by a credit institution if they judge it prudentially adequate and provided that the total of such subordinated loan capital and the items referred to in paragraph 5 does not exceed 250 % of the original own funds left to meet the requirements imposed in Annexes I, II, III, VI, VII and VIII.]
8. Illiquid assets include:
- tangible fixed assets (except to the extent that land and buildings may be allowed to count against the loans which they are securing),
  - holdings in, including subordinated claims on, credit or financial institutions which may be included in the own funds of such institutions, unless they have been deducted under items 12 and 13 of Article 2 (1) of Directive 89/299/EEC or under paragraph 9 (iv) of this Annex.
- Where shares in a credit or financial institution are held temporarily for the purpose of a financial assistance operation designed to reorganize and save that institution, the competent authorities may waive this provision. They may also waive it in respect of those shares which are included in the investment firm's trading book,
- holdings and other investments, in undertakings other than credit institutions and other financial institutions, which are not readily marketable,
  - deficiencies in subsidiaries,
  - deposits made, other than those which are available for repayment within 90 days, and also excluding payments in connection with margined futures or options contracts,
  - loans and other amounts due, other than those due to be repaid within 90 days,
  - physical stocks, unless they are subject to the capital requirements imposed in Article 4 (2) and provided that such requirements are not less stringent than those imposed in Article 4 (1) (iii).
9. Those investment firms included in a group subject to the waiver described in Article 7 (4) shall calculate their own funds in accordance with paragraphs 1 to 8 subject to the following modifications:
- (i) the illiquid assets referred to in paragraph 2 (d) shall be deducted;
  - (ii) the exclusion referred to in paragraph 2 (a) shall not cover those components of items 12 and 13 of Article 2 (1) of Directive 89/299/EEC which an investment firm holds

in respect of undertakings included in the scope of consolidation as defined in Article 7 (2) of this Directive;

- (iii) the limits referred to in Article 6 (1) (a) and (b) of Directive 89/299/EEC shall be calculated with reference to the original own funds less those components of items 12 and 13 of Article 2 (1) of Directive 89/299/EEC described in (ii) which are elements of the original own funds of the undertakings in question;
- (iv) those components of items 12 and 13 of Article 2 (1) of Directive 89/299/EEC referred to in (iii) shall be deducted from the original own funds rather than from the total of all items as prescribed in Article 6 (1) (c) of the same Directive for the purposes, in particular, of paragraphs 4 to 7 of this Annex.

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- (1) [OJ No L 222, 14. 8. 1978, p. 11](#). Directive as last amended by Directive 90/605/EEC ([OJ No L 317, 16. 11. 1990, p. 60](#)).
- (2) [OJ No L 372, 31. 12. 1986, p. 1](#).