

Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) (repealed)

CHAPTER I

Subject matter, scope and definitions

Section 1

Subject matter and scope

Article 1

1 This Directive lays down the capital adequacy requirements applying to investment firms and credit institutions, the rules for their calculation and the rules for their prudential supervision. Member States shall apply the requirements of this Directive to investment firms and credit institutions as defined in Article 3.

2 A Member State may impose additional or more stringent requirements on those investment firms and credit institutions that it has authorised.

Article 2

1 Subject to Articles 18, 20, 22 to 32, 34 and 39 of this Directive, Articles 68 to 73 of Directive 2006/48/EC shall apply *mutatis mutandis* to investment firms. In applying Articles 70 to 72 of Directive 2006/48/EC to investment firms, every reference to a parent credit institution in a Member State shall be construed as a reference to a parent investment firm in a Member State and every reference to an EU parent credit institution shall be construed as a reference to an EU parent investment firm.

Where a credit institution has as a parent undertaking a parent investment firm in a Member State, only that parent investment firm shall be subject to requirements on a consolidated basis in accordance with Articles 71 to 73 of Directive 2006/48/EC.

Where an investment firm has as a parent undertaking a parent credit institution in a Member State, only that parent credit institution shall be subject to requirements on a consolidated basis in accordance with Articles 71 to 73 of Directive 2006/48/EC.

Where a financial holding company has as a subsidiary both a credit institution and an investment firm, requirements on the basis of the consolidated financial situation of the financial holding company shall apply to the credit institution.

2 When a group covered by paragraph 1 does not include a credit institution, Directive 2006/48/EC shall apply, subject to the following:

- a every reference to credit institutions shall be construed as a reference to investment firms;
- b in Articles 125 and 140(2) of Directive 2006/48/EC, each reference to other articles of that Directive shall be construed as a reference to Directive 2004/39/EC;
- c for the purposes of Article 39(3) of Directive 2006/48/EC, references to the European Banking Committee shall be construed as references to the Council and the Commission; and

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- d by way of derogation from Article 140(1) of Directive 2006/48/EC, where a group does not include a credit institution, the first sentence of that Article shall be replaced by the following: ‘Where an investment firm, a financial holding company or a mixed-activity holding company controls one or more subsidiaries which are insurance companies, the competent authorities and the authorities entrusted with the public task of supervising insurance undertakings shall cooperate closely’.

Section 2

Definitions

Article 3

- 1 For the purposes of this Directive the following definitions shall apply:
- a ‘credit institutions’ means credit institutions as defined in Article 4(1) of Directive 2006/48/EC;
 - b ‘investment firms’ means institutions as defined in Article 4(1)(1) of Directive 2004/39/EC, which are subject to the requirements imposed by that Directive, excluding:
 - (i) credit institutions;
 - (ii) local firms as defined in point (p); and
 - (iii) firms which are only authorised to provide the service of investment advice and/or receive and transmit orders from investors without holding money or securities belonging to their clients and which for that reason may not at any time place themselves in debt with those clients;
 - c ‘institutions’ means credit institutions and investment firms;
 - d ‘recognised third-country investment firms’ means firms meeting the following conditions:
 - (i) firms which, if they were established within the Community, would be covered by the definition of investment firm;
 - (ii) firms which are authorised in a third country; and
 - (iii) firms which are subject to and comply with prudential rules considered by the competent authorities as at least as stringent as those laid down by this Directive;
 - e ‘financial instruments’ means any contract that gives rise to both a financial asset of one party and a financial liability or equity instrument of another party;
 - f ‘parent investment firm in a Member State’ means an investment firm which has an institution or financial institution as a subsidiary or which holds a participation in one or both such entities, and which is not itself a subsidiary of another institution authorised in the same Member State or of a financial holding company set up in the same Member State;
 - g ‘EU parent investment firm’ means a parent investment firm in a Member State which is not a subsidiary of another institution authorised in any Member State or of a financial holding company set up in any Member State;
 - h ‘over-the-counter (OTC) derivative instruments’ means the items falling within the list in Annex IV to Directive 2006/48/EC other than those items to which an exposure value of zero is attributed under point 6 of Part 2 of Annex III to that Directive;

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- i 'regulated market' means a market as defined in Article 4(1)(14) of Directive 2004/39/EC;
- j 'convertible' means a security which, at the option of the holder, may be exchanged for another security;
- k 'warrant' means a security which gives the holder the right to purchase an underlying asset at a stipulated price until or at the expiry date of the warrant and which may be settled by the delivery of the underlying itself or by cash settlement;
- l 'stock financing' means positions where physical stock has been sold forward and the cost of funding has been locked in until the date of the forward sale;
- m 'repurchase agreement' and 'reverse repurchase agreement' mean any agreement in which an institution or its counterparty transfers securities or commodities or guaranteed rights relating to title — to securities or commodities where that guarantee is issued by a recognised exchange which holds the rights to the securities or commodities and the agreement does not allow an institution to transfer or pledge a particular security or commodity to more than one counterparty at one time, subject to a commitment to repurchase them — or substituted securities or commodities of the same description — at a specified price on a future date specified, or to be specified, by the transferor, being a repurchase agreement for the institution selling the securities or commodities and a reverse repurchase agreement for the institution buying them;
- n 'securities or commodities lending' and 'securities or commodities borrowing' mean any transaction in which an institution or its counterparty transfers securities or commodities against appropriate collateral, subject to a commitment that the borrower will return equivalent securities or commodities at some future date or when requested to do so by the transferor, that transaction being securities or commodities lending for the institution transferring the securities or commodities and being securities or commodities borrowing for the institution to which they are transferred;
- o 'clearing member' means a member of the exchange or the clearing house which has a direct contractual relationship with the central counterparty (market guarantor);
- p 'local firm' means a firm dealing for its own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets, or dealing for the accounts of other members of those markets and being guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such a firm is assumed by clearing members of the same markets;
- q 'delta' means the expected change in an option price as a proportion of a small change in the price of the instrument underlying the option;
- r 'own funds' means own funds as defined in Directive 2006/48/EC; and
- s 'capital' means own funds.

For the purposes of applying supervision on a consolidated basis, the term 'investment firm' shall include third-country investment firms.

For the purposes of point (e), financial instruments shall include both primary financial instruments or cash instruments and derivative financial instruments the value of which is derived from the price of an underlying financial instrument, a rate, an index or the price of another underlying item, and include as a minimum the instruments specified in Section C of Annex I to Directive 2004/39/EC.

2 The terms 'parent undertaking', 'subsidiary undertaking', 'asset management company' and 'financial institution' shall cover undertakings defined in Article 4 of Directive 2006/48/EC.

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The terms ‘financial holding company’, ‘parent financial holding company in a Member State’, ‘EU parent financial holding company’ and ‘ancillary services undertaking’ shall cover undertakings defined in Article 4 of Directive 2006/48/EC, save that every reference to credit institutions shall be read as a reference to institutions.

3 For the purposes of applying Directive 2006/48/EC to groups covered by Article 2(1) which do not include a credit institution, the following definitions shall apply:

- a ‘financial holding company’ means a financial institution the subsidiary undertakings of which are either exclusively or mainly investment firms or other financial institutions, at least one of which is an investment firm, and which is not a mixed financial holding company within the meaning of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate⁽¹⁾;
- b ‘mixed-activity holding company’ means a parent undertaking, other than a financial holding company or an investment firm or a mixed financial holding company within the meaning of Directive 2002/87/EC, the subsidiaries of which include at least one investment firm; and
- c ‘competent authorities’ means the national authorities which are empowered by law or regulation to supervise investment firms.

CHAPTER II

Initial capital

Article 4

For the purposes of this Directive, ‘initial capital’ shall be comprised of the items referred to in Article 57(a) and (b) of Directive 2006/48/EC.

Article 5

1 An investment firm that does not deal in any financial instruments for its own account or underwrite issues of financial instruments on a firm commitment basis, but which holds clients' money and/or securities and which offers one or more of the following services, shall have initial capital of EUR 125 000:

- a the reception and transmission of investors' orders for financial instruments;
- b the execution of investors' orders for financial instruments; or
- c the management of individual portfolios of investments in financial instruments.

2 The competent authorities may allow an investment firm which executes investors' orders for financial instruments to hold such instruments for its own account if the following conditions are met:

- a such positions arise only as a result of the firm's failure to match investors' orders precisely;
- b the total market value of all such positions is subject to a ceiling of 15 % of the firm's initial capital;
- c the firm meets the requirements laid down in Articles 18, 20 and 28; and
- d such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.

The holding of non-trading-book positions in financial instruments in order to invest own funds shall not be considered as dealing in relation to the services set out in paragraph 1 or for the purposes of paragraph 3.

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3 Member States may reduce the amount referred to in paragraph 1 to EUR 50 000 where a firm is not authorised to hold clients' money or securities, to deal for its own account, or to underwrite issues on a firm commitment basis.

Article 6

Local firms shall have initial capital of EUR 50 000 insofar as they benefit from the freedom of establishment or to provide services specified in Articles 31 and 32 of Directive 2004/39/EC.

Article 7

Coverage for the firms referred to in Article 3(1)(b)(iii) shall take one of the following forms:

- (a) initial capital of EUR 50 000;
- (b) professional indemnity insurance covering the whole territory of the Community or some other comparable guarantee against liability arising from professional negligence, representing at least EUR 1 000 000 applying to each claim and in aggregate EUR 1 500 000 per year for all claims; or
- (c) a combination of initial capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to that referred to in points (a) or (b).

The amounts referred to in the first sub-paragraph shall be periodically reviewed by the Commission in order to take account of changes in the European Index of Consumer Prices as published by Eurostat, in line with and at the same time as the adjustments made under Article 4(7) of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation⁽²⁾.

Article 8

If a firm as referred to in Article 3(1)(b)(iii) is also registered under Directive 2002/92/EC, it shall comply with Article 4(3) of that Directive and have coverage in one of the following forms:

- (a) initial capital of EUR 25 000;
- (b) professional indemnity insurance covering the whole territory of the Community or some other comparable guarantee against liability arising from professional negligence, representing at least EUR 500 000 applying to each claim and in aggregate EUR 750 000 per year for all claims; or
- (c) a combination of initial capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to that referred to in points (a) or (b).

Article 9

All investment firms other than those referred to in Articles 5 to 8 shall have initial capital of EUR 730 000.

Article 10

1 By way of derogation from Articles 5(1), 5(3), 6 and 9, Member States may continue an authorisation of investment firms and firms covered by Article 6 which was in existence before 31 December 1995, the own funds of which firms or investment firms are less than the initial capital levels specified for them in Articles 5(1), 5(3), 6 and 9.

The own funds of such firms or investment firms shall not fall below the highest reference level calculated after the date of notification contained in Directive 93/6/EEC. That reference level shall be the average daily level of own funds calculated over a six-month period preceding the date of calculation. It shall be calculated every six months in respect of the corresponding preceding period.

2 If control of a firm covered by paragraph 1 is taken by a natural or legal person other than the person who controlled it previously, the own funds of that firm shall attain at least the level specified for them in Articles 5(1), 5(3), 6 and 9, except in the case of a first transfer by inheritance made after 31 December 1995, subject to the competent authorities' approval and for a period of not more than 10 years from the date of that transfer.

3 In certain specific circumstances, and with the approval of the competent authorities, in the event of a merger of two or more investment firms and/or firms covered by Article 6, the own funds of the firm produced by the merger need not attain the level specified in Articles 5(1), 5(3), 6 and 9. Nevertheless, during any period when the level specified in Articles 5(1), 5(3), 6 and 9 has not been attained, the own funds of the new firm may not fall below the merged firms' total own funds at the time of the merger.

4 The own funds of investment firms and firms covered by Article 6 may not fall below the level specified in Articles 5(1), 5(3), 6 and 9 and paragraphs 1 and 3 of this Article.

In the event that the own funds of such firms and investment firms fall below that level, the competent authorities may, where the circumstances justify it, allow such firms a limited period in which to rectify their situations or cease their activities.

CHAPTER III

Trading book

Article 11

1 The trading book of an institution shall consist of all positions in financial instruments and commodities held either with trading intent or in order to hedge other elements of the trading book and which are either free of any restrictive covenants on their tradability or able to be hedged.

2 Positions held with trading intent are those held intentionally for short-term resale and/or with the intention of benefiting from actual or expected short-term price differences between buying and selling prices or from other price or interest rate variations. The term 'positions' shall include proprietary positions and positions arising from client servicing and market making.

3 Trading intent shall be evidenced on the basis of the strategies, policies and procedures set up by the institution to manage the position or portfolio in accordance with Part A of Annex VII.

4 Institutions shall establish and maintain systems and controls to manage their trading book in accordance with Parts B and D of Annex VII.

5 Internal hedges may be included in the trading book, in which case Part C of Annex VII shall apply.

CHAPTER IV

Own funds

Article 12

[^{F1}‘Original own funds’ means the sum of points (a) to (ca), less the sum of points (i), (j) and (k) of Article 57 of Directive 2006/48/EC.]

The Commission shall, by 1 January 2009, submit an appropriate proposal to the European Parliament and to the Council for amendment of this Chapter.

Textual Amendments

- F1** Substituted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\)](#).

Article 13

1 Subject to paragraphs 2 to 5 of this Article and Articles 14 to 17, the own funds of investment firms and credit institutions shall be determined in accordance with Directive 2006/48/EC.

In addition, the first subparagraph applies to 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) of the Treaty on the annual accounts of certain types of companies⁽³⁾.

2 By way of derogation from paragraph 1, the competent authorities may permit those institutions which are obliged to meet the capital requirements calculated in accordance with Articles 21 and 28 to 32 and Annexes I and III to VI to use, for that purpose only, an alternative determination of own funds. No part of the own funds used for that purpose may be used simultaneously to meet other capital requirements.

Such an alternative determination shall be the sum of the items set out in points (a) to (c) of this subparagraph, minus the item set out in point (d), with the deduction of that last item being left to the discretion of the competent authorities:

- a own funds as defined in Directive 2006/48/EC, excluding only points (l) to (p) of Article 57 of that Directive for those investment firms which are required to deduct item (d) of this paragraph from the total of items (a) to (c);
- 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 as one of the items set out in points (b) or (k) of Article 57 of Directive 2006/48/EC;
- c subordinated loan capital and/or the items referred to in paragraph 5 of this Article, subject to the conditions set out in paragraphs 3 and 4 of this Article and in Article 14; and
- d illiquid assets as specified in Article 15.

3 The subordinated loan capital referred to in point (c) of the second subparagraph of paragraph 2 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 that institution's overall capital 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 capital requirements.

4 The subordinated loan capital referred to in point (c) of the second subparagraph of paragraph 2 may not exceed a maximum of 150 % of the original own funds left to meet the requirements calculated in accordance with Articles 21 and 28 to 32 and Annexes I to VI and may approach that maximum only in particular circumstances acceptable to the competent authorities.

5 The competent authorities may permit institutions to replace the subordinated loan capital referred to in point (c) of the second subparagraph of paragraph 2 with points (d) to (h) of Article 57 of Directive 2006/48/EC.

Article 14

1 The competent authorities may permit investment firms to exceed the ceiling for subordinated loan capital set out in Article 13(4) if they judge it prudentially adequate and provided that the total of such subordinated loan capital and the items referred to in Article 13(5) does not exceed 200 % of the original own funds left to meet the requirements calculated in accordance with Articles 21 and 28 to 32 and Annexes I and III to VI, or 250 % of the same amount where investment firms deduct the item set out in Article 13(2)(d) when calculating own funds.

2 The competent authorities may permit the ceiling for subordinated loan capital set out in Article 13(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 points (d) to (h) of Article 57 of Directive 2006/48/EC does not exceed 250 % of the original own funds left to meet the requirements calculated in accordance with Articles 28 to 32 and Annexes I and III to VI to this Directive.

Article 15

Illiquid assets as referred to in point (d) of the second subparagraph of Article 13(2) shall include the following:

- (a) tangible fixed assets, except to the extent that land and buildings may be allowed to count against the loans which they are securing;
- (b) holdings in, including subordinated claims on, credit or financial institutions which may be included in the own funds of those institutions, unless they have been deducted under points (l) to (p) of Article 57 of Directive 2006/48/EC or under Article 16(d) of this Directive;
- (c) holdings and other investments in undertakings other than credit or financial institutions, which are not readily marketable;
- (d) deficiencies in subsidiaries;
- (e) 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;

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- (f) loans and other amounts due, other than those due to be repaid within 90 days; and
- (g) physical stocks, unless they are already subject to capital requirements at least as stringent as those set out in Articles 18 and 20.

For the purposes of point (b), where shares in a credit or financial institution are held temporarily for the purpose of a financial assistance operation designed to reorganise and save that institution, the competent authorities may waive the application of this Article. They may also waive it in respect of those shares which are included in an investment firm's trading book.

Article 16

Investment firms included in a group which has been granted the waiver provided for in Article 22 shall calculate their own funds in accordance with Articles 13 to 15, subject to the following:

- (a) the illiquid assets referred to in Article 13(2)(d) shall be deducted;
- (b) the exclusion referred to in point (a) of Article 13(2) shall not cover those components of points (l) to (p) of Article 57 of Directive 2006/48/EC which an investment firm holds in respect of undertakings included in the scope of consolidation as defined in Article 2(1) of this Directive;
- (c) the limits referred to in points (a) and (b) of Article 66(1) of Directive 2006/48/EC shall be calculated with reference to the original own funds less the components of points (l) to (p) of Article 57 of that Directive as referred to in point (b) of this Article which are elements of the original own funds of those undertakings; and
- (d) the components of points (l) to (p) of Article 57 of Directive 2006/48/EC referred to in point (c) of this Article shall be deducted from the original own funds rather than from the total of all items as laid down in Article 66(2) of that Directive for the purposes in particular of Articles 13(4), 13(5) and 14 of this Directive.

Article 17

1 Where an institution calculates risk-weighted exposure amounts for the purposes of Annex II to this Directive in accordance with Articles 84 to 89 of Directive 2006/48/EC, then for the purposes of the calculation provided for in point 4 of Part 1 of Annex VII to Directive 2006/48/EC, the following shall apply:

- a value adjustments made to take account of the credit quality of the counterparty may be included in the sum of value adjustments and provisions made for the exposures indicated in Annex II; and
- b subject to the approval of the competent authorities, if the credit risk of the counterparty is adequately taken into account in the valuation of a position included in the trading book, the expected loss amount for the counterparty risk exposure shall be zero.

For the purposes of point (a), for such institutions, such value adjustments shall not be included in own funds other than in accordance with the provisions of this paragraph.

2 For the purposes of this Article, Article 153 and 154 of Directive 2006/48/EC shall apply.

CHAPTER V

Section 1

Provisions against risks

Article 18

1 Institutions shall have own funds which are always more than or equal to the sum of the following:

- a the capital requirements, calculated in accordance with the methods and options laid down in Articles 28 to 32 and Annexes I, II and VI and, as appropriate, Annex V, for their trading-book business; and
- b the capital requirements, calculated in accordance with the methods and options laid down in Annexes III and IV and, as appropriate, Annex V, for all of their business activities.

2 By way of derogation from paragraph 1, the competent authorities may allow institutions to calculate the capital requirements for their trading book business in accordance with Article 75(a) of Directive 2006/48/EC and points 6, 7, and 9 of Annex II to this Directive, where the size of the trading book business meets the following requirements:

- a the trading-book business of such institutions does not normally exceed 5 % of their total business;
- b their total trading-book positions do not normally exceed EUR 15 million; and
- c the trading-book business of such institutions never exceeds 6 % of their total business and their total trading-book positions never exceed EUR 20 million.

3 In order to calculate the proportion that trading-book business bears to total business for the purposes of points (a) and (c) of paragraph 2, the competent authorities may refer either to the size of the combined on- and off-balance-sheet business, to the profit and loss account or to the own funds of the institutions in question, or to a combination of those measures. When the size of on- and off-balance-sheet business is assessed, debt instruments shall be valued at their market prices or their principal values, equities at their market prices and derivatives according to the nominal or market values of the instruments underlying them. Long positions and short positions shall be summed regardless of their signs.

4 If an institution should happen for more than a short period to exceed either or both of the limits imposed in paragraph 2(a) and (b) or either or both of the limits imposed in paragraph 2(c), it shall be required to meet the requirements imposed in paragraph 1(a) in respect of its trading-book business and to notify the competent authority thereof.

Article 19

1 For the purposes of point 14 of Annex I, subject to the discretion of the national authorities, a 0 % weighting can be assigned to debt securities issued by the entities listed in Table 1 of Annex I, where these debt securities are denominated and funded in domestic currency.

2 By way of derogation from points 13 and 14 of Annex I, Member States may set a specific risk requirement for any bonds falling within points 68 to 70 of Part 1 of Annex VI to Directive 2006/48/EC which shall be equal to the specific risk requirement for a qualifying item with the same residual maturity as such bonds and reduced in accordance with the percentages given in point 71 of Part 1 to Annex VI to that Directive.

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3 If, as set out in point 52 of Annex I, a competent authority approves a third country's collective investment undertaking (CIU) as eligible, a competent authority in another Member State may make use of this approval without conducting its own assessment.

Article 20

1 Subject to paragraphs 2, 3 and 4 of this Article, and Article 34 of this Directive, the requirements in Article 75 of Directive 2006/48/EC shall apply to investment firms.

2 By way of derogation from paragraph 1, competent authorities may allow investment firms that are not authorised to provide the investment services listed in points 3 and 6 of Section A of Annex I to Directive 2004/39/EC to provide own funds which are always more than or equal to the higher of the following:

- a the sum of the capital requirements contained in points (a) to (c) of Article 75 of Directive 2006/48/EC; and
- b the amount laid down in Article 21 of this Directive.

3 By way of derogation from paragraph 1, competent authorities may allow investment firms which hold initial capital as set out in Article 9, but which fall within the following categories, to provide own funds which are always more than or equal to the sum of the capital requirements calculated in accordance with the requirements contained in points (a) to (c) of Article 75 of Directive 2006/48/EC and the amount laid down in Article 21 of this Directive:

- a investment firms that deal on own account only for the purpose of fulfilling or executing a client order or for the purpose of gaining entrance to a clearing and settlement system or a recognised exchange when acting in an agency capacity or executing a client order; and
- b) investment firms:
 - (i) that do not hold client money or securities;
 - (ii) that undertake only dealing on own account;
 - (iii) that have no external customers;
 - (iv) the execution and settlement of whose transactions takes place under the responsibility of a clearing institution and are guaranteed by that clearing institution.

4 Investment firms referred to in paragraphs 2 and 3 shall remain subject to all other provisions regarding operational risk set out in Annex V of Directive 2006/48/EC.

5 Article 21 shall apply only to investment firms to which paragraphs (2) or (3) or Article 46 apply and in the manner specified therein.

Article 21

Investment firms shall be required to hold own funds equivalent to one quarter of their preceding year's fixed overheads.

The competent authorities may adjust that requirement in the event of a material change in a firm's business since the preceding year.

Where a firm has not completed a year's business, starting from the day it starts up, the requirement shall be a quarter of the fixed overheads projected in its business plan, unless an adjustment to that plan is required by the competent authorities.

Section 2

Application of requirements on a consolidated basis

Article 22

1 The competent authorities required or mandated to exercise supervision of groups covered by Article 2 on a consolidated basis may waive, on a case-by-case basis, the application of capital requirements on a consolidated basis provided that:

- a each EU investment firm in such a group uses the calculation of own funds set out in Article 16;
- b all investment firms in such a group fall within the categories in Article 20(2) and (3);
- c each EU investment firm in such a group meets the requirements imposed in Articles 18 and 20 on an individual basis and at the same time deducts from its own funds any contingent liability in favour of investment firms, financial institutions, asset management companies and ancillary services undertakings, which would otherwise be consolidated and;
- d any financial holding company which is the parent financial holding company in a Member State of any investment firm in such a group holds at least as much capital, defined here as the sum of points (a) to (h) of Article 57 of Directive 2006/48/EC, as the sum of the full book value of any holdings, subordinated claims and instruments as referred to in Article 57 of that Directive in investment firms, financial institutions, asset management companies and ancillary services undertakings which would otherwise be consolidated, and the total amount of any contingent liability in favour of investment firms, financial institutions, asset management companies and ancillary services undertakings which would otherwise be consolidated.

Where the criteria in the first subparagraph are met, each EU investment firm shall have in place systems to monitor and control the sources of capital and funding of all financial holding companies, investment firms, financial institutions, asset management companies and ancillary services undertakings within the group.

2 By way of derogation from paragraph 1, competent authorities may permit financial holding companies which are the parent financial holding company in a Member State of an investment firm in such a group to use a value lower than the value calculated under paragraph 1(d), but no lower than the sum of the requirements imposed in Articles 18 and 20 on an individual basis to investment firms, financial institutions, asset management companies and ancillary services undertakings which would otherwise be consolidated and the total amount of any contingent liability in favour of investment firms, financial institutions, asset management companies and ancillary services undertakings which would otherwise be consolidated. For the purposes of this paragraph, the capital requirement for investment undertakings of third countries, financial institutions, asset management companies and ancillary services undertakings is a notional capital requirement.

Article 23

The competent authorities shall require investment firms in a group which has been granted the waiver provided for in Article 22 to notify them of the risks which could undermine their financial positions, including those associated with the composition and sources of their capital and funding. If the competent authorities then consider that the financial positions of those investment firms is not adequately protected, they shall require them to take measures including, if necessary, limitations on the transfer of capital from such firms to group entities.

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Where the competent authorities waive the obligation of supervision on a consolidated basis provided for in Article 22, they shall take other appropriate measures to monitor the risks, namely large exposures, of the whole group, including any undertakings not located in a Member State.

Where the competent authorities waive the application of capital requirements on a consolidated basis provided for in Article 22, the requirements of Article 123 and Chapter 5 of Title V of Directive 2006/48/EC shall apply on an individual basis, and the requirements of Article 124 of that Directive shall apply to the supervision of investment firms on an individual basis.

Article 24

1 By way of derogation from Article 2(2), competent authorities may exempt investment firms from the consolidated capital requirement established in that Article, provided that all the investment firms in the group are covered by Article 20(2) and the group does not include credit institutions.

2 Where the requirements of paragraph 1 are met, a parent investment firm in a Member State shall be required to provide own funds at a consolidated level which are always more than or equal to the higher of the following two amounts, calculated on the basis of the parent investment firm's consolidated financial position and in compliance with Section 3 of this Chapter:

- a the sum of the capital requirements contained in points (a) to (c) of Article 75 of Directive 2006/48/EC; and
- b the amount prescribed in Article 21 of this Directive.

3 Where the requirements of paragraph 1 are met, an investment firm controlled by a financial holding company shall be required to provide own funds at a consolidated level which are always more than or equal to the higher of the following two amounts, calculated on the basis of the financial holding company's consolidated financial position and in compliance with Section 3 of this Chapter:

- a the sum of the capital requirements contained in points (a) to (c) of Article 75 of Directive 2006/48/EC; and
- b the amount prescribed in Article 21 of this Directive.

Article 25

By way of derogation from Article 2(2), competent authorities may exempt investment firms from the consolidated capital requirement established in that Article, provided that all the investment firms in the group fall within the investment firms referred to in Article 20(2) and (3), and the group does not include credit institutions.

Where the requirements of the first paragraph are met, a parent investment firm in a Member State shall be required to provide own funds at a consolidated level which are always more than or equal to the sum of the requirements contained in points (a) to (c) of Article 75 of Directive 2006/48/EC and the amount prescribed in Article 21 of this Directive, calculated on the basis of the parent investment firm's consolidated financial position and in compliance with Section 3 of this Chapter.

Where the requirements of the first paragraph are met, an investment firm controlled by a financial holding company shall be required to provide own funds at a consolidated level which are always more than or equal to the sum of the requirements contained in points (a) to (c) of Article 75 of Directive 2006/48/EC and the amount prescribed in

Article 21 of this Directive, calculated on the basis of the financial holding company's consolidated financial position and in compliance with Section 3 of this Chapter.

Section 3

Calculation of consolidated requirements

Article 26

1 Where the waiver provided for in Article 22 is not exercised, the competent authorities may, for the purpose of calculating the capital requirements set out in Annexes I and V and the exposures to clients set out in Articles 28 to 32 and Annex VI on a consolidated basis, permit positions in the trading book of one institution to offset positions in the trading book of another institution according to the rules set out in Articles 28 to 32 Annexes I, V and VI.

In addition, the competent authorities may allow foreign-exchange positions in one institution to offset foreign-exchange positions in another institution in accordance with the rules set out in Annex III and/or Annex V. They may also allow commodities positions in one institution to offset commodities positions in another institution in accordance with the rules set out in Annex IV and/or Annex V.

2 The competent authorities may permit offsetting of the trading book and of the foreign-exchange and commodities positions, respectively, of undertakings located in third countries, subject to the simultaneous fulfilment of the following conditions:

- a such undertakings have been authorised in a third country and either satisfy the definition of credit institution set out in Article 4(1) of Directive 2006/48/EC or are recognised third-country investment firms;
- b such undertakings comply, on an individual basis, with capital adequacy rules equivalent to those laid down in this Directive; and
- c no regulations exist in the third countries in question which might significantly affect the transfer of funds within the group.

3 The competent authorities may also allow the offsetting provided for in paragraph 1 between institutions within a group that have been authorised in the Member State in question, provided that:

- a there is a satisfactory allocation of capital within the group; and
- b the regulatory, legal or contractual framework in which the institutions operate is such as to guarantee mutual financial support within the group.

4 Furthermore, the competent authorities may allow the offsetting provided for in paragraph 1 between institutions within a group that fulfil the conditions imposed in paragraph 3 and any institution included in the same group which has been authorised in another Member State provided that that institution is obliged to fulfil the capital requirements imposed in Articles 18, 20 and 28 on an individual basis.

Article 27

1 In the calculation of own funds on a consolidated basis Article 65 of Directive 2006/48/EC shall apply.

2 The competent authorities responsible for exercising supervision on a consolidated basis may recognise the validity of the specific own-funds definitions applicable to the institutions concerned under Chapter IV in the calculation of their consolidated own funds.

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Section 4

Monitoring and control of large exposures

Article 28

[^{F1} Institutions, except investment firms that fulfil the criteria set out in paragraph 2 or 3 of Article 20 of this Directive, shall monitor and control their large exposures in accordance with Articles 106 to 118 of Directive 2006/48/EC.]

2 By way of derogation from paragraph 1, institutions which calculate the capital requirements for their trading-book business in accordance with Annexes I and II, and, as appropriate, Annex V to this Directive, shall monitor and control their large exposures in accordance with Articles 106 to 118 of Directive 2006/48/EC subject to the amendments laid down in Articles 29 to 32 of this Directive.

^{F23}

Textual Amendments

- F1** Substituted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).
- F2** Deleted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).

Article 29

1 The exposures to individual clients which arise on the trading book shall be calculated by summing the following items:

- a the excess — where positive — of an institution's long positions over its short positions in all the financial instruments issued by the client in question, the net position in each of the different instruments being calculated according to the methods laid down in Annex I;
- b the net exposure, in the case of the underwriting of a debt or an equity instrument; and
- c the exposures due to the transactions, agreements and contracts referred to in Annex II with the client in question, such exposures being calculated in the manner laid down in that Annex, for the calculation of exposure values.

For the purposes of point (b), the net exposure is calculated by deducting those underwriting positions which are subscribed or sub-underwritten by third parties on the basis of a formal agreement reduced by the factors set out in point 41 of Annex I.

For the purposes of point (b), pending further coordination, the competent authorities shall require institutions to set up systems to monitor and control their underwriting exposures between the time of the initial commitment and working day one in the light of the nature of the risks incurred in the markets in question.

For the purposes of point (c), Articles 84 to 89 of Directive 2006/48/EC shall be excluded from the reference in point 6 of Annex II to this Directive.

2 The exposures to groups of connected clients on the trading book shall be calculated by summing the exposures to individual clients in a group, as calculated in paragraph 1.

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Article 30

1 The overall exposures to individual clients or groups of connected clients shall be calculated by summing the exposures which arise on the trading book and the exposures which arise on the non-trading book, taking into account Article 112 to 117 of Directive 2006/48/EC.

In order to calculate the exposure which arises on the non-trading book, institutions shall take the exposure arising from assets which are deducted from their own funds by virtue of point (d) of the second subparagraph of Article 13(2) to be zero.

2 Institutions' overall exposures to individual clients and groups of connected clients calculated in accordance with paragraph 4 shall be reported in accordance with Article 110 of Directive 2006/48/EC.

Other than in relation to repurchase transactions, securities or commodities lending or borrowing transactions, the calculation of large exposures to individual clients and groups of connected clients for reporting purposes shall not include the recognition of credit risk mitigation.

3 The sum of the exposures to an individual client or group of connected clients in paragraph 1 shall be limited in accordance with Articles 111 to 117 of Directive 2006/48/EC.

[^{F14} By derogation from paragraph 3 competent authorities may allow assets constituting claims and other exposures on recognised third country investment firms and recognised clearing houses and exchanges to be subject to the same treatment as laid down in Article 111(1) of Directive 2006/48/EC and in Article 106(2)(c) of that Directive respectively.]

Textual Amendments

F1 Substituted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)

Article 31

The competent authorities may authorise the limits laid down in Articles 111 to 117 of Directive 2006/48/EC to be exceeded if the following conditions are met:

- (a) [^{F1}the exposure on the non-trading book to the client or group of clients in question does not exceed the limit laid down in Article 111(1) of Directive 2006/48/EC, this limit being calculated with reference to own funds as specified in that Directive, so that the excess arises entirely on the trading book;
- (b) the institution meets an additional capital requirement on the excess in respect of the limit laid down in Article 111(1) of Directive 2006/48/EC, that additional capital requirement being calculated in accordance with Annex VI to this Directive;]
- (c) where 10 days or less has elapsed since the excess occurred, the trading-book exposure to the client or group of connected clients in question shall not exceed 500 % of the institution's own funds;
- (d) any excesses that have persisted for more than 10 days must not, in aggregate, exceed 600 % of the institution's own funds; and

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- (e) [F1institutions shall report to the competent authorities every three months all cases where the limit laid down in Article 111(1) of Directive 2006/48/EC has been exceeded during the preceding three months.]

[F1In relation to point (e), in each case in which the limit has been exceeded, the amount of the excess and the name of the client concerned shall be reported.]

Textual Amendments

- F1** Substituted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)

Article 32

[F1 The competent authorities shall establish procedures to prevent institutions from deliberately avoiding the additional capital requirements that they would otherwise incur, on exposures exceeding the limit laid down in Article 111(1) of Directive 2006/48/EC once those exposures have been maintained for more than 10 days, by means of temporarily transferring the exposures in question to another company, whether within the same group or not, and/or by undertaking artificial transactions to close out the exposure during the 10-day period and create a new exposure.]

The competent authorities shall notify the Council and the Commission of those procedures.

Institutions shall maintain systems which ensure that any transfer which has the effect referred to in the first subparagraph is immediately reported to the competent authorities.

2 The competent authorities may permit institutions which are allowed to use the alternative determination of own funds under Article 13(2) to use that determination for the purposes of Articles 30(2), 30(3) and 31 provided that the institutions concerned are required to meet all of the obligations set out in Articles 110 to 117 of Directive 2006/48/EC, in respect of the exposures which arise outside their trading books by using own funds as defined in that Directive.

Textual Amendments

- F1** Substituted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)

Section 5

Valuation of positions for reporting purposes

Article 33

1 All trading book positions shall be subject to prudent valuation rules as specified in Annex VII, Part B. These rules shall require institutions to ensure that the value applied to each of its trading book positions appropriately reflects the current market value. The former value

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shall contain an appropriate degree of certainty having regard to the dynamic nature of trading book positions, the demands of prudential soundness and the mode of operation and purpose of capital requirements in respect of trading book positions.

2 Trading book positions shall be re-valued at least daily.

3 In the absence of readily available market prices, the competent authorities may waive the requirement imposed in paragraphs 1 and 2 and shall require institutions to use alternative methods of valuation provided that those methods are sufficiently prudent and have been approved by competent authorities.

Section 6

Risk management and capital assessment

Article 34

Competent authorities shall require that every investment firm, as well as meeting the requirements set out in Article 13 of Directive 2004/39/EC, shall meet the requirements set out in Articles 22 and 123 of Directive 2006/48/EC, subject to the provisions on level of application set out in Articles 68 to 73 of that Directive.

Section 7

Reporting requirements

Article 35

1 Member States shall require that investment firms and credit institutions provide the competent authorities of their home Member States with all the information necessary for the assessment of their compliance with the rules adopted in accordance with this Directive. Member States shall also ensure that internal control mechanisms and administrative and accounting procedures of the institutions permit the verification of their compliance with such rules at all times.

2 Investment firms shall report to the competent authorities in the manner specified by the latter at least once every month in the case of firms covered by Article 9, at least once every three months in the case of firms covered by Article 5(1) and at least once every six months in the case of firms covered by Article 5(3).

3 Notwithstanding paragraph 2, investment firms covered by Articles 5(1) and 9 shall be required to provide the information on a consolidated or sub-consolidated basis only once every six months.

4 Credit institutions shall be obliged to report in the manner specified by the competent authorities as often as they are obliged to report under Directive 2006/48/EC.

5 The competent authorities shall oblige institutions to report to them immediately any case in which their counter parties in repurchase and reverse repurchase agreements or securities and commodities-lending and securities and commodities-borrowing transactions default on their obligations.

[^{F36} Investment firms shall be covered by the uniform formats, frequencies and dates of reporting referred to in Article 74(2) of Directive 2006/48/EC.]

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Textual Amendments

- F3** Inserted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)

CHAPTER VI

Section 1

Competent authorities

Article 36

- 1 Member States shall designate the authorities which are competent to carry out the duties provided for in this Directive. They shall inform the Commission thereof, indicating any division of duties.
- 2 The competent authorities shall be public authorities or bodies officially recognized by national law or by public authorities as part of the supervisory system in operation in the Member State concerned.
- 3 The competent authorities shall be granted all the powers necessary for the performance of their tasks, and in particular that of overseeing the constitution of trading books.

Section 2

Supervision

Article 37

- 1 Chapter 4 of Title V of Directive 2006/48/EC shall apply mutatis mutandis to the supervision of investment firms in accordance with the following:
 - a references to Article 6 of Directive 2006/48/EC shall be construed as references to Article 5 of Directive 2004/39/EC;
 - b references to Article 22 and 123 of Directive 2006/48/EC shall be construed as references to Article 34 of this Directive; and
 - c references to Articles 44 to 52 of Directive 2006/48/EC shall be construed as references to Articles 54 and 58 of Directive 2004/39/EC.

Where an EU parent financial holding company has as subsidiary both a credit institution and an investment firm, Title V, Chapter 4 of Directive 2006/48/EC shall apply to the supervision of institutions as if references to credit institutions were to institutions.

- 2 Article 129(2) of Directive 2006/48/EC shall also apply to the recognition of internal models of institutions under Annex V to this Directive where the application is submitted by an EU parent credit institution and its subsidiaries or an EU parent investment firm and its subsidiaries, or jointly by the subsidiaries of an EU parent financial holding company.

The period for the recognition referred to in the first sub-paragraph shall be six months.

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Article 38

1 The competent authorities of the Member States shall cooperate closely in the performance of the duties provided for in this Directive, particularly where investment services are provided on the basis of the freedom to provide services or through the establishment of branches.

The competent authorities shall on request supply one another with all information likely to facilitate the supervision of the capital adequacy of institutions, in particular the verification of their compliance with the rules laid down in this Directive.

2 Any exchange of information between competent authorities which is provided for in this Directive shall be subject to the following obligations of professional secrecy:

- a for investment firms, those imposed in Article 54 and 58 of Directive 2004/39/EC; and
- b for credit institutions, those imposed in Articles 44 to 52 of Directive 2006/48/EC.

[^{F33} Article 42a of Directive 2006/48/EC, with the exception of point (a) of its paragraph 1, shall apply mutatis mutandis to the supervision of investment firms unless the investment firms fulfil the criteria set out in Article 20(2), 20(3) or 46(1) of this Directive.]

Textual Amendments

- F3** Inserted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)

CHAPTER VII

Disclosure

Article 39

The requirements set out in Title V, Chapter 5 of Directive 2006/48/EC shall apply to investment firms.

CHAPTER VIII

Section 1

Article 40

For the purposes of the calculation of minimum capital requirements for counterparty risk under this Directive, and for the calculation of minimum capital requirements for credit risk under Directive 2006/48/EC, and without prejudice to the provisions of Part 2, point 6 of Annex III to that Directive, exposures to recognised third-country investment firms and exposures to recognised clearing houses and exchanges shall be treated as exposures to institutions.

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Section 2

Powers of execution

Article 41

1 The Commission shall decide on any technical adaptations in the following areas [^{F4}in accordance with the procedure referred to in Article 42(2)]:

- a clarification of the definitions in Article 3 in order to ensure uniform application of this Directive;
- b clarification of the definitions in Article 3 to take account of developments on financial markets;
- c adjustment of the amounts of initial capital prescribed in Articles 5 to 9 and the amount referred to in Article 18(2) to take account of developments in the economic and monetary field;
- d adjustment of the categories of investment firms in Article 20(2) and (3) to take account of developments on financial markets;
- e clarification of the requirement laid down in Article 21 to ensure uniform application of this Directive;
- f alignment of terminology on and the framing of definitions in accordance with subsequent acts on institutions and related matters;
- g adjustment of the technical provisions in Annexes I to VII as a result of developments on financial markets, risk measurement, accounting standards or requirements which take account of Community legislation or which have regard to convergence of supervisory practices; or
- h technical adaptations to take account of the outcome of the review referred to in Article 65(3) of Directive 2004/39/EC.

[^{F52} The measures referred to in paragraph 1, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 42(2).]

Textual Amendments

- F4** Deleted by [Directive 2008/23/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions, as regards the implementing powers conferred on the Commission.](#)
- F5** Substituted by [Directive 2008/23/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions, as regards the implementing powers conferred on the Commission.](#)

Article 42

1 The Commission shall be assisted by the European Banking Committee established by Commission Decision 2004/10/EC⁽⁴⁾ of 5 November 2003 (hereinafter referred to as 'the Committee').

[^{F52} Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.]

[^{F53} By 31 December 2010, and, thereafter, at least every three years, the Commission shall review the provisions concerning its implementing powers and present a report to the European Parliament and to the Council on the functioning of those powers. The report shall examine,

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in particular, the need for the Commission to propose amendments to this Directive in order to ensure the appropriate scope of the implementing powers conferred on the Commission. The conclusion as to whether or not amendment is necessary shall be accompanied by a detailed statement of reasons. If necessary, the report shall be accompanied by a legislative proposal to amend the provisions conferring implementing powers on the Commission.]

Textual Amendments

- F5** Substituted by [Directive 2008/23/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions, as regards the implementing powers conferred on the Commission.](#)

Section 3

Transitional provisions

Article 43

Article 152(1) to (7) of Directive 2006/48/EC shall apply, in accordance with Article 2 and Chapter V, Sections 2 and 3 of this Directive, to investment firms calculating risk-weighted exposure amounts, for the purposes of Annex II to this Directive, in accordance with Articles 84 to 89 of Directive 2006/48/EC, or using the Advanced Measurement Approach as specified in Article 105 of that Directive for the calculation of their capital requirements for operational risk.

Article 44

Until 31 December 2012, for investment firms the relevant indicator for the trading and sales business line of which represents at least 50 % of the total of relevant indicators for all of their business lines calculated in accordance with Article 20 of this Directive and points 1 to 4 of Part 2 of Annex X to Directive 2006/48/EC, Member States may apply a percentage of 15 % to the business line ‘trading and sales’.

Article 45

1 Competent authorities may permit investment firms to exceed the limits concerning large exposures set out in Article 111 of Directive 2006/48/EC. Investment firms need not include any excesses in their calculation of capital requirements exceeding such limits, as set out in Article 75(b) of that Directive. This discretion is available until [^{F1}31 December 2014] or the date of entry into force of any modifications consequent to the treatment of large exposures pursuant to Article 119 of Directive 2006/48/EC, whichever is the earlier. For this discretion to be exercised, the following conditions shall be met:

- a) the investment firm provides investment services or investment activities related to the financial instruments listed in points 5, 6, 7, 9 and 10 of Section C of Annex I to Directive 2004/39/EC;
- b) the investment firm does not provide such investment services or undertake such investment activities for, or on behalf of, retail clients;
- c) breaches of the limits referred to in the introductory part of this paragraph arise in connection with exposures resulting from contracts that are financial instruments as listed in point (a) and relate to commodities or underlyings within the meaning of point 10 of Section C of Annex I to Directive 2004/39/EC (MiFID) and are calculated in accordance with Annexes III and IV of Directive 2006/48/EC, or in connection with

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exposures resulting from contracts concerning the delivery of commodities or emission allowances; and

- d the investment firm has a documented strategy for managing and, in particular, for controlling and limiting risks arising from the concentration of exposures. The investment firm shall inform the competent authorities of this strategy and all material changes to it without delay. The investment firm shall make appropriate arrangements to ensure a continuous monitoring of the creditworthiness of borrowers, according to their impact on concentration risk. These arrangements shall enable the investment firm to react adequately and sufficiently promptly to any deterioration in that creditworthiness.

2 Where an investment firm exceeds the internal limits set according to the strategy referred to in point (d) of paragraph 1, it shall notify the competent authority without delay of the size and nature of the excess and of the counterparty.

Textual Amendments

- F1** Substituted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\)](#).

Article 46

By way of derogation from Article 20(1), until 31 December 2011 competent authorities may choose, on a case-by-case basis, not to apply the capital requirements arising from point (d) of Article 75 of Directive 2006/48/EC in respect of investment firms to which Article 20(2) and (3) do not apply, whose total trading book positions never exceed EUR 50 million and whose average number of relevant employees during the financial year does not exceed 100.

Instead, the capital requirement in relation to those investment firms shall be at least the lower of:

- (a) the capital requirements arising from point (d) of Article 75 of Directive 2006/48/EC; and
- b) 12/88 of the higher of the following:
 - (i) the sum of the capital requirements contained in points (a) to (c) of Article 75 of Directive 2006/48/EC; and
 - (ii) the amount laid down in Article 21 of this Directive, notwithstanding Article 20(5).

If point (b) applies, an incremental increase shall be applied on at least an annual basis.

Applying this derogation shall not result in a reduction in the overall level of capital requirements for an investment firm, in comparison to the requirements as at 31 December 2006, unless such a reduction is prudentially justified by a reduction in the size of the investment firm's business.

Article 47

Until [^{F1}31 December 2010] or any earlier date specified by the competent authorities on a case-by-case basis, institutions that have received specific risk model recognition

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prior to 1 January 2007 in accordance with point 1 of Annex V may, for that existing recognition, treat [F1points 4 and 8 of Annex VIII] to Directive 93/6/EEC as those points stood prior to 1 January 2007.

Textual Amendments

- F1** Substituted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)

Article 48

1 The provisions on capital requirements as laid down in this Directive and Directive 2006/48/EC shall not apply to investment firms whose main business consists exclusively of the provision of investment services or activities in relation to the financial instruments set out in points 5, 6, 7, 9 and 10 of Section C of Annex I to Directive 2004/39/EC and to whom Directive 93/22/EEC⁽⁵⁾ did not apply on 31 December 2006. This exemption is available until [F131 December 2014] or the date of entry into force of any modifications pursuant to paragraphs 2 and 3, whichever is the earlier.

2 As part of the review required by Article 65(3) of Directive 2004/39/EC, the Commission shall, on the basis of public consultations and in the light of discussions with the competent authorities, report to the Parliament and the Council on:

- a an appropriate regime for the prudential supervision of investment firms whose main business consists exclusively of the provision of investment services or activities in relation to the commodity derivatives or derivatives contracts set out in points 5, 6, 7, 9 and 10 of Section C of Annex I to Directive 2004/39/EC; and
- b the desirability of amending Directive 2004/39/EC to create a further category of investment firm whose main business consists exclusively of the provision of investment services or activities in relation to the financial instruments set out in points 5, 6, 7, 9 and 10 of Section C of Annex I to Directive 2004/39/EC relating to energy supplies (including electricity, coal, gas and oil).

3 On the basis of the report referred to in paragraph 2, the Commission may submit proposals for amendments to this Directive and to Directive 2006/48/EC

Textual Amendments

- F1** Substituted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)

Section 4

Final provisions

Article 49

1 Member States shall adopt and publish, by 31 December 2006, the laws, regulations and administrative provisions necessary to comply with Articles 2, 3, 11, 13, 17, 18, 19, 20, 22,

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23, 24, 25, 29, 30, 33, 34, 35, 37, 39, 40, 41, 43, 44, 50 and the Annexes I, II, III, V, VII. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 1 January 2007.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directives repealed by this Directive shall be construed as references to this Directive.

2 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 50

1 Article 152(8) to (14) of Directive 2006/48/EC shall apply mutatis mutandis for the purposes of this Directive subject to the following provisions which shall apply where the discretion referred to in Article 152(8) of Directive 2006/48/EC is exercised:

- a references in point 7 of Annex II to this Directive to Directive 2006/48/EC shall be read as references to Directive 2000/12/EC as that Directive stood prior to 1 January 2007; and
- b point 4 of Annex II to this Directive shall apply as it stood prior to 1 January 2007.

2 Article 157(3) of Directive 2006/48/EC shall apply mutatis mutandis for the purposes of Articles 18 and 20 of this Directive.

Article 51

By 1 January 2011, the Commission shall review and report on the application of this Directive and submit its report to the Parliament and the Council together with any appropriate proposals for amendment.

Article 52

Directive 93/6/EEC, as amended by the Directives listed in Annex VIII, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex VIII, Part B.

References made to the repealed directives shall be construed as being made to this Directive and should be read in accordance with the correspondence table set out in Annex IX.

Article 53

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 54

This Directive is addressed to the Member States.

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- (1) [OJ L 35, 11.2.2003, p. 1](#). Directive as amended by Directive 2005/1/EC.
- (2) [OJ L 9, 15.1.2003, p. 3](#).
- (3) [OJ L 222, 14.8.1978, p. 11](#). Directive as last amended by Directive 2003/51/EC of the European Parliament and of the Council ([OJ L 178, 17.7.2003, p. 16](#)).
- (4) [OJ L 3, 7.1.2004, p. 36](#).
- (5) Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field ([OJ L 141, 11.6.1993, p. 27](#)). Directive as last amended by Directive 2002/87/EC.