

Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (Text with EEA relevance)

PART ONE

GENERAL PROVISIONS

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 4

Definitions

- 1 For the purposes of this Regulation, the following definitions shall apply:
- (1) 'credit institution' means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account;
 - (2) 'investment firm' means a person as defined in point (1) of Article 4(1) of Directive 2004/39/EC, which is subject to the requirements imposed by that Directive, excluding the following:
 - (a) credit institutions;
 - (b) local firms;
 - (c) firms which are not authorised to provide the ancillary service referred to in point (1) of Section B of Annex I to Directive 2004/39/EC, which provide only one or more of the investment services and activities listed in points 1, 2, 4 and 5 of Section A of Annex I to that Directive, and which are not permitted to hold money or securities belonging to their clients and which for that reason may not at any time place themselves in debt with those clients;
 - (3) "institution" means a credit institution or an investment firm;.
 - (4) '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;
 - (5) 'insurance undertaking' means insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)⁽¹⁾;

- (6) 'reinsurance undertaking' means reinsurance undertaking as defined in point (4) of Article 13 of Directive 2009/138/EC;
- (7) 'collective investment undertaking' or 'CIU' means a UCITS as defined in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)⁽²⁾, including, unless otherwise provided, third-country entities which carry out similar activities, which are subject to supervision pursuant to Union law or to the law of a third country which applies supervisory and regulatory requirements at least equivalent to those applied in the Union, an AIF as defined in Article 4(1)(a) of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers⁽³⁾, or a non-EU AIF as defined in Article 4(1)(aa) of that Directive;
- (8) 'public sector entity' means a non-commercial administrative body responsible to central governments, regional governments or local authorities, or to authorities that exercise the same responsibilities as regional governments and local authorities, or a non-commercial undertaking that is owned by or set up and sponsored by central governments, regional governments or local authorities, and that has explicit guarantee arrangements, and may include self-administered bodies governed by law that are under public supervision;
- (9) 'management body' means management body as defined in point (7) of Article 3(1) of Directive 2013/36/EU;
- (10) 'senior management' means senior management as defined in point (9) of Article 3(1) of Directive 2013/36/EU;
- (11) "systemic risk" means systemic risk as defined in point (10) of Article 3(1) of Directive 2013/36/EU;
- (12) "model risk" means model risk as defined in point (11) of Article 3(1) of Directive 2013/36/EU;
- (13) 'originator' means an entity which:
- (a) itself or through related entities, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposure being securitised; or
 - (b) purchases a third party's exposures for its own account and then securitises them;
- (14) 'sponsor' means an institution other than an originator institution that establishes and manages an asset-backed commercial paper programme or other securitisation scheme that purchases exposures from third-party entities;
- (15) 'parent undertaking' means:
- (a) a parent undertaking within the meaning of Articles 1 and 2 of Directive 83/349/EEC;
 - (b) for the purposes of Section II of Chapters 3 and 4 of Title VII and Title VIII of Directive 2013/36/EU and Part Five of this Regulation, a parent undertaking within the meaning of Article 1(1) of Directive 83/349/EEC and any undertaking which effectively exercises a dominant influence over another undertaking;

- (16) 'subsidiary' means:
- (a) a subsidiary undertaking within the meaning of Articles 1 and 2 of Directive 83/349/EEC;
 - (b) a subsidiary undertaking within the meaning of Article 1(1) of Directive 83/349/EEC and any undertaking over which a parent undertaking effectively exercises a dominant influence.
- Subsidiaries of subsidiaries shall also be considered to be subsidiaries of the undertaking that is their original parent undertaking;
- (17) 'branch' means a place of business which forms a legally dependent part of an institution and which carries out directly all or some of the transactions inherent in the business of institutions;
- (18) 'ancillary services undertaking' means an undertaking the principal activity of which consists of owning or managing property, managing data-processing services, or a similar activity which is ancillary to the principal activity of one or more institutions;
- (19) 'asset management company' means an asset management company as defined in point (5) of Article 2 of Directive 2002/87/EC and an AIFM as defined in Article 4(1)(b) of Directive 2011/61/EU, including, unless otherwise provided, third country entities, that carry out similar activities, that are subject to the laws of a third country which applies supervisory and regulatory requirements at least equivalent to those applied in the Union;
- (20) 'financial holding company' means a financial institution, the subsidiaries of which are exclusively or mainly institutions or financial institutions, at least one of such subsidiaries being an institution, and which is not a mixed financial holding company;
- (21) 'mixed financial holding company' means mixed financial holding company as defined in point (15) of Article 2 of Directive 2002/87/EC;
- (22) 'mixed activity holding company' means a parent undertaking, other than a financial holding company or an institution or a mixed financial holding company, the subsidiaries of which include at least one institution;
- (23) 'third-country insurance undertaking' means third-country insurance undertaking as defined in point (3) of Article 13 of Directive 2009/138/EC;
- (24) 'third-country reinsurance undertaking' means third-country reinsurance undertaking as defined in point (6) of Article 13 of Directive 2009/138/EC;
- (25) 'recognised third-country investment firm' means a firm meeting all of the following conditions:
- (a) if it were established within the Union, it would be covered by the definition of an investment firm;
 - (b) it is authorised in a third country;
 - (c) it is subject to and complies with prudential rules considered by the competent authorities as at least as stringent as those laid down in this Regulation or in Directive 2013/36/EU;
- (26) 'financial institution' means an undertaking other than an institution, the principal activity of which is to acquire holdings or to pursue one or more of the activities listed

in points 2 to 12 and point 15 of Annex I to Directive 2013/36/EU, including a financial holding company, a mixed financial holding company, a payment institution within the meaning of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market⁽⁴⁾, and an asset management company, but excluding insurance holding companies and mixed-activity insurance holding companies as defined in point (g) of Article 212(1) of Directive 2009/138/E;

- (27) 'financial sector entity' means any of the following:
- (a) an institution;
 - (b) a financial institution;
 - (c) an ancillary services undertaking included in the consolidated financial situation of an institution;
 - (d) an insurance undertaking;
 - (e) a third-country insurance undertaking;
 - (f) a reinsurance undertaking;
 - (g) a third-country reinsurance undertaking;
 - (h) an insurance holding company;
 - (i) a mixed-activity holding company
 - (j) a mixed-activity insurance holding company as defined in point (g) of Article 212(1) of Directive 2009/138/EC;
 - (k) an undertaking excluded from the scope of Directive 2009/138/EC in accordance with Article 4 of that Directive;
 - (l) a third-country undertaking with a main business comparable to any of the entities referred to in points (a) to (k);
- (28) 'parent institution in a Member State' means an institution in a Member State which has a institution or a financial institution as a subsidiary or which holds a participation in such an institution or financial institution, and which is not itself a subsidiary of another institution authorised in the same Member State, or of a financial holding company or mixed financial holding company set up in the same Member State;
- (29) 'EU parent institution' means a parent institution in a Member State which is not a subsidiary of another institution authorised in any Member State, or of a financial holding company or mixed financial holding company set up in any Member State;
- (30) 'parent financial holding company in a Member State' means a financial holding company which is not itself a subsidiary of an institution authorised in the same Member State, or of a financial holding company or mixed financial holding company set up in the same Member State;
- (31) 'EU parent financial holding company' means a parent financial holding company in a Member State which is not a subsidiary of an institution authorised in any Member State or of another financial holding company or mixed financial holding company set up in any Member State;

- (32) 'parent mixed financial holding company in a Member State' means a mixed financial holding company which is not itself a subsidiary of an institution authorised in the same Member State, or of a financial holding company or mixed financial holding company set up in that same Member State;
- (33) 'EU parent mixed financial holding company' means a parent mixed financial holding company in a Member State which is not a subsidiary of an institution authorised in any Member State or of another financial holding company or mixed financial holding company set up in any Member State;
- (34) 'central counterparty' or 'CCP' means a CCP as defined in point (1) of Article 2 of Regulation (EU) No 648/2012;
- (35) 'participation' means participation within the meaning of the first sentence of Article 17 of Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies⁽⁶⁾, or the ownership, direct or indirect, of 20 % or more of the voting rights or capital of an undertaking;
- (36) 'qualifying holding' means a direct or indirect holding in an undertaking which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking;
- (37) 'control' means the relationship between a parent undertaking and a subsidiary, as defined in Article 1 of Directive 83/349/EEC, or the accounting standards to which an institution is subject under Regulation (EC) No 1606/2002, or a similar relationship between any natural or legal person and an undertaking;
- (38) 'close links' means a situation in which two or more natural or legal persons are linked in any of the following ways:
- (a) participation in the form of ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking;
 - (b) control;
 - (c) a permanent link of both or all of them to the same third person by a control relationship;
- (39) 'group of connected clients' means any of the following:
- (a) two or more natural or legal persons who, unless it is shown otherwise, constitute a single risk because one of them, directly or indirectly, has control over the other or others;
 - (b) two or more natural or legal persons between whom there is no relationship of control as described in point (a) but who are to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, in particular funding or repayment difficulties, the other or all of the others would also be likely to encounter funding or repayment difficulties.

Notwithstanding points (a) and (b), where a central government has direct control over or is directly interconnected with more than one natural or legal person, the set consisting of the central government and all of the natural or legal persons directly or indirectly controlled by it in accordance with point (a), or interconnected with it in accordance with point (b), may be considered as not constituting a group of connected clients. Instead the existence of a group of connected clients formed by the

central government and other natural or legal persons may be assessed separately for each of the persons directly controlled by it in accordance with point (a), or directly interconnected with it in accordance with point (b), and all of the natural and legal persons which are controlled by that person according to point (a) or interconnected with that person in accordance with point (b), including the central government. The same applies in cases of regional governments or local authorities to which Article 115(2) applies

- (40) 'competent authority' means a public authority or body officially recognised by national law, which is empowered by national law to supervise institutions as part of the supervisory system in operation in the Member State concerned;
- (41) 'consolidating supervisor' means a competent authority responsible for the exercise of supervision on a consolidated basis of EU parent institutions and of institutions controlled by EU parent financial holding companies or EU parent mixed financial holding companies;
- (42) 'authorisation' means an instrument issued in any form by the authorities by which the right to carry out the business is granted;
- (43) 'home Member State' means the Member State in which an institution has been granted authorisation;
- (44) 'host Member State' means the Member State in which an institution has a branch or in which it provides services;
- (45) 'ESCB central banks' means the national central banks that are members of the European System of Central Banks (ESCB), and the European Central Bank (ECB);
- (46) 'central banks' means the ESCB central banks and the central banks of third countries;
- (47) 'consolidated situation' means the situation that results from applying the requirements of this Regulation in accordance with Part One, Title II, Chapter 2 to an institution as if that institution formed, together with one or more other entities, a single institution;
- (48) 'consolidated basis' means on the basis of the consolidated situation;
- (49) 'sub-consolidated basis' means on the basis of the consolidated situation of a parent institution, financial holding company or mixed financial holding company, excluding a sub-group of entities, or on the basis of the consolidated situation of a parent institution, financial holding company or mixed financial holding company that is not the ultimate parent institution, financial holding company or mixed financial holding company;
- (50) 'financial instrument' means any of the following:
 - (a) a contract that gives rise to both a financial asset of one party and a financial liability or equity instrument of another party;
 - (b) an instrument specified in Section C of Annex I to Directive 2004/39/EC;
 - (c) a derivative financial instrument;
 - (d) a primary financial instrument;
 - (e) a cash instrument.

The instruments referred to in points (a), (b) and (c) are only financial instruments if their value is derived from the price of an underlying financial instrument or another underlying item, a rate, or an index;

- (51) 'initial capital' means the amount and types of own funds specified in Article 12 of Directive 2013/36/EU for credit institutions and in Title IV of that Directive for investment firms;
- (52) 'operational risk' means the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, and includes legal risk;
- (53) 'dilution risk' means the risk that an amount receivable is reduced through cash or non-cash credits to the obligor;
- (54) 'probability of default' or 'PD' means the probability of default of a counterparty over a one year period;
- (55) 'loss given default' or 'LGD' means the ratio of the loss on an exposure due to the default of a counterparty to the amount outstanding at default;
- (56) 'conversion factor' means the ratio of the currently undrawn amount of a commitment that could be drawn and that would therefore be outstanding at default to the currently undrawn amount of the commitment, the extent of the commitment being determined by the advised limit, unless the unadvised limit is higher;
- (57) 'credit risk mitigation' means a technique used by an institution to reduce the credit risk associated with an exposure or exposures which that institution continues to hold;
- (58) 'funded credit protection' means a technique of credit risk mitigation where the reduction of the credit risk on the exposure of an institution derives from the right of that institution, in the event of the default of the counterparty or on the occurrence of other specified credit events relating to the counterparty, to liquidate, or to obtain transfer or appropriation of, or to retain certain assets or amounts, or to reduce the amount of the exposure to, or to replace it with, the amount of the difference between the amount of the exposure and the amount of a claim on the institution;
- (59) 'unfunded credit protection' means a technique of credit risk mitigation where the reduction of the credit risk on the exposure of an institution derives from the obligation of a third party to pay an amount in the event of the default of the borrower or the occurrence of other specified credit events;
- (60) 'cash assimilated instrument' means a certificate of deposit, a bond, including a covered bond, or any other non-subordinated instrument, which has been issued by an institution, for which the institution has already received full payment and which shall be unconditionally reimbursed by the institution at its nominal value;
- (61) 'securitisation' means a transaction or scheme, whereby the credit risk associated with an exposure or pool of exposures is tranching, having both of the following characteristics:
 - (a) payments in the transaction or scheme are dependent upon the performance of the exposure or pool of exposures;
 - (b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme;
- (62) 'securitisation position' means an exposure to a securitisation;

- (63) 're-securitisation' means securitisation where the risk associated with an underlying pool of exposures is tranching and at least one of the underlying exposures is a securitisation position;
- (64) 're-securitisation position' means an exposure to a re-securitisation;
- (65) 'credit enhancement' means a contractual arrangement whereby the credit quality of a position in a securitisation is improved in relation to what it would have been if the enhancement had not been provided, including the enhancement provided by more junior tranches in the securitisation and other types of credit protection;
- (66) 'securitisation special purpose entity' or 'SSPE' means a corporation trust or other entity, other than an institution, organised for carrying out a securitisation or securitisations, the activities of which are limited to those appropriate to accomplishing that objective, the structure of which is intended to isolate the obligations of the SSPE from those of the originator institution, and in which the holders of the beneficial interests have the right to pledge or exchange those interests without restriction;
- (67) 'tranche' means a contractually established segment of the credit risk associated with an exposure or a number of exposures, where a position in the segment entails a risk of credit loss greater than or less than a position of the same amount in each other such segment, without taking account of credit protection provided by third parties directly to the holders of positions in the segment or in other segments;
- (68) 'marking to market' means the valuation of positions at readily available close out prices that are sourced independently, including exchange prices, screen prices or quotes from several independent reputable brokers;
- (69) 'marking to model' means any valuation which has to be benchmarked, extrapolated or otherwise calculated from one or more market inputs;
- (70) 'independent price verification' means a process by which market prices or marking to model inputs are regularly verified for accuracy and independence;
- (71) 'eligible capital' means the sum of the following:
- (a) Tier 1 capital as referred to in Article 25;
 - (b) Tier 2 capital as referred to in Article 71 that is equal to or less than one third of Tier 1 capital;
- (72) 'recognised exchange' means an exchange which meets all of the following conditions:
- (a) it is a regulated market;
 - (b) it has a clearing mechanism whereby contracts listed in Annex II are subject to daily margin requirements which, in the opinion of the competent authorities, provide appropriate protection;
- (73) 'discretionary pension benefits' means enhanced pension benefits granted on a discretionary basis by an institution to an employee as part of that employee's variable remuneration package, which do not include accrued benefits granted to an employee under the terms of the company pension scheme;
- (74) 'mortgage lending value' means the value of immovable property as determined by a prudent assessment of the future marketability of the property taking into account

- long-term sustainable aspects of the property, the normal and local market conditions, the current use and alternative appropriate uses of the property;
- (75) 'residential property' means a residence which is occupied by the owner or the lessee of the residence, including the right to inhabit an apartment in housing cooperatives located in Sweden;
- (76) 'market value' means, for the purposes of immovable property, the estimated amount for which the property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without being under compulsion;
- (77) 'applicable accounting framework' means the accounting standards to which the institution is subject under Regulation (EC) No 1606/2002 or Directive 86/635/EEC;
- (78) 'one-year default rate' means the ratio between the number of defaults occurred during a period that starts from one year prior to a date T and the number of obligors assigned to this grade or pool one year prior to that date;
- (79) 'speculative immovable property financing' means loans for the purposes of the acquisition of or development or construction on land in relation to immovable property, or of and in relation to such property, with the intention of reselling for profit;
- (80) 'trade finance' means financing, including guarantees, connected to the exchange of goods and services through financial products of fixed short-term maturity, generally of less than one year, without automatic rollover;
- (81) 'officially supported export credits' means loans or credits to finance the export of goods and services for which an official export credit agency provides guarantees, insurance or direct financing;
- (82) '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 either of the following:
- (a) 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;
 - (b) 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;
- (83) 'repurchase transaction' means any transaction governed by a repurchase agreement or a reverse repurchase agreement;
- (84) 'simple repurchase agreement' means a repurchase transaction of a single asset, or of similar, non-complex assets, as opposed to a basket of assets;
- (85) 'positions held with trading intent' means any of the following:
- (a) proprietary positions and positions arising from client servicing and market making;

- (b) positions intended to be resold short term;
 - (c) positions intended to benefit from actual or expected short term price differences between buying and selling prices or from other price or interest rate variations;
- (86) 'trading book' means all positions in financial instruments and commodities held by an institution either with trading intent, or in order to hedge positions held with trading intent;
- (87) 'multilateral trading facility' means multilateral trading facility as defined in point 15 of Article 4 of Directive 2004/39/EC;
- (88) 'qualifying central counterparty' means a central counterparty that has been either authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation;
- (89) 'default fund' means a fund established by a CCP in accordance with Article 42 of Regulation (EU) No 648/2012 and used in accordance with Article 45 of that Regulation;
- (90) 'pre-funded contribution to the default fund of a CCP' means a contribution to the default fund of a CCP that is paid in by an institution;
- (91) 'trade exposure' means a current exposure, including a variation margin due to the clearing member but not yet received, and any potential future exposure of a clearing member or a client, to a CCP arising from contracts and transactions listed in points (a) to (e) of Article 301(1), as well as initial margin;
- (92) 'regulated market' means regulated market as defined in point (14) of Article 4 of Directive 2004/39/EC;
- (93) 'leverage' means the relative size of an institution's assets, off-balance sheet obligations and contingent obligations to pay or to deliver or to provide collateral, including obligations from received funding, made commitments, derivatives or repurchase agreements, but excluding obligations which can only be enforced during the liquidation of an institution, compared to that institution's own funds;
- (94) 'risk of excessive leverage' means the risk resulting from an institution's vulnerability due to leverage or contingent leverage that may require unintended corrective measures to its business plan, including distressed selling of assets which might result in losses or in valuation adjustments to its remaining assets;
- (95) 'credit risk adjustment' means the amount of specific and general loan loss provision for credit risks that has been recognised in the financial statements of the institution in accordance with the applicable accounting framework;
- (96) 'internal hedge' means a position that materially offsets the component risk elements between a trading book and a non-trading book position or sets of positions;
- (97) 'reference obligation' means an obligation used for the purposes of determining the cash settlement value of a credit derivative;
- (98) 'external credit assessment institution' or 'ECAI' means a credit rating agency that is registered or certified in accordance with Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating

- agencies⁽⁶⁾ or a central bank issuing credit ratings which are exempt from the application of Regulation (EC) No 1060/2009;
- (99) 'nominated ECAI' means an ECAI nominated by an institution;
- (100) 'accumulated other comprehensive income' has the same meaning as under International Accounting Standard (IAS) 1, as applicable under Regulation (EC) No 1606/2002;
- (101) 'basic own funds' means basic own funds within the meaning of Article 88 of Directive 2009/138/EC;
- (102) 'Tier 1 own-fund insurance items' means basic own-fund items of undertakings subject to the requirements of Directive 2009/138/EC where those items are classified in Tier 1 within the meaning of Directive 2009/138/EC in accordance with Article 94(1) of that Directive;
- (103) 'additional Tier 1 own-fund insurance items' means basic own-fund items of undertakings subject to the requirements of Directive 2009/138/EC where those items are classified in Tier 1 within the meaning of Directive 2009/138/EC in accordance with Article 94(1) of that Directive and the inclusion of those items is limited by the delegated acts adopted in accordance with Article 99 of that Directive;
- (104) 'Tier 2 own-fund insurance items' means basic own-fund items of undertakings subject to the requirements of Directive 2009/138/EC where those items are classified in Tier 2 within the meaning of Directive 2009/138/EC in accordance with Article 94(2) of that Directive;
- (105) 'Tier 3 own-fund insurance items' means basic own-fund insurance items of undertakings subject to the requirements of Directive 2009/138/EC where those items are classified in Tier 3 within the meaning of Directive 2009/138/EC in accordance with Article 94(3) of that Directive;
- (106) 'deferred tax assets' has the same meaning as under the applicable accounting framework;
- (107) 'deferred tax assets that rely on future profitability' means deferred tax assets the future value of which may be realised only in the event the institution generates taxable profit in the future;
- (108) 'deferred tax liabilities' has the same meaning as under the applicable accounting framework;
- (109) 'defined benefit pension fund assets' means the assets of a defined pension fund or plan, as applicable, calculated after they have been reduced by the amount of obligations under the same fund or plan;
- (110) 'distributions' means the payment of dividends or interest in any form;
- (111) 'financial undertaking' has the same meaning as under points (25)(b) and (d) of Article 13 of Directive 2009/138/EC;
- (112) 'funds for general banking risk' has the same meaning as under Article 38 of Directive 86/635/EEC;
- (113) 'goodwill' has the same meaning as under the applicable accounting framework;

- (114) 'indirect holding' means any exposure to an intermediate entity that has an exposure to capital instruments issued by a financial sector entity where, in the event the capital instruments issued by the financial sector entity were permanently written off, the loss that the institution would incur as a result would not be materially different from the loss the institution would incur from a direct holding of those capital instruments issued by the financial sector entity;
- (115) 'intangible assets' has the same meaning as under the applicable accounting framework and includes goodwill;
- (116) 'other capital instruments' means capital instruments issued by financial sector entities that do not qualify as Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments or Tier 1 own-fund insurance items, additional Tier 1 own-fund insurance items, Tier 2 own-fund insurance items or Tier 3 own-fund insurance items;
- (117) 'other reserves' means reserves within the meaning of the applicable accounting framework that are required to be disclosed under the applicable accounting standard, excluding any amounts already included in accumulated other comprehensive income or retained earnings;
- (118) 'own funds' means the sum of Tier 1 capital and Tier 2 capital;
- (119) 'own funds instruments' means capital instruments issued by the institution that qualify as Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments;
- (120) 'minority interest' means the amount of Common Equity Tier 1 capital of a subsidiary of an institution that is attributable to natural or legal persons other than those included in the prudential scope of consolidation of the institution;
- (121) 'profit' has the same meaning as under the applicable accounting framework;
- (122) 'reciprocal cross holding' means a holding by an institution of the own funds instruments or other capital instruments issued by financial sector entities where those entities also hold own funds instruments issued by the institution;
- (123) 'retained earnings' means profits and losses brought forward as a result of the final application of profit or loss under the applicable accounting framework;
- (124) 'share premium account' has the same meaning as under the applicable accounting framework;
- (125) 'temporary differences' has the same meaning as under the applicable accounting framework;
- (126) 'synthetic holding' means an investment by an institution in a financial instrument the value of which is directly linked to the value of the capital instruments issued by a financial sector entity;
- (127) 'cross-guarantee scheme' means a scheme that meets all the following conditions:
- (a) the institutions fall within the same institutional protection scheme as referred to in Article 113(7);
 - (b) the institutions are fully consolidated in accordance with Article 1(1)(b), (c) or (d) or Article 1(2) of Directive 83/349/EEC and are included in the supervision on a consolidated basis of an institution which is a parent institution in a Member State in accordance with Part One, Title II, Chapter 2 of this Regulation and subject to own funds requirements;

- (c) the parent institution in a Member State and the subsidiaries are established in the same Member State and are subject to authorisation and supervision by the same competent authority;
 - (d) the parent institution in a Member State and the subsidiaries have entered into a contractual or statutory liability arrangement which protects those institutions and in particular ensures their liquidity and solvency, in order to avoid bankruptcy in the case that it becomes necessary;
 - (e) arrangements are in place to ensure the prompt provision of financial means in terms of capital and liquidity if required under the contractual or statutory liability arrangement referred to in point (d);
 - (f) the adequacy of the arrangements referred to in points (d) and (e) is monitored on a regular basis by the competent authority;
 - (g) the minimum period of notice for a voluntary exit of a subsidiary from the liability arrangement is 10 years;
 - (h) the competent authority is empowered to prohibit a voluntary exit of a subsidiary from the liability arrangement;
- (128) 'distributable items' means the amount of the profits at the end of the last financial year plus any profits brought forward and reserves available for that purpose before distributions to holders of own funds instruments less any losses brought forward, profits which are non-distributable pursuant to provisions in legislation or the institution's bye-laws and sums placed to non-distributable reserves in accordance with applicable national law or the statutes of the institution, those losses and reserves being determined on the basis of the individual accounts of the institution and not on the basis of the consolidated accounts.

2 Where reference in this Regulation is made to real estate or residential or commercial immovable property or a mortgage on such property, it shall include shares in Finnish residential housing companies operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation. Member States or their competent authorities may allow shares constituting an equivalent indirect holding of real estate to be treated as a direct holding of real estate provided that such an indirect holding is specifically regulated in the national law of the Member State concerned and that, when pledged as collateral, it provides equivalent protection to creditors.

3 Trade finance as referred to in point (80) of paragraph 1 is generally uncommitted and requires satisfactory supporting transactional documentation for each drawdown request enabling refusal of the finance in the event of any doubt about credit-worthiness or the supporting transactional documentation. Repayment of trade finance exposures is usually independent of the borrower, the funds instead coming from cash received from importers or resulting from proceeds of the sales of the underlying goods.

Status: This is the original version (as it was originally adopted).

- (1) OJ L 335, 17.12.2009, p. 1.
- (2) OJ L 302, 17.11.2009, p. 32.
- (3) OJ L 174, 1.7.2011, p. 1.
- (4) OJ L 319, 5.12.2007, p. 1.
- (5) OJ L 222, 14.8.1978, p. 11.
- (6) OJ L 302, 17.11.2009, p. 1.