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)

[X1PART ONE

GENERAL PROVISIONS

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Scope

This Regulation lays down uniform rules concerning general prudential requirements that institutions supervised under Directive 2013/36/EU shall comply with in relation to the following items:

(a) own funds requirements relating to entirely quantifiable, uniform and standardised elements of credit risk, market risk, operational risk and settlement risk;

(b) requirements limiting large exposures;

(c) after the delegated act referred to in Article 460 has entered into force, liquidity requirements relating to entirely quantifiable, uniform and standardised elements of liquidity risk;

(d) reporting requirements related to points (a), (b) and (c) and to leverage;

(e) public disclosure requirements.

This Regulation does not govern publication requirements for competent authorities in the field of prudential regulation and supervision of institutions as set out in Directive 2013/36/EU.

Article 2

Supervisory powers

For the purposes of ensuring compliance with this Regulation, competent authorities shall have the powers and shall follow the procedures set out in Directive 2013/36/EU.

Article 3

Application of stricter requirements by institutions

This Regulation shall not prevent institutions from holding own funds and their components in excess of, or applying measures that are stricter than those required by this Regulation.

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 or 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 and 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 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, respectively, in points (f) and (g) of Article 212(1) of Directive 2009/138/EC;

(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 as defined in point (f) 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[(5)], 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 tranched, 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 tranched 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 following:

(a) for the purposes of Title III of Part Two it means the sum of the following:

(i) Tier 1 capital as referred to in Article 25, without applying the deduction in Article 36(1)(k)(i);

(ii) Tier 2 capital as referred to in Article 71 that is equal to or less than one third of Tier 1 capital as calculated pursuant to point (i) of this point;

(b) for the purposes of Article 97 and Part Four it means the sum of the following:

(i) Tier 1 capital as referred to in Article 25;

(ii) 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 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 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;

(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' or 'QCCP' 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 or to the client, 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 latest 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 immovable property, to residential property or commercial immovable property or to 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 immovable property to be treated as a direct holding of immovable property 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 creditworthiness 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.

Article 5

Definitions specific to capital requirements for credit risk

For the purposes of Part Three, Title II, the following definitions shall apply:

(1) 'exposure' means an asset or off-balance sheet item;

(2) 'loss' means economic loss, including material discount effects, and material direct and indirect costs associated with collecting on the instrument;

(3) 'expected loss' or 'EL' means the ratio of the amount expected to be lost on an exposure from a potential default of a counterparty or dilution over a one-year period to the amount outstanding at default.

TITLE II

LEVEL OF APPLICATION OF REQUIREMENTS

CHAPTER 1

Application of requirements on an individual basis

Article 6

General principles

1 Institutions shall comply with the obligations laid down in Parts Two to Five and Eight on an individual basis.

2 No institution which is either a subsidiary in the Member State where it is authorised and supervised, or a parent undertaking, and no institution included in the consolidation pursuant to Article 18, shall be required to comply with the obligations laid down in Articles 89, 90 and 91 on an individual basis.

3 No institution which is either a parent undertaking or a subsidiary, and no institution included in the consolidation pursuant to Article 18, shall be required to comply with the obligations laid down in Part Eight on an individual basis.

4 Credit institutions and investment firms that are authorised to provide the investment services and activities listed in points (3) and (6) of Section A of Annex I to Directive 2004/39/EC shall comply with the obligations laid down in Part Six on an individual basis. Pending the report from the Commission in accordance with Article 508(3), competent authorities may exempt investment firms from compliance with the obligations laid down in Part Six taking into account the nature, scale and complexity of the investment firms' activities.

5 Institutions, except for investment firms referred to in Article 95(1) and Article 96(1) and institutions for which competent authorities have exercised the derogation specified in Article 7(1) or (3), shall comply with the obligations laid down in Part Seven on an individual basis.

Article 7

Derogation from the application of prudential requirements on an individual basis

1 Competent authorities may waive the application of Article 6(1) to any subsidiary of an institution, where both the subsidiary and the institution are subject to authorisation and supervision by the Member State concerned, and the subsidiary is included in the supervision on a consolidated basis of the institution which is the parent undertaking, and all of the following conditions are satisfied, in order to ensure that own funds are distributed adequately between the parent undertaking and the subsidiary:

a there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by its parent undertaking;

b either the parent undertaking satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the permission of the competent authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of negligible interest;

c the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary;

d the parent undertaking holds more than 50 % of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary.

2 Competent authorities may exercise the option provided for in paragraph 1 where the parent undertaking is a financial holding company or a mixed financial holding company set up in the same Member State as the institution, provided that it is subject to the same supervision as that exercised over institutions, and in particular to the standards laid down in Article 11(1).

3 Competent authorities may waive the application of Article 6(1) to a parent institution in a Member State where that institution is subject to authorisation and supervision by the Member State concerned, and it is included in the supervision on a consolidated basis, and all the following conditions are satisfied, in order to ensure that own funds are distributed adequately among the parent undertaking and the subsidiaries:

a there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities to the parent institution in a Member State;

b the risk evaluation, measurement and control procedures relevant for consolidated supervision cover the parent institution in a Member State.

The competent authority which makes use of this paragraph shall inform the competent authorities of all other Member States.

Article 8

Derogation from the application of liquidity requirements on an individual basis

1 The competent authorities may waive in full or in part the application of Part Six to an institution and to all or some of its subsidiaries in the Union and supervise them as a single liquidity sub-group so long as they fulfil all of the following conditions:

a the parent institution on a consolidated basis or a subsidiary institution on a sub-consolidated basis complies with the obligations laid down in Part Six;

b the parent institution on a consolidated basis or the subsidiary institution on a sub-consolidated basis monitors and has oversight at all times over the liquidity positions of all institutions within the group or sub-group, that are subject to the waiver and ensures a sufficient level of liquidity for all of these institutions;

c the institutions have entered into contracts that, to the satisfaction of the competent authorities, provide for the free movement of funds between them to enable them to meet their individual and joint obligations as they become due;

d there is no current or foreseen material practical or legal impediment to the fulfilment of the contracts referred to in (c).

By 1 January 2014, the Commission shall report to the European Parliament and the Council on any legal obstacles which are capable of rendering impossible the application

of point (c) of the first subparagraph and is invited to make a legislative proposal, if appropriate, by 31 December 2015, on which of those obstacles should be removed.

2 The competent authorities may waive in full or in part the application of Part Six to an institution and to all or some of its subsidiaries where all institutions of the single liquidity sub-group are authorised in the same Member State and provided that the conditions in paragraph 1 are fulfilled.

3 Where institutions of the single liquidity sub-group are authorised in several Member States, paragraph 1 shall only be applied after following the procedure laid down in Article 21 and only to the institutions whose competent authorities agree about the following elements:

a their assessment of the compliance of the organisation and of the treatment of liquidity risk with the conditions set out in Article 86 of Directive 2013/36/EU across the single liquidity sub-group;

b the distribution of amounts, location and ownership of the required liquid assets to be held within the single liquidity sub-group;

c the determination of minimum amounts of liquid assets to be held by institutions for which the application of Part Six will be waived;

d the need for stricter parameters than those set out in Part Six;

e unrestricted sharing of complete information between the competent authorities;

f a full understanding of the implications of such a waiver.

4 Competent authorities may also apply paragraphs 1, 2 and 3 to institutions which are members of the same institutional protection scheme as referred to in Article 113(7) provided that they meet all the conditions laid down therein, and to other institutions linked by a relationship referred to in Article 113(6) provided that they meet all the conditions laid down therein. Competent authorities shall in that case determine one of the institutions subject to the waiver to meet Part Six on the basis of the consolidated situation of all institutions of the single liquidity sub-group.

5 Where a waiver has been granted under paragraph 1 or paragraph 2, the competent authorities may also apply Article 86 of Directive 2013/36/EU, or parts thereof, at the level of the single liquidity sub-group and waive the application of Article 86 of Directive 2013/36/EU, or parts thereof, on an individual basis.

Article 9

Individual consolidation method

1 Subject to paragraphs 2 and 3 of this Article and to Article 144(3) of Directive 2013/36/EU, the competent authorities may permit on a case-by-case basis parent institutions to incorporate in the calculation of their requirement under Article 6(1), subsidiaries which meet the conditions laid down in points (c) and (d) of Article 7(1) and whose material exposures or material liabilities are to that parent institution.

2 The treatment set out in paragraph 1 shall be permitted only where the parent institution demonstrates fully to the competent authorities the circumstances and arrangements, including legal arrangements, by virtue of which there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds, or repayment of liabilities when due by the subsidiary to its parent undertaking.

3 Where a competent authority exercises the discretion laid down in paragraph 1, it shall on a regular basis and not less than once a year inform the competent authorities of all the

other Member States of the use made of paragraph 1 and of the circumstances and arrangements referred to in paragraph 2. Where the subsidiary is in a third country, the competent authorities shall provide the same information to the competent authorities of that third country as well.

Article 10

Waiver for credit institutions permanently affiliated to a central body

1 Competent authorities may, in accordance with national law, partially or fully waive the application of the requirements set out in Parts Two to Eight to one or more credit institutions situated in the same Member State and which are permanently affiliated to a central body which supervises them and which is established in the same Member State, if the following conditions are met:

a the commitments of the central body and affiliated institutions are joint and several liabilities or the commitments of its affiliated institutions are entirely guaranteed by the central body;

b the solvency and liquidity of the central body and of all the affiliated institutions are monitored as a whole on the basis of consolidated accounts of these institutions;

c the management of the central body is empowered to issue instructions to the management of the affiliated institutions.

Member States may maintain and make use of existing national legislation regarding the application of the waiver referred to in the first subparagraph as long as it does not conflict with this Regulation or Directive 2013/36/EU.

2 Where the competent authorities are satisfied that the conditions set out in paragraph 1 are met, and where the liabilities or commitments of the central body are entirely guaranteed by the affiliated institutions, the competent authorities may waive the application of Parts Two to Eight to the central body on an individual basis.

CHAPTER 2

Prudential consolidation

Section 1

Application of requirements on a consolidated basis

Article 11

General treatment

1 Parent institutions in a Member State shall comply, to the extent and in the manner prescribed in Article 18, with the obligations laid down in Parts Two to Four and Part Seven on the basis of their consolidated situation. The parent undertakings and their subsidiaries subject to this Regulation shall set up a proper organisational structure and appropriate internal control mechanisms in order to ensure that the data required for consolidation are duly processed and forwarded. In particular, they shall ensure that subsidiaries not subject to this Regulation implement arrangements, processes and mechanisms to ensure a proper consolidation.

2 Institutions controlled by a parent financial holding company or a parent mixed financial holding company in a Member State shall comply, to the extent and in the manner prescribed in Article 18, with the obligations laid down in Parts Two to Four and Part Seven on the basis of the consolidated situation of that financial holding company or mixed financial holding company.

Where more than one institution is controlled by a parent financial holding company or by a parent mixed financial holding company in a Member State, the first subparagraph shall apply only to the institution to which supervision on a consolidated basis applies in accordance with Article 111 of Directive 2013/36/EU.

3 EU parent institutions, institutions controlled by an EU parent financial holding company and institutions controlled by an EU parent mixed financial holding company shall comply with the obligations laid down in Part Six on the basis of the consolidated situation of that parent institution, financial holding company or mixed financial holding company, if the group comprises one or more credit institutions or investment firms that are authorised to provide the investment services and activities listed in points (3) and (6) of Section A of Annex I to Directive 2004/39/EC. Pending the report from the Commission in accordance with Article 508(2) of this Regulation, and if the group comprises only investment firms, competent authorities may exempt investment firms from compliance with the obligations laid down in Part Six on a consolidated basis, taking into account the nature, scale and complexity of the investment firm's activities.

4 Where Article 10 is applied, the central body referred to in that Article shall comply with the requirements of Parts Two to Eight on the basis of the consolidated situation of the whole as constituted by the central body together with its affiliated institutions.

5 In addition to the requirements in paragraphs 1 to 4, and without prejudice to other provisions of this Regulation and Directive 2013/36/EU, when it is justified for supervisory purposes by the specificities of the risk or of the capital structure of an institution or where Member States adopt national laws requiring the structural separation of activities within a banking group, competent authorities may require the structurally separated institutions to comply with the obligations laid down in Parts Two to Four and Parts Six to Eight of this Regulation and in Title VII of Directive 2013/36/EU on a sub-consolidated basis.

Applying the approach set out in the first subparagraph shall be without prejudice to effective supervision on a consolidated basis and shall neither entail disproportionate adverse effects on the whole or parts of the financial system in other Member States or in the Union as a whole nor form or create an obstacle to the functioning of the internal market.

Article 12

Financial holding company or mixed financial holding company with both a subsidiary credit institution and a subsidiary investment firm

Where a financial holding company or a mixed financial holding company has at least one credit institution and one investment firm as subsidiaries, the requirements that apply on the basis of the consolidated situation of the financial holding company or of the mixed financial holding company shall apply to the credit institution.

Article 13

Application of disclosure requirements on a consolidated basis

1 EU parent institutions shall comply with the obligations laid down in Part Eight on the basis of their consolidated situation.

Significant subsidiaries of EU parent institutions and those subsidiaries which are of material significance for their local market shall disclose the information specified in Articles 437, 438, 440, 442, 450, 451 and 453, on an individual or sub-consolidated basis.

2 Institutions controlled by an EU parent financial holding company or EU parent mixed financial holding company shall comply with the obligations laid down in Part Eight on the basis of the consolidated situation of that financial holding company or mixed financial holding company.

Significant subsidiaries of EU parent financial holding companies or EU parent mixed holding companies and those subsidiaries which are of material significance for their local market shall disclose the information specified in Articles 437, 438, 440, 442, 450, 451 and 453 on an individual or sub-consolidated basis.

3 Paragraphs 1 and 2 shall not apply in full or in part to EU parent institutions, institutions controlled by an EU parent financial holding company or EU parent mixed financial holding company, to the extent that they are included within equivalent disclosures provided on a consolidated basis by a parent undertaking established in a third country.

4 Where Article 10 is applied, the central body referred to in that Article shall comply with the requirements of Part Eight on the basis of the consolidated situation of the central body. Article 18(1) shall apply to the central body and the affiliated institutions shall be treated as the subsidiaries of the central body.

Article 14

Application of requirements of Part Five on a consolidated basis

1 Parent undertakings and their subsidiaries subject to this Regulation shall meet the obligations laid down in Part Five on a consolidated or sub-consolidated basis, to ensure that their arrangements, processes and mechanisms required by those provisions are consistent and well-integrated and that any data and information relevant to the purpose of supervision can be produced. In particular, they shall ensure that subsidiaries not subject to this Regulation implement arrangements, processes and mechanisms to ensure compliance with those provisions.

2 Institutions shall apply an additional risk weight in accordance with Article 407 when applying Article 92 on a consolidated or sub-consolidated basis if the requirements of Article 405 or 406 are breached at the level of an entity established in a third country included in the consolidation in accordance with Article 18 if the breach is material in relation to the overall risk profile of the group.

3 Obligations resulting from Part Five concerning subsidiaries, not themselves subject to this Regulation, shall not apply if the EU parent institution or institutions controlled by an EU parent financial holding company or EU parent mixed financial holding company, can

demonstrate to the competent authorities that the application of Part Five is unlawful under the laws of the third country where the subsidiary is established.

Article 15

Derogation from the application of own funds requirements on a consolidated basis for groups of investment firms

1 The consolidating supervisor may waive, on a case-by-case basis, the application of Part Three of this Regulation and Title VII, Chapter 4 of Directive 2013/36/EU on a consolidated basis provided that the following conditions exist:

a each EU investment firm in the group uses the alternative calculation of total risk exposure amount referred to in Article 95(2) or 96(2);

b all investment firms in the group fall within the categories in Article 95(1) or 96(1);

c each EU investment firm in the group meets the requirements imposed in Article 95 or 96 on an individual basis and at the same time deducts from its Common Equity Tier 1 items any contingent liability in favour of investment firms, financial institutions, asset management companies and ancillary services undertakings, which would otherwise be consolidated;

d any financial holding company which is the parent financial holding company in a Member State of any investment firm in the group holds at least enough capital, defined here as the sum of the items referred to in Articles 26(1), 51(1) and 62(1), to cover the sum of the following:

(i) the sum of the full book value of any holdings, subordinated claims and instruments referred to in Article 36(1)(h) and (i), Article 56(1)(c) and (d), and Article 66(1)(c) and (d) in investment firms, financial institutions, asset management companies and ancillary services undertakings which would otherwise be consolidated; and

(ii) 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;

e the group does not include credit institutions.

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 The competent authorities may also apply the waiver if the financial holding companies holds a lower amount of own funds than the amount calculated under paragraph 1(d), but no lower than the sum of the own funds requirements imposed 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 own funds requirement for investment undertakings of third countries, financial institutions, asset management companies and ancillary services undertakings is a notional own funds requirement.

Article 16

Derogation from the application of the leverage ratio requirements on a consolidated basis for groups of investment firms

Where all entities in a group of investment firms, including the parent entity, are investment firms that are exempt from the application of the requirements laid down in Part Seven on an individual basis in accordance with Article 6(5), the parent investment firm may choose not to apply the requirements laid down in Part Seven on a consolidated basis.

Article 17

Supervision of investment firms waived from the application of own funds requirements on a consolidated basis

1 Investment firms in a group which has been granted the waiver provided for in Article 15 shall notify the competent authorities of the risks which could undermine their financial positions, including those associated with the composition and sources of their own funds, internal capital and funding.

2 Where the competent authorities responsible for the prudential supervision of the investment firm waive the obligation of supervision on a consolidated basis as provided for in Article 15, they shall take other appropriate measures to monitor the risks, in particular large exposures, of the whole group, including any undertakings not located in a Member State.

3 Where the competent authorities responsible for the prudential supervision of the investment firm waive the application of own funds requirements on a consolidated basis as provided for in Article 15, the requirements of Part Eight shall apply on an individual basis.

Section 2

Methods for prudential consolidation

Article 18

Methods for prudential consolidation

1 The institutions that are required to comply with the requirements referred to in Section 1 on the basis of their consolidated situation shall carry out a full consolidation of all institutions and financial institutions that are its subsidiaries or, where relevant, the subsidiaries of the same parent financial holding company or parent mixed financial holding company. Paragraphs 2 to 8 of this Article shall not apply where Part Six applies on the basis of an institution's consolidated situation.

2 However, the competent authorities may on a case-by-case basis permit proportional consolidation according to the share of capital that the parent undertaking holds in the subsidiary. Proportional consolidation may only be permitted where all of the following conditions are fulfilled:

a the liability of the parent undertaking is limited to the share of capital that the parent undertaking holds in the subsidiary in view of the liability of the other shareholders or members;

b the solvency of those other shareholders or members is satisfactory;

c the liability of the other shareholders and members is clearly established in a legally binding way.

3 Where undertakings are linked by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC, the competent authorities shall determine how consolidation is to be carried out.

4 The consolidating supervisor shall require the proportional consolidation according to the share of capital held of participations in institutions and financial institutions managed by an undertaking included in the consolidation together with one or more undertakings not included in the consolidation, where the liability of those undertakings is limited to the share of the capital they hold.

5 In the case of participations or capital ties other than those referred to in paragraphs 1 and 4, the competent authorities shall determine whether and how consolidation is to be carried out. In particular, they may permit or require use of the equity method. That method shall not, however, constitute inclusion of the undertakings concerned in supervision on a consolidated basis.

6 The competent authorities shall determine whether and how consolidation is to be carried out in the following cases:

a where, in the opinion of the competent authorities, an institution exercises a significant influence over one or more institutions or financial institutions, but without holding a participation or other capital ties in these institutions; and

b where two or more institutions or financial institutions are placed under single management other than pursuant to a contract or clauses of their memoranda or articles of association.

In particular, the competent authorities may permit, or require use of, the method provided for in Article 12 of Directive 83/349/EEC. That method shall not, however, constitute inclusion of the undertakings concerned in consolidated supervision.

7 EBA shall develop draft regulatory technical standards to specify conditions according to which consolidation shall be carried out in the cases referred to in paragraphs 2 to 6 of this Article.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2016.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

8 Where consolidated supervision is required pursuant to Article 111 of Directive 2013/36/EU, ancillary services undertakings and asset management companies as defined in point (5) of Article 2 of Directive 2002/87/EC shall be included in consolidations in the cases, and in accordance with the methods, laid down in this Article.

Section 3

Scope of prudential consolidation

Article 19

Entities excluded from the scope of prudential consolidation

1 An institution, a financial institution or an ancillary services undertaking which is a subsidiary or an undertaking in which a participation is held, need not to be included in the consolidation where the total amount of assets and off-balance sheet items of the undertaking concerned is less than the smaller of the following two amounts:

a EUR 10 million;

b 1 % of the total amount of assets and off-balance sheet items of the parent undertaking or the undertaking that holds the participation.

2 The competent authorities responsible for exercising supervision on a consolidated basis pursuant to Article 111 of Directive 2013/36/EU may on a case-by-case basis decide in the following cases that an institution, financial institution or ancillary services undertaking which is a subsidiary or in which a participation is held need not be included in the consolidation:

a where the undertaking concerned is situated in a third country where there are legal impediments to the transfer of the necessary information;

b where the undertaking concerned is of negligible interest only with respect to the objectives of monitoring institutions;

c where, in the opinion of the competent authorities responsible for exercising supervision on a consolidated basis, the consolidation of the financial situation of the undertaking concerned would be inappropriate or misleading as far as the objectives of the supervision of credit institutions are concerned.

3 Where, in the cases referred to in paragraph 1 and point (b) of paragraph 2, several undertakings meet the criteria set out therein, they shall nevertheless be included in the consolidation where collectively they are of non-negligible interest with respect to the specified objectives.

Article 20

Joint decisions on prudential requirements

1 The competent authorities shall work together, in full consultation:

a in the case of applications for the permissions referred to in Article 143(1), Article 151(4) and (9), Article 283, Article 312(2) and Article363 respectively submitted by an EU parent institution and its subsidiaries, or jointly by the subsidiaries of an EU parent financial holding company or EU parent mixed financial holding company, to decide whether or not to grant the permission sought and to determine the terms and conditions, if any, to which such permission should be subject;

b for the purposes of determining whether the criteria for a specific intragroup treatment as referred to in Article 422(9) and Article 425(5) complemented by the EBA regulatory technical standards referred to in Article 422(10) and Article 425(6) are met.

Applications shall be submitted only to the consolidating supervisor.

The application referred to in Article 312(2), shall include a description of the methodology used for allocating operational risk capital between the different entities of the group. The application shall indicate whether and how diversification effects are intended to be factored in the risk measurement system.

2 The competent authorities shall do everything within their power to reach a joint decision within six months on:

a the application referred to in point (a) of paragraph 1;

b the assessment of the criteria and the determination of the specific treatment referred to in point (b) of paragraph 1.

This joint decision shall be set out in a document containing the fully reasoned decision which shall be provided to the applicant by the competent authority referred to in paragraph 1.

3 The period referred to in paragraph 2 shall begin:

a on the date of receipt of the complete application referred to in point (a) of paragraph 1 by the consolidating supervisor. The consolidating supervisor shall forward the complete application to the other competent authorities without delay;

b on the date of receipt by competent authorities of a report prepared by the consolidating supervisor analysing intragroup commitments within the group.

4 In the absence of a joint decision between the competent authorities within six months, the consolidating supervisor shall make its own decision on point (a) of paragraph 1. The decision of the consolidating supervisor shall not limit the powers of the competent authorities under Article 105 of Directive 2013/36/EU.

The decision shall be set out in a document containing the fully reasoned decision and shall take into account the views and reservations of the other competent authorities expressed during the six months period.

The decision shall be provided to the EU parent institution, the EU parent financial holding company or to the EU parent mixed financial holding company and the other competent authorities by the consolidating supervisor.

If, at the end of the six-month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor shall defer its decision on point (a) of paragraph 1 of this Article and await any decision that EBA may take in accordance with Article 19(3) of that Regulation on its decision, and shall take its decision in conformity with the decision of EBA. The six-month period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the six-month period or after a joint decision has been reached.

5 In the absence of a joint decision between the competent authorities within six months, the competent authority responsible for the supervision of the subsidiary on an individual basis shall make its own decision on point (b) of paragraph 1.

The decision shall be set out in a document containing the fully reasoned decision and shall take into account the views and reservations of the other competent authorities expressed during the six-month period.

The decision shall be provided to the consolidating supervisor that informs the EU parent institution, the EU parent financial holding company or the EU parent mixed financial holding company.

If, at the end of the six-month period, the consolidating supervisor has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authority responsible for the supervision of the subsidiary on an individual basis shall defer its decision on point (b) of paragraph 1 of this Article and await any decision that EBA may take in accordance with Article 19(3) of that Regulation on its decision, and shall take its decision in conformity with the decision of EBA. The six-month period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the six-month period or after a joint decision has been reached.

6 Where an EU parent institution and its subsidiaries, the subsidiaries of an EU parent financial holding company or an EU parent mixed financial holding company use an Advanced Measurement Approach referred to in Article 312(2) or an IRB Approach referred to in Article 143 on a unified basis, the competent authorities shall allow the qualifying criteria set out in Articles 321 and 322 or in Part Three, Title II, Chapter 3, Section 6 respectively to be met by the parent and its subsidiaries considered together, in a way that is consistent with the structure of the group and its risk management systems, processes and methodologies.

7 The decisions referred to in paragraphs 2, 4 and 5 shall be recognised as determinative and applied by the competent authorities in the Member States concerned.

8 EBA shall develop draft implementing technical standards to specify the joint decision process referred to in point (a) of paragraph 1 with regard to the applications for permissions referred to in Article 143(1), Article 151(4) and (9), Article 283, Article 312(2), and Article 363 with a view to facilitating joint decisions.

EBA shall submit those draft implementing technical standards to the Commission by 31 December 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 21

Joint decisions on the level of application of liquidity requirements

1 Upon application of an EU parent institution or an EU parent financial holding company or EU parent mixed financial holding company or a sub-consolidating subsidiary of an EU parent institution or an EU parent financial holding company or EU parent mixed financial holding company, the consolidating supervisor and the competent authorities responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial holding company or EU parent mixed financial holding company in a Member State shall do everything within their power to reach a joint decision on whether the conditions in points (a) to (d) of Article 8(1) are met and identifying a single liquidity sub-group for the application of Article 8.

The joint decision shall be reached within six months after submission by the consolidating supervisor of a report identifying single liquidity sub-groups on the basis of the criteria laid down in Article 8. In the event of disagreement during the six-month period, the consolidating supervisor shall consult EBA at the request of any of the other

competent authorities concerned. The consolidating supervisor may consult EBA on its own initiative.

The joint decision may also impose constraints on the location and ownership of liquid assets and require minimum amounts of liquid assets to be held by institutions that are exempt from the application of Part Six.

The joint decision shall be set out in a document containing the fully reasoned decision which shall be submitted to the parent institution of the liquidity subgroup by the consolidating supervisor.

2 In the absence of a joint decision within six months, each competent authority responsible for supervision on an individual basis shall take its own decision.

However, any competent authority may during the six-month period refer to EBA the question whether the conditions in points (a) to (d) of Article 8(1) are met. In that case, EBA may carry out its non-binding mediation in accordance with Article 31(c) of Regulation (EU) No 1093/2010 and all the competent authorities involved shall defer their decisions pending the conclusion of the non-binding mediation. Where, during the mediation, no agreement has been reached by the competent authorities within three months, each competent authority responsible for supervision on an individual basis shall take its own decision taking into account the proportionality of benefits and risks at the level of the Member State of the parent institution and the proportionality of benefits and risks at the level of the Member State of the subsidiary. The matter shall not be referred to EBA after the end of the six-month period or after a joint decision has been reached.

The joint decision referred to in paragraph 1 and the decisions referred to in the second subparagraph of this paragraph shall be binding.

3 Any relevant competent authority may also during the six-month period consult EBA in the event of a disagreement on the conditions in points (a) to (d) of Article 8(3). In that case, EBA may carry out its non-binding mediation in accordance with Article 31(c) of Regulation (EU) No 1093/2010, and all the competent authorities involved shall defer their decisions pending the conclusion of the non-binding mediation. Where, during the mediation, no agreement has been reached by the competent authorities within three months, each competent authority responsible for supervision on an individual basis shall take its own decision.

Article 22

Sub-consolidation in cases of entities in third countries

Subsidiary institutions shall apply the requirements laid down in Articles 89 to 91 and Parts Three and Four on the basis of their sub-consolidated situation if those institutions, or the parent undertaking where it is a financial holding company or mixed financial holding company, have an institution or a financial institution as a subsidiary in a third country, or hold a participation in such an undertaking.

Article 23

Undertakings in third countries

For the purposes of applying supervision on a consolidated basis in accordance with this Chapter, the terms ‘investment firm’, ‘credit institution’, financial institution', and

'institution' shall also apply to undertakings established in third countries, which, were they established in the Union, would fulfil the definitions of those terms in Article 4.

Article 24

Valuation of assets and off-balance sheet items

1 The valuation of assets and off-balance sheet items shall be effected in accordance with the applicable accounting framework.

2 By way of derogation from paragraph 1, competent authorities may require that institutions effect the valuation of assets and off-balance sheet items and the determination of own funds in accordance with the international accounting standards as applicable under Regulation (EC) No 1606/2002.**]**

Editorial Information

X1 Substituted by Corrigendum to 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 (OJ L 176, 27.6.2013, p. 1).

(1) **[**[X1]OJ L 335, 17.12.2009, p. 1.**]**

(2) **[**[X1]OJ L 302, 17.11.2009, p. 32.**]**

(3) **[**[X1]OJ L 174, 1.7.2011, p. 1.**]**

(4) **[**[X1]OJ L 319, 5.12.2007, p. 1.**]**

(5) **[**[X1]OJ L 222, 14.8.1978, p. 11.**]**

(6) **[**[X1]OJ L 302, 17.11.2009, p. 1.**]**

Editorial Information

X1 Substituted by Corrigendum to 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 (OJ L 176, 27.6.2013, p. 1).

Status:
Point in time view as at 28/06/2013.

Changes to legislation:
There are currently no known outstanding effects for the Regulation (EU) No 575/2013 of the European Parliament and of the Council, PART ONE.