
STATUTORY INSTRUMENTS

2013 No. 3115

The Capital Requirements Regulations 2013

PART 1

Introductory provisions

Citation, commencement and expiry

- 1.—(1) These Regulations may be cited as the Capital Requirements Regulations 2013.
- (2) Subject to paragraph (3), these Regulations come into force on 1st January 2014.
- (3) The Regulations specified in the first column of Schedule 1 (CRD transitional arrangements) come into force on the dates specified in the second column or cease to have effect on the dates specified in the third column.

Interpretation

- 2.—(1) In these Regulations—
- “appropriate regulator” means the PRA in relation to a PRA-authorized person and the FCA in relation to any other person;
- “Bank” means the Bank of England;
- “capital requirements directive” means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC(1);
- “capital requirements regulation” means 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(2);
- “EBA Regulation” means Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC(3);
- “EEA consolidating supervisor” means the competent authority responsible under the capital requirements directive for the exercise of supervision on a consolidated basis of—
- (a) an EEA parent institution; or
 - (b) institutions controlled by an EEA parent financial holding company or EEA parent mixed financial holding company;

(1) OJ no L176, 27/6/2013, p. 338. For corrigenda see OJ no L208, 2/8/2013, p.73.

(2) OJ no L176, 27/6/2013, p.1. For corrigenda see OJ no L208, 2/8/2013 p.68 and OJ no L321, 30/11/2013 p. 6.

(3) OJ no L331, 15/12/2010, p.12.

“EEA parent institution” means a parent institution in an EEA State which is not a subsidiary of another institution authorised in any EEA State or of a financial holding company or mixed financial holding company set up in any EEA State;

“EIOPA” means the European Insurance and Occupational Pensions Authority established under the EIOPA Regulation;

“EIOPA Regulation” means Regulation (EU) 1094/2010 of 24 November 2010 of the European Parliament and of the Council establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC(4);

“ESRB” means the European Systemic Risk Board established under the ESRB Regulation;

“ESRB Regulation” means Regulation (EU) No 1092/2010 of 24 November 2013 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board(5);

“FSMA” means the Financial Services and Markets Act 2000;

“group” means a group whose members include one or more institutions;

“home EEA State” means the EEA State in which an institution has been granted authorisation;

“host EEA State” means an EEA State in which an institution has a branch or in which it provides services;

“national consolidating supervisor” means the competent authority responsible under the capital requirements directive for the exercise of supervision on a consolidated basis of—

- (a) a parent institution in an EEA State; or
- (b) institutions controlled by a parent financial holding company in an EEA State or a parent mixed financial holding company in an EEA State;

“parent institution in an EEA State” means an institution which has an institution or financial institution as a subsidiary or which holds a participation (within the meaning of Article 4(1)(35) of the capital requirements regulation) in an institution or financial institution, and which is not itself a subsidiary of another institution authorised in the same EEA State, or of a financial holding company or mixed financial holding company set up in the same EEA State;

“parent financial holding company in an EEA State” means a financial holding company which is not itself a subsidiary of an institution authorised in the same EEA State, or of another financial holding company or mixed financial holding company set up in the same EEA State;

“parent mixed financial holding company in an EEA State” means a mixed financial holding company which is not itself a subsidiary of an institution authorised in the same EEA State, or of another mixed financial holding company or financial holding company set up in the same EEA State;

“relevant competent authority” means a competent authority which is not the EEA consolidating supervisor and which has authorised a subsidiary of an EEA parent institution, a subsidiary of an EEA parent financial holding company or a subsidiary of a EEA parent mixed financial holding company.

(2) Except as provided by paragraph (1)—

- (a) any expression used in these Regulations which is defined in Article 4 (definitions) of the capital requirements regulation or Article 3 (definitions) of the capital requirements directive has the meaning which it is given in that Article(6);

(4) OJ no L331, 15/12/2010, p 48.

(5) OJ no L331, 15/12/2010, p1.

(6) In particular, “branch”, “credit institution”, “institution” and “investment firm” are defined in Article 4(1) of the capital requirements regulation.

- (b) any other expression used in these Regulations which is defined in section 417 (definitions) of FSMA has the meaning given by that section(7).

PART 2

Capital Requirements Regulations 2006: revocation

Capital Requirements Regulations 2006: revocation

3. The Capital Requirements Regulations 2006(8) are revoked.

PART 3

Designation of competent authorities

Main provisions of the capital requirements directive and capital requirements regulation

4. For the purposes of every provision of the capital requirements directive and capital requirements regulation—

- (a) the PRA is responsible for all the functions of a competent authority in respect of PRA-
authorised persons; and
- (b) the FCA is responsible for all the functions of a competent authority in respect of any
other person.

Capital buffers and Article 458 of the capital requirements regulation

5. Nothing in regulation 4 has the effect of designating the PRA or the FCA as the designated authority for the purposes of Chapter 4 of Title 7 of the capital requirements directive (capital buffers) or Article 458 of the capital requirements regulation(9).

PART 4

PRA and FCA: cooperation and co-ordination

Co-operation within the European System of Financial Supervision

6. The appropriate regulator must, in the exercise of its duties as a competent authority under the capital requirements directive and the capital requirements regulation—

- (a) take into account any convergence in relation to the use of supervisory tools and
supervisory practices in the application of the capital requirements directive and the capital
requirements regulation, and for that purpose must—
- (i) co-operate with trust and full mutual respect with other competent authorities
designated for the purposes of the capital requirements directive and capital
requirements regulation, in particular when ensuring the flow of appropriate and

(7) In particular, “EBA”, “ESMA”, “FCA”, “PRA”, “PRA-
authorised person” and “the Tribunal” are defined in section 417 of FSMA.

(8) S.I. 2006/3221; the S.I. has been amended by S.I. 2010/906, S.I. 2010/2628, S.I. 2011/1435, 2012/917 and S.I. 2013/472.

(9) For the designation of the authority in charge of applying Article 458 of the capital requirements regulation, see paragraph 38 of Schedule 2 (amendments to the Bank of England Act 1998).

- reliable information between themselves and other members of the European System of Financial Supervision (referred to in Article 2(2) of the EBA Regulation);
- (ii) co-operate with and participate in the activities of EBA and, as appropriate, the colleges of supervisors;
 - (iii) in accordance with Article 16 of the EBA Regulation, make every effort to comply with the guidelines and recommendations issued by EBA and respond to the warnings and recommendations issued by the ESRB pursuant to Article 16 of the ESRB Regulation; and
 - (iv) co-operate closely with the ESRB; and
- (b) duly consider the potential impact of their decisions on the stability of the financial system in other EEA States, such consideration, in emergency situations, to be based on the information available at the relevant time.

Co-operation with EBA

7.—(1) The appropriate regulator must provide EBA with all the information necessary to carry out its duties under the capital requirements directive, the capital requirements regulation and the EBA Regulation.

(2) The appropriate regulator must inform EBA in advance of any meetings relating to the development and co-ordination of the recovery and resolution plans referred to in Article 74(4) of the capital requirements directive, including the main issues to be discussed and the activities to be considered, and invite EBA to participate in those meetings.

Information gathering, planning and co-ordination duties

8.—(1) The appropriate regulator must co-operate closely with other relevant competent authorities in the EEA and (where appropriate) the EEA consolidating supervisor and provide them with all information which is essential for, or relevant to, the exercise of their supervisory tasks.

(2) For the purposes of this regulation, information shall be regarded as essential if it could materially influence the assessment of the financial soundness of an institution or financial institution in another EEA State and, in particular, includes—

- (a) the legal structure, governance and organisational structure of the group, including all regulated entities, non-regulated subsidiaries and significant branches⁽¹⁰⁾ belonging to the group, and the parent undertakings;
- (b) identification of the relevant competent authorities and the competent authorities responsible for the supervision of regulated entities in the group;
- (c) procedures for the collection and verification of information from institutions which are members of a group;
- (d) adverse developments in institutions or other members of the group, which could seriously affect other institutions which are members of the group;
- (e) major sanctions and exceptional measures taken by the EEA consolidating supervisor or any of the relevant competent authorities under the capital requirements directive.

(3) The appropriate regulator may, in accordance with Article 19 of the EBA Regulation, request EBA to act in relation to any of the following matters—

- (a) where a competent authority has not communicated essential information; or
- (b) where a request for co-operation, in particular to exchange relevant information, has been rejected by a competent authority or has not been acted upon within a reasonable time.

⁽¹⁰⁾ For the meaning of “significant branch” see Article 51 of the capital requirements directive and see regulation 15.

(4) Where an appropriate regulator has authorised the subsidiary of an EEA parent institution, and needs information regarding the implementation of the approaches and methodologies set out in the capital requirements directive, which may already be available to the EEA consolidating supervisor, it must, wherever possible, obtain that information by requesting its disclosure from the EEA consolidating supervisor.

Requirement to consult other competent authorities: major sanctions or exceptional measures

9.—(1) Where the appropriate regulator is considering whether to impose a major sanction or exceptional measure on an institution, it must, before making its decision, consult—

- (a) the EEA consolidating supervisor; and
- (b) where the decision would be of importance to another competent authority's supervisory tasks, that competent authority.

(2) Paragraph (1) does not apply where the appropriate regulator considers that—

- (a) there is an urgent need to act; or
- (b) consultation may jeopardise the effectiveness of its decision.

(3) Where paragraph (1) does not apply by virtue of paragraph (2), the appropriate regulator must, without delay, inform the EEA consolidating supervisor and any competent authority falling within paragraph (1)(b) of the action that it has taken.

(4) The reference in paragraph (1) to a major sanction or exceptional measure includes—

- (a) the imposition of a specific own funds requirement in accordance with Article 104 of the capital requirements directive;
- (b) the imposition of any limitation on the use of the advanced measurement approach for the calculation of own funds requirements under Article 312(2) of the capital requirements regulation.

Emergency situations: notification requirements

10.—(1) This regulation applies where—

- (a) an entity belonging to a group has been authorised, or a significant branch is established, in the United Kingdom; and
- (b) an emergency situation, including a situation as defined in Article 18 of the EBA Regulation or a situation of adverse developments in financial markets, arises in the United Kingdom, which potentially jeopardises the market liquidity and the stability of the financial system in any other EEA State where an entity belonging to a group has been authorised or where a significant branch is established.

(2) The appropriate regulator must notify the following entities as soon as practicable that an emergency situation has occurred—

- (a) the European Central Bank;
- (b) EBA;
- (c) ESRB;
- (d) the central bank of the other EEA State referred to in paragraph (1)(b); and
- (e) the central government departments of that other EEA State which are responsible for legislation concerning the supervision of institutions, financial institutions and insurance undertakings.

(3) The appropriate regulator must, when providing notification in accordance with paragraph (2), provide all information that is essential for the purpose of that body's tasks, unless it is prevented from disclosing that information by section 348 of FSMA (restrictions on disclosure of confidential information by FCA, PRA etc)(11).

Collaboration concerning supervision of cross-border institutions

11.—(1) Where an institution is authorised in the United Kingdom and has a branch or provides services in another EEA State, the appropriate regulator must(12)—

- (a) collaborate closely with the competent authority of the institution's host EEA State in its supervision of that institution;
- (b) supply the competent authority of the institution's host EEA State with all information concerning the ownership and management of the institution that is likely to facilitate the institution's authorisation and supervision;
- (c) supply the competent authority of the institution's host EEA State with all information likely to facilitate the monitoring of the institution, in particular with regard to any factors that may influence the systemic risk posed by the institution, including its liquidity, solvency, deposit guarantee, limitation of large exposures to which it is subject, administrative and accounting procedures, and internal control mechanisms;
- (d) provide the competent authority of the institution's host EEA State with information and findings pertaining to the supervision of the liquidity of the institution in accordance with Part 6 of the capital requirements regulation and Chapter 3 of Title 7 of the capital requirements directive, to the extent that such information and findings are relevant to the protection of depositors or investors in the host EEA State;
- (e) immediately inform the competent authority of the institution's host EEA State when the institution operating in that State experiences liquidity stress, or can reasonably be expected to experience liquidity stress, and provide the competent authority with details of the planning and implementation of a recovery plan and any prudential measures taken in the context of that plan;
- (f) explain to the competent authority of the institution's host EEA State on request how it has taken into account the information and findings provided by that competent authority.

(2) Where an institution is authorised in another EEA State and has a branch or provides services in the United Kingdom, the appropriate regulator must notify the competent authority of the institution's home EEA State and EBA in accordance with Article 50(4) of the capital requirements directive before taking any measures to prevent further breaches of the capital requirements directive or capital requirements regulation(13).

(3) Where an appropriate regulator makes a request for collaboration from a competent authority in another EEA State and the competent authority either rejects the request or fails to act upon it within a reasonable time, the appropriate regulator may refer the matter to EBA (who may act in accordance with Article 19 of the EBA Regulation)(14).

(11) Section 348 was amended by the Financial Services Act 2010 (c.28), section 24 and Schedule 2 paragraphs 1 and 26, the Financial Services Act 2012 (c.21), section 41 and Schedule 20 paragraph 9.

(12) Sub-paragraphs (d) to (f) of paragraph (1) come into force on a date specified in a Commission delegated act. See Schedule 1.

(13) Paragraph (2) comes into force on a date to be specified in a Commission delegated act. See Schedule 1.

(14) Paragraph (3) comes into force on a date to be specified in a Commission delegated act. See Schedule 1.

On-the-spot checks and inspections: during CRD transitional period

12. Before an appropriate regulator conducts an on-the-spot check or inspection of a branch of an institution which has been authorised in another EEA State, it must notify the competent authority of that State(15).

On-the-spot checks or inspections: after CRD transitional period

13.—(1) Before an appropriate regulator conducts an on-the-spot check or inspection of a branch of an institution which has been authorised in another EEA State, it must consult the competent authority of that State(16).

(2) After the on-the-spot check or inspection has been carried out, the appropriate regulator must disclose to the competent authority of the institution's home EEA State all information received and findings that are relevant to the risk assessment of the institution or the stability of the financial system of the United Kingdom(17).

On-the-spot checks and inspections: powers of EEA competent authorities

14.—(1) The provisions of Part 11 of FSMA (information gathering and investigations) mentioned in paragraph (2) apply—

- (a) for the purpose specified in paragraph (3) as they apply for the purposes of FSMA; but
- (b) subject to the modifications mentioned in paragraph (4).

(2) The provisions of Part 11 of FSMA referred to in paragraph (1) are—

- (a) subsections (1) to (6), (9) and (10) of section 165 (regulators' power to require information: authorised persons etc)(18);
- (b) subsections (1) to (8) of section 166 (reports by skilled persons)(19);
- (c) section 167(1) (appointment of persons to carry out general investigations)(20);
- (d) subsections (1), (2), and (4) to (8) of section 170 (investigations: general)(21);
- (e) subsections (1) to (3), (5) and (6) of section 171 (powers of persons appointed under section 167)(22);
- (f) subsections (2) to (6), and (8), of section 175 (information and documents: supplemental provisions)(23);
- (g) subsections (1) to (3), and (5) to (11), of section 176 (entry of premises under warrant)(24);
- (h) section 176A (retention of documents taken under section 176)(25); and
- (i) section 177 (offences)(26).

(15) This regulation ceases to have effect on a date to be specified in a Commission delegated act. See Schedule 1.

(16) This paragraph comes into force on a date to be specified in a Commission delegated act. See Schedule 1.

(17) This paragraph comes into force on a date to be specified in a Commission delegated act. See Schedule 1.

(18) Section 165 was amended by the Financial Services Act 2010, s24 and Schedule 2 paragraphs 1 and 15. There are other amendments but none is relevant.

(19) Section 166 was substituted by the Financial Services Act 2012, s41 and Schedule 12 paragraph 1.

(20) Section 167 was amended by the Financial Services Act 2012, s41 and Schedule 12 paragraph 7. There are other amendments but none is relevant.

(21) Section 170 was amended by the Financial Services Act 2012, s41 and Schedule 12 paragraph 10.

(22) Section 167 was amended by [S.I. 2007/126](#).

(23) Section 175 was amended by the Financial Services Act 2012, s41 and Schedule 12 paragraph 13.

(24) Section 176 was amended by [S.I. 2005/1433](#), the Financial Services Act 2010, s24 and Schedule 2 paragraph 1 and 17 and the Financial Services Act 2012, s41 and Schedule 12 paragraph 14

(25) Section 176A was inserted by the Financial Services Act 2012, s41 and Schedule 12 paragraph 15.

(26) Section 177 was amended by [S.I. 2001/1090](#), the Criminal Justice Act 2003, s280 and Schedule 26 paragraph 54 and the Financial Services Act 2012, s114 and Schedule 18 paragraph 1 and 8.

(3) The specified purpose is enabling a competent authority of a home EEA State to carry out on-the-spot checks and inspections of branches in the United Kingdom of institutions authorised in that EEA State in accordance with Article 52 or 159 of the capital requirements directive.

(4) The modifications referred to in paragraph (1) are—

- (a) references to a “regulator” are to be interpreted as references to the competent authority of the EEA State;
- (b) references to an authorised person are to be interpreted as references to the branch in the United Kingdom of the institution authorised in that EEA State;
- (c) in section 165—
 - (i) in subsection (1), for “either” substitute “a”; and
 - (ii) in subsection (4), for “either regulator of functions conferred on it by or under this Act” substitute “a regulator of functions conferred on it as the competent authority for the purposes of the capital requirements directive or capital requirements regulation”;
- (d) in section 166—
 - (i) in subsection (1), for “either” substitute “a”; and
 - (ii) in subsection (2), omit paragraphs (b) to (d) and “who is, or was at the relevant time, carrying on a business”;
- (e) in section 167(1)—
 - (i) for “an investigating authority” substitute “a regulator”;
 - (ii) for “the investigating authority” substitute “the regulator”; and
 - (iii) for “on its behalf” to the end of the subsection substitute “on its behalf for the purposes of carrying out on-the-spot checks and inspections under Article 52 or 159 of the capital requirements directive of branches of credit institutions or investments firms authorised in the regulator’s EEA State.”;
- (f) in section 170—
 - (i) in each case, for “an investigating authority” substitute “a regulator”;
 - (ii) in each case, for “the investigating authority” substitute “the regulator”; and
 - (iii) in subsection (1) omit “or 168(3) to (5)”;
- (g) in section 175—
 - (i) in subsection (2) omit “, or any relevant person,”; and
 - (ii) in subsection (8) omit “or 168(3) or (5)”;
- (h) in section 176—
 - (i) in subsection (1) for “Secretary of State, either” substitute “a” and for “first, second or third” substitute “first or second”;
 - (ii) in subsection (3)(a) omit “or an appointed representative”;
 - (iii) in subsection (10) omit “or 168(3) or (5)”;
 - (iv) in paragraph (a) of subsection (11) omit “87C, 87J,” and “165A, 169A,”; and
 - (v) in paragraph (b) of subsection (11) omit “171, 172, 173 or”; and
- (i) in section 177(5)—
 - (i) in paragraph (a), for “six months” substitute “three months” and for “the statutory maximum” substitute “level 5 on the standard scale”; and
 - (ii) omit paragraph (b).

Significant branches: UK is the host EEA State

15.—(1) This regulation applies where—

- (a) a credit institution, or an investment firm which is not subject to Article 95 of the capital requirements regulation, is authorised in another EEA State;
- (b) the credit institution or investment firm has established a branch in the United Kingdom; and
- (c) an appropriate regulator is the competent authority for that branch.

(2) The appropriate regulator may make a request to the competent authority of the home EEA State or, where appropriate, to the EEA consolidating supervisor (in which case a copy of the request shall be sent to the competent authority of the home EEA State) for the branch to be designated as significant.

(3) A request made under paragraph (2) must include reasons for considering the branch to be significant with particular regard to—

- (a) the likely impact of a suspension or closure of the operations of the institution on systemic liquidity and the payment, clearing and settlement systems in the United Kingdom;
- (b) the size and importance of the branch in terms of the number of clients within the context of the banking or financial system of the United Kingdom; and
- (c) in the case of a branch of a credit institution, whether the market share of the branch in terms of deposits in the United Kingdom exceeds 2%.

(4) The appropriate regulator must—

- (a) make every effort to reach a joint decision with the competent authority of the home EEA State and, where appropriate, the EEA consolidating supervisor, on the designation of the branch as significant; and
- (b) if a joint decision is made, provide the competent authorities concerned with a document setting out the fully reasoned joint decision.

(5) If a joint decision has not been reached within two months of receipt of a request made by the appropriate regulator under paragraph (2), the appropriate regulator must—

- (a) make a decision within a further period of two months on whether or not to designate the branch as significant, taking into account any views and reservations of the competent authority of the home EEA State and, where appropriate, the EEA consolidating supervisor; and
- (b) provide the competent authorities concerned with a document containing its fully reasoned decision.

(6) Where a branch has been designated as significant and the competent authority of the home EEA State fails to consult the appropriate regulator in accordance with paragraph 5 of Article 51(2) of the capital requirements directive or maintains that the operational steps required by Article 86(11) of the capital requirements directive are inadequate, the appropriate regulator may refer the matter to EBA and request its assistance in accordance with Article 19 of the EBA Regulation⁽²⁷⁾.

Significant branches: UK is the home EEA State or EEA consolidating supervisor

16.—(1) Paragraphs (2) and (3) of this regulation apply where—

- (a) an appropriate regulator is the competent authority of the home EEA State or the EEA consolidating supervisor of a credit institution or an investment firm which is not subject to Article 95 of the capital requirements regulation; and

(27) Paragraph (6) come into force on a date to be specified in a Commission delegated act. See Schedule 1.

- (b) the appropriate regulator has received a request (or a copy of a request) from the competent authority of a host EEA State for a branch of the credit institution or investment firm established in that State to be designated as significant.

(2) The appropriate regulator must make every effort to reach a joint decision with the competent authority of the host EEA State and, where appropriate, the EEA consolidating supervisor, on the designation of the branch as significant.

(3) Where a joint decision has not been reached and the competent authority of the host EEA State has made and notified the appropriate regulator of its own decision to designate the branch as significant, the appropriate regulator must recognise that decision as determinative.

(4) Paragraphs (5) to (9) of this regulation apply where the appropriate regulator is the competent authority of the home EEA State and a decision has been made to designate a branch of an institution established in another EEA State as significant.

(5) The appropriate regulator must~~(28)~~—

- (a) in relation to the institution for which it is the home EEA State competent authority, communicate to the competent authority of the host EEA State the information referred to in regulation 8(2)(d) or (e);
- (b) in preparation for and during an emergency situation, plan and co-ordinate supervisory activities in cooperation with the competent authority of the host EEA State and, if necessary, its central bank;
- (c) notify a competent authority of the host EEA State of the outcome of any risk assessment referred to in Article 97 of the capital requirements directive or, where applicable, regulation 29 or 31 of these Regulations;
- (d) notify the competent authority of the host EEA State of any decision to exercise a supervisory power or impose a specific liquidity requirement, insofar as that decision is relevant to the branch; and
- (e) consult a competent authority of a host EEA State about the operational steps required by Article 86(11) of the capital requirements directive where that is relevant to liquidity risks in the host EEA State's currency.

(6) Where the appropriate regulator—

- (a) is not required to establish a college of supervisors by regulation 33; and
- (b) the institution has significant branches in two or more EEA States other than the United Kingdom,

it must, acting on the basis of written co-ordination and co-operation agreements entered into after consulting the competent authorities of the host EEA States, establish a college of supervisors in accordance with paragraphs (7) to (9).

(7) The purpose of the college of supervisors is to facilitate co-operation under regulation 11 and paragraph (5) of this regulation.

(8) Where it establishes a college of supervisors, the appropriate regulator must—

- (a) inform members in advance about the organisation of and agenda for any meeting of the college of supervisors, including any activities to be considered at that meeting;
- (b) decide which competent authorities may attend any meeting or participate in any activity;
- (c) chair any meeting; and
- (d) inform members in a timely manner of the actions taken at any meeting or any activities carried out.

(28) Sub-paragraphs (c) to (e) of paragraph (5)(4) come into force on a date to be specified in a Commission delegated act. See Schedule 1.

(9) When making a decision under paragraph (8)(b), the appropriate regulator must take into account the relevance to each competent authority of the supervisory activity to be planned or coordinated, and in particular—

- (a) the potential impact on the stability of the financial system in the EEA State concerned; and
- (b) the obligations under paragraph (5).

Duties to notify EBA and EIOPA

17.—(1) The appropriate regulator must inform EBA of—

- (a) the names of the authorities or bodies which may receive confidential information in accordance with Article 57(5) of the capital requirements directive.
- (b) any action it has taken pursuant to Article 86(3) of the capital requirements directive where developments in relation to an institution's liquidity risk profile may lead to the instability of that institution or systemic instability;
- (c) the results of any review it has carried out in accordance with Article 97(1) of the capital requirements directive which shows that an institution may pose systemic risk in accordance with Article 23 of the EBA Regulation;
- (d) any administrative penalties imposed on an institution, unless such a disclosure would be contrary to section 348 of FSMA;
- (e) any authorisation given to a member of a management body of an institution in accordance with Article 91 of the capital requirements directive permitting that person to hold an additional non-executive directorship;
- (f) the functioning of the review and evaluation process referred to in Article 97 of the capital requirements directive and the methodology used to base the decisions referred to in Articles 98, 100, 101, 102, 104 and 105 of the capital requirements directive on this process;
- (g) any review and evaluation process conducted for the purposes of Article 103(1) of the capital requirements directive;
- (h) any delegation of responsibility for supervising an institution, made in accordance with Article 115(2) of the capital requirements directive.

(2) The results of a review referred to in paragraph (1)(c) must be provided to EBA without delay.

(3) Where the appropriate regulator is the EEA consolidating supervisor in relation to a group it must—

- (a) where the members of the group include a credit institution, provide EBA with all information regarding the legal and organisational structure of the group and its governance;
- (b) inform EBA and EIOPA of decisions taken under Article 120(1) and (2) of the capital requirements directive with respect to the risk-based supervision of any mixed financial holding company which is subject to equivalent provisions under the capital requirements directive and under Directive [2002/87/EC\(29\)](#) or Directive [2009/138/EC\(30\)](#).

(29) OJ no 035, 11/2/2003, p1.

(30) OJ no 335, 17/12/2009, p1.

PART 5

Publication of information by PRA and FCA

General disclosures required of PRA and FCA

18.—(1) In this regulation, a “relevant institution” is an institution falling within the scope of the capital requirements directive⁽³¹⁾.

(2) The PRA and FCA must publish—

- (a) the texts of laws, regulations, administrative rules and general guidance adopted in the United Kingdom in the field of the prudential regulation of relevant institutions;
- (b) the manner in which the options and discretions available under the capital requirements regulation and capital requirements directive have been exercised;
- (c) the general criteria and methodologies they use in the review and evaluation referred to in Article 97 of the capital requirements directive;
- (d) aggregate statistical data on key aspects of the implementation of the prudential framework for relevant institutions in the United Kingdom, including the number and nature of supervisory measures taken and penalties imposed in respect of breaches of requirements of the capital requirements regulation and the capital requirements directive.

(3) The information published in accordance with paragraph (2) must be—

- (a) sufficient to enable a meaningful comparison between the approach adopted by the United Kingdom and the approaches adopted by other EEA States;
- (b) published using a common format and updated regularly; and
- (c) accessible at a single electronic location.

Specific disclosures required of PRA and FCA

19.—(1) For the purposes of Part 5 of the capital requirements regulation, the PRA and FCA must publish—

- (a) the general criteria and methodologies adopted to review compliance with Articles 405 to 409 of the capital requirements regulation; and
- (b) a summary description of the outcome of the supervisory review and a description of the measures imposed in cases of non-compliance with Articles 405 to 409 of the capital requirements regulation, identified on an annual basis.

(2) In relation to Article 7(3) of the capital requirements regulation, the PRA and FCA must publish—

- (a) the criteria they apply in order to determine whether there is a current or foreseeable material, practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;
- (b) the number of parent institutions which benefit from the exercise of the discretion laid down in Article 7(3) of the capital requirements regulation and the number of those which incorporate subsidiaries in a third country; and
- (c) on an aggregate basis for the United Kingdom—
 - (i) the total amount of own funds on the consolidated basis of parent institutions in the United Kingdom, which benefit from the exercise of the discretion laid down in

⁽³¹⁾ The scope of the capital requirements directive is set out in Article 2 (scope).

- Article 7(3) of the capital requirements regulation, which are held in subsidiaries in a third country;
- (ii) the percentage of total own funds on the consolidated basis of parent institutions in the United Kingdom which benefit from the exercise of the discretion laid down in Article 7(3) of the capital requirements regulation, represented by own funds which are held in subsidiaries in a third country; and
 - (iii) the percentage of total own funds required under Article 92 of the capital requirements regulation on the consolidated basis of parent institutions in the United Kingdom, which benefit from the exercise of the discretion laid down in Article 7(3) of the capital requirements regulation, represented by own funds which are held in subsidiaries in a third country.
- (3) In relation to Article 9(1) of the capital requirements regulation, the PRA and FCA must publish—
- (a) the criteria they apply in order to determine whether there is a current or foreseeable material, practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;
 - (b) the number of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of the capital requirements regulation and the number of such parent institutions which incorporate subsidiaries in a third country; and
 - (c) on an aggregate basis for the United Kingdom—
 - (i) the total amount of own funds of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of the capital requirements regulation which are held in subsidiaries in a third country;
 - (ii) the percentage of total own funds of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of the capital requirements regulation represented by own funds which are held in subsidiaries in a third country; and
 - (iii) the percentage of total own funds required under Article 92 of the capital requirements regulation of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of the capital requirements regulation represented by own funds which are held in subsidiaries in a third country.

PART 6

Consolidated supervision

Determination of the consolidating supervisor

20.—(1) The appropriate regulator must determine whether it is the EEA consolidating supervisor in respect of a group in accordance with Article 111 of the capital requirements directive.

(2) In particular cases, when determining which competent authority is the EEA consolidating supervisor in respect of a group, the appropriate regulator may, by agreement with the other relevant competent authorities, waive the criteria in paragraphs 3 and 4 of Article 111 of the capital requirements directive if their application would be inappropriate, taking into account the relative importance of the activities of the institutions which are members of the group in different countries.

(3) The appropriate regulator must notify EBA and the Commission if it concludes an agreement referred to in paragraph (2).

(4) If the appropriate regulator is the EEA consolidating supervisor, it shall be responsible for exercising supervision on a consolidated basis in accordance with Section 1 of Chapter 3 of Title 7 of the capital requirements directive and these Regulations.

Assessment of equivalence of consolidated supervision by supervisory authorities in non-EEA States

21.—(1) In this regulation, a “relevant institution” is an institution which satisfies the following conditions—

- (a) the institution is authorised by the PRA or FCA;
- (b) the parent undertaking of the institution is an institution, financial holding company or mixed financial holding company whose head office is not located in an EEA State;
- (c) the institution is not subject to supervision on a consolidated basis in accordance with Article 111 of the capital requirements directive;
- (d) the PRA or FCA would (but for paragraph (4)) be responsible for supervision of the institution on a consolidated basis; and
- (e) either—
 - (i) the parent undertaking of the institution, or any regulated entity established in the EEA which is a member of the same group as the institution, has requested the assessment referred to in paragraph (2) be carried out; or
 - (ii) the PRA or FCA has decided on its own initiative to carry out that assessment.

(2) The appropriate regulator must assess whether a relevant institution is subject to supervision on a consolidated basis by a supervisory authority of a country outside the EEA which is equivalent to the standard of supervision applicable to an institution under the capital requirements directive and Chapter 2 of Title 2 of Part 1 of the capital requirements regulation.

(3) For the purposes of carrying out the assessment referred to in paragraph (2), the appropriate authority must—

- (a) consult the other competent authorities which are responsible for the supervision of members of the group of which the relevant institution is a member; and
- (b) take into account any guidance issued by the European Banking Committee in accordance with Article 127(2) of the capital requirements directive.

(4) Where the appropriate regulator concludes that a relevant institution is not subject to equivalent supervision in accordance with paragraph (2), the appropriate regulator may apply—

- (a) the requirements of the capital requirements directive and capital requirements regulation to the institution, amended as necessary; or
- (b) other appropriate supervisory techniques, which must be designed to achieve the objectives of supervision on a consolidated basis in accordance with Chapter 3 of Title 7 of the capital requirements directive.

(5) The other appropriate supervisory techniques referred to in paragraph (4) may include a requirement on the institution to establish a financial holding company or mixed financial holding company with its head office in an EEA State, so that supervision on a consolidated basis may be applied in relation to the consolidated situation of that holding company.

(6) The appropriate regulator must—

- (a) consult the competent authorities referred to in paragraph (3)(a) before determining which supervisory techniques may be applied for the purposes of paragraph (4)(b); and
- (b) notify those competent authorities, the European Commission and EBA of the supervisory techniques it applies.

Co-ordination and co-operation arrangements

22.—(1) Where the appropriate regulator is the EEA consolidating supervisor, it must, wherever possible, have written co-ordination and co-operation agreements in place with other relevant competent authorities.

- (2) The written co-ordination and co-operation agreements—
- (a) must, so far as necessary, facilitate and establish effective supervision; and
 - (b) may specify additional tasks entrusted to the appropriate regulator and procedures for decision making and co-ordination.

(3) Where the appropriate regulator is not the EEA consolidating supervisor and has authorised a subsidiary in the United Kingdom of a parent institution in an EEA State other than the United Kingdom, it may, by agreement in accordance with Article 28 of the EBA Regulation, delegate its responsibility for supervising the subsidiary to the competent authority which authorised and supervises that parent institution.

(4) Where the appropriate regulator is the EEA consolidating supervisor or a relevant competent authority in relation to a parent institution established in the United Kingdom, it may, by agreement with a relevant competent authority in accordance with Article 28 of the EBA Regulation, accept responsibility for supervising a subsidiary of that parent institution which is established in another EEA State.

Co-ordination of supervisory activities by the EEA consolidating supervisor

23.—(1) This regulation applies where the appropriate regulator is the EEA consolidating supervisor.

- (2) The appropriate authority must take such steps as it considers appropriate—
- (a) in going-concern situations—
 - (i) to co-ordinate the gathering and dissemination of relevant or essential information;
 - (ii) to plan and co-ordinate supervisory activities in co-operation with other relevant competent authorities;
 - (b) in preparation for and during emergency situations, including adverse developments in institutions or in financial markets—
 - (i) to co-ordinate the gathering and dissemination of relevant or essential information;
 - (ii) to plan and co-ordinate supervisory activities, including exceptional measures, preparation of risk assessments, implementation of contingency plans and communication to the public, in co-operation with other relevant competent authorities and, where necessary, central banks.
- (3) For the purposes of paragraph (2)—
- (a) “essential information” has the same meaning as regulation 8(2); and
 - (b) “exceptional measures” includes the imposition of a specific own funds requirement under Article 104 of the capital requirements directive and the imposition of any limitation on the use of the advanced measurement approach for the calculation of own funds requirements under Article 312(2) of the capital requirements regulation.

(4) If a relevant competent authority does not co-operate with the appropriate regulator to the extent required in carrying out the tasks referred to in paragraph (2), the appropriate regulator may refer the matter to EBA (which may act in accordance with Article 19 of the EBA Regulation).

The Bank's general duties**24.** Where—

- (a) an entity belonging to a group has been authorised, or a significant branch is established, in the United Kingdom; and
- (b) an emergency situation arises, including a situation as defined in Article 18 of the EBA Regulation or a situation of adverse developments in financial markets, which potentially jeopardises the market liquidity and the stability of the financial system in the United Kingdom,

the Bank must notify, as soon as practicable, the national consolidating supervisor or, where appropriate, the EEA consolidating supervisor and EBA.

Exchange of information**25.—(1)** This regulation applies where—

- (a) an institution has been authorised in the United Kingdom and its parent undertaking is situated in another EEA State; or
- (b) a parent undertaking is situated in the United Kingdom, whose subsidiaries include institutions which have been authorised in another EEA State.

(2) The appropriate regulator must disclose to a relevant competent authority and, where appropriate, the EEA consolidating supervisor, all relevant information which may allow or aid the exercise of supervision on a consolidated basis.

Obtaining information already disclosed

26. Where the appropriate regulator is the EEA consolidating supervisor and needs information which has already been given to a relevant competent authority, it must, wherever possible, obtain that information by requesting its disclosure from that relevant competent authority.

Verification of information by a competent authority in another EEA State

27.—(1) This regulation applies where the appropriate regulator wishes in a specific case to check information concerning any of the following entities which are established in another EEA State—

- (a) an institution;
- (b) a financial holding company;
- (c) a mixed financial holding company;
- (d) a financial institution;
- (e) an ancillary services undertaking,
- (f) a mixed-activity holding company;
- (g) a subsidiary of any of the entities mentioned in paragraphs (a) to (f) which is an insurance company or investment firm subject to authorisation;
- (h) a subsidiary of any of the entities mentioned in paragraphs (a) to (c) which is not included within the scope of supervision on a consolidated basis.

(2) The appropriate regulator may ask the competent authority in that other EEA State to check that information.

Requirement to establish list of holding companies

28.—(1) Where the appropriate authority is the EEA consolidating supervisor, it shall establish lists of the financial holding companies and mixed financial holding companies referred to in Article 11 of capital requirements regulation.

(2) The lists mentioned in paragraph (1) shall be communicated to the competent authorities in other EEA States, EBA and the European Commission.

Joint decisions on own funds: PRA or FCA is the EEA consolidating supervisor

29.—(1) This regulation applies where the appropriate regulator is the EEA consolidating supervisor of an institution (“the relevant institution”).

(2) The appropriate regulator must submit a report setting out its risk assessment of the group in accordance with Articles 73, 97 and 104(1)(a) of the capital requirements directive to the relevant competent authorities.

(3) The appropriate regulator must take all reasonable steps to reach a joint decision with the relevant competent authorities, within four months of submitting its report, on—

- (a) the application of Articles 73 and 97 of the capital requirements directive to determine the adequacy of the consolidated level of own funds held by the group with respect to its financial situation and risk profile; and
- (b) the required level of own funds for the application of Article 104(1)(a) to each member of the group and to the group as a whole.

(4) The appropriate regulator must consider, for the purposes of reaching a joint decision, the risk assessments prepared in relation to subsidiaries by the relevant competent authorities.

(5) The appropriate regulator must provide the relevant institution with a document setting out the fully reasoned joint decision.

(6) Where a joint decision cannot be reached, the appropriate regulator must, at the request of any of the relevant competent authorities, consult EBA, or may do so of its own initiative.

(7) If a joint decision has not been made within four months of the appropriate regulator submitting its report in accordance with paragraph (2), the appropriate regulator must—

- (a) after considering the risk assessments prepared in relation to subsidiaries by the relevant competent authorities and any advice given by EBA, make a decision on the matters referred to in paragraph (3);
- (b) where that decision differs significantly from any advice given by EBA, give reasons for the difference;
- (c) provide all relevant competent authorities and the relevant institution with a document containing its decision and the decisions of the relevant competent authorities on the levels of own funds required to be held by subsidiaries on an individual or, where appropriate, sub-consolidated basis;
- (d) recognise the decisions taken by the relevant competent authorities, mentioned in subparagraph (c), as determinative.

(8) If, by the end of the four month period referred to in paragraph (7), any of the relevant competent authorities has referred the matter to EBA in accordance with Article 19 of the EBA Regulation, the appropriate regulator must defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation on the appropriate regulator’s decision on the matters referred to in paragraph (3).

(9) If EBA takes a decision in accordance with Article 19(3) of the EBA Regulation, the appropriate regulator must take its decision on the matters referred to in paragraph (3) in conformity with the decision of EBA.

(10) The appropriate regulator must update the joint decision reached in accordance with paragraph (3) or its own decision made under paragraph (7)(a) or (9)—

- (a) annually; or
- (b) in exceptional circumstances, on receipt of a fully reasoned written request by a relevant competent authority to update the decision on the application of Article 104(1)(a) of the capital requirements directive;

and where sub-paragraph (b) applies, the updated decision may be made after consultation with the competent authority making the request, without consulting the other relevant competent authorities.

Joint decisions on own funds: PRA or FCA is not the EEA consolidating supervisor

30.—(1) This regulation applies where an appropriate regulator—

- (a) is a relevant competent authority; and
- (b) receives a report containing the risk assessment of the group from the EEA consolidating supervisor.

(2) The appropriate regulator must submit to the EEA consolidating supervisor a report containing its risk assessment of each subsidiary of the group it has authorised.

(3) The appropriate regulator must take all reasonable steps to reach a joint decision with the EEA consolidating supervisor and any other relevant competent authorities on the matters referred to in regulation 29(3) within four months of the appropriate regulator receiving the report from the EEA consolidating supervisor.

(4) Where agreement on a joint decision cannot be reached, the appropriate regulator may request that the EEA consolidating supervisor consult EBA.

(5) If a joint decision has not been reached within four months of the appropriate regulator receiving the report from the EEA consolidating supervisor, the appropriate regulator must—

- (a) make a decision on the level of own funds which each subsidiary it has authorised should hold on an individual or, where appropriate, sub-consolidated, basis, in accordance with Articles 73, 97 and 104(1)(a) of the capital requirements directive, taking into account the views of the EEA consolidating supervisor and any advice given by EBA;
- (b) where the appropriate regulator's decision differs significantly from any advice given by EBA, give reasons for the difference;
- (c) provide the EEA consolidating supervisor with a document containing its decision; and
- (d) recognise the decisions taken by the EEA consolidating supervisor and any other relevant competent authorities on the levels of own funds required to be held by the group or its subsidiaries located outside the United Kingdom, as determinative.

(6) If, by the end of the four month period referred to in paragraph (5), any of the relevant competent authorities has referred the matter to EBA in accordance with Article 19 of the EBA Regulation, the appropriate regulator must defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation.

(7) If EBA takes a decision in accordance with Article 19(3) of the EBA Regulation, the appropriate regulator must take its decision on the matters referred to in paragraph (5)(a) in conformity with the decision of EBA.

(8) The appropriate regulator may, in exceptional circumstances, make a fully reasoned written request to the EEA consolidating supervisor to update the decision on the level of own funds required to be held by any subsidiary of the group located in the United Kingdom in accordance with Article 104(1)(a) of the capital requirements directive.

Joint decision on liquidity: PRA or FCA is the EEA consolidating supervisor

31.—(1) This regulation applies where the appropriate regulator is the EEA consolidating supervisor of an institution (“the relevant institution”).

(2) The appropriate regulator must submit a report containing its assessment of the liquidity risk profile of a group in accordance with Articles 86 and 105 of the capital requirements directive to the relevant competent authorities.

(3) The appropriate regulator must take all reasonable steps to reach a joint decision with the relevant competent authorities, within one month of submitting its report, on measures to address any significant matters and material findings relating to liquidity supervision in relation to the group including those relating to—

- (a) the adequacy of the organisation and the treatment of risks as required pursuant to Article 86 of the capital requirements directive; and
- (b) the need for institution-specific liquidity requirements in accordance with Article 105 of the capital requirements directive.

(4) The appropriate regulator must consider, for the purposes of reaching a joint decision, the risk assessments prepared in accordance with Articles 73 and 97 of the capital requirements directive in relation to subsidiaries by the relevant competent authorities.

(5) The appropriate regulator must provide the relevant institution with a document setting out the fully reasoned joint decision.

(6) Where a joint decision cannot be reached, the appropriate regulator must, at the request of any of the relevant competent authorities, consult EBA, or may do so of its own initiative.

(7) If a joint decision has not been made within one month of the appropriate regulator submitting its report in accordance with paragraph (2), the appropriate regulator must—

- (a) after considering the risk assessments prepared in relation to subsidiaries by the relevant competent authorities and any advice given by EBA, make a decision on the matters referred to in paragraph (3);
- (b) where that decision differs significantly from any advice given by EBA, give reasons for the difference;
- (c) provide all relevant competent authorities and the relevant institution with a document containing its decision and the decisions of the relevant competent authorities on the matters referred to in paragraph (3);
- (d) recognise the decisions taken by the relevant competent authorities, mentioned in subparagraph (c), as determinative.

(8) If, by the end of the one month period referred to in paragraph (7), any of the relevant competent authorities has referred the matter to EBA in accordance with Article 19 of the EBA Regulation, the appropriate regulator must defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation on the appropriate regulator’s decision on the matters referred to in paragraph (3).

(9) If EBA takes a decision in accordance with Article 19(3) of the EBA Regulation, the appropriate regulator must take its decision on the matters referred to in paragraph (3) in conformity with the decision of EBA.

(10) The appropriate regulator must update the joint decision reached in accordance with paragraph (3) or its own decision made under paragraph (7)(a) or (9)—

- (a) annually; or
- (b) in exceptional circumstances, on receipt of a fully reasoned written request by a relevant competent authority to update the decision on the application of Article 105 of the capital requirements directive;

and where sub-paragraph (b) applies, the updated decision may be made after consultation with the competent authority making the request, without consulting the other relevant competent authorities.

Joint decision on liquidity: PRA or FCA is not the EEA consolidating supervisor

32.—(1) This regulation applies where an appropriate regulator—

- (a) is a relevant competent authority; and
- (b) receives a report containing the assessment of the liquidity risk profile of a group in accordance with Articles 86 and 105 of the capital requirements directive from the EEA consolidating supervisor.

(2) The appropriate regulator must submit to the EEA consolidating supervisor a report containing its assessment of the liquidity risk profile of each subsidiary of the group it has authorised.

(3) The appropriate regulator must take all reasonable steps to reach a joint decision with the EEA consolidating supervisor and any other relevant competent authorities on the matters referred to in regulation 31(3) within one month of the appropriate regulator receiving the report from the EEA consolidating supervisor.

(4) Where agreement on a joint decision cannot be reached, the appropriate regulator may request that the EEA consolidating supervisor consult EBA.

(5) If a joint decision has not been reached within one month of the appropriate regulator receiving the report from the EEA consolidating supervisor, the appropriate regulator must—

- (a) make a decision on the matters referred to in regulation 31(3), taking into account the views of the EEA consolidating supervisor and any advice given by EBA;
- (b) where the appropriate regulator's decision differs significantly from any advice given by EBA, give reasons for the difference;
- (c) provide the EEA consolidating supervisor with a document containing its decision; and
- (d) recognise the decisions taken by the EEA consolidating supervisor and any other relevant competent authorities on the matters referred to in regulation 31(3) in relation to the banking or investment group or its subsidiaries outside the United Kingdom, as determinative.

(6) If, by the end of the one month period referred to in paragraph (5), any of the relevant competent authorities has referred the matter to EBA in accordance with Article 19 of the EBA Regulation, the appropriate regulator must defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation.

(7) If EBA takes a decision in accordance with Article 19(3) of the EBA Regulation, the appropriate regulator must take its decision on the matters referred to in paragraph (5)(a) in conformity with the decision of EBA.

(8) The appropriate regulator may, in exceptional circumstances, make a fully reasoned written request to the EEA consolidating supervisor to update the decision on the liquidity requirements of any subsidiary of the group within the United Kingdom in accordance with Article 105 of the capital requirements directive.

Colleges of supervisors

33.—(1) This regulation applies where the appropriate regulator is the EEA consolidating supervisor.

(2) Where an institution belongs to a group whose members include at least one other institution which is established in another EEA State, the appropriate regulator must, acting on the basis of agreements entered into pursuant to regulation 22, establish a college of supervisors to—

- (a) facilitate its duties as an EEA consolidating supervisor; and
- (b) ensure appropriate co-ordination and co-operation with competent authorities outside the EEA where appropriate.

(3) The college of supervisors shall facilitate the carrying out of the following tasks by the EEA consolidating supervisor and the other relevant competent authorities—

- (a) exchanging relevant information;
- (b) agreeing on the voluntary allocation of tasks and the voluntary delegation of responsibilities where appropriate;
- (c) determining supervisory examination programmes based on a risk assessment of the relevant group in accordance with Article 97 of the capital requirements directive;
- (d) increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements;
- (e) where appropriate, applying the prudential requirements under the capital requirements directive on a consistent basis to all members of a group;
- (f) planning and co-ordination of supervisory activities in preparation for and during emergency situations, including adverse developments in institutions or financial markets, taking into account the work of any other relevant bodies established for such purposes.

(4) The following bodies may participate in the college of supervisors—

- (a) the relevant competent authorities;
- (b) the competent authorities of a host EEA State in which a significant branch is established;
- (c) central banks;
- (d) competent authorities situated outside the EEA, provided that, in the opinion of the appropriate regulator and all relevant competent authorities, they are subject to confidentiality requirements equivalent to the requirements of section 2 of Chapter 1 of the capital requirements directive and, where applicable, Articles 54 and 58 of Directive [2004/39/EC](#);
- (e) competent authorities responsible for the supervision of other regulated entities in the group.

(5) The appropriate regulator must co-operate closely with EBA and other competent authorities participating in the college of supervisors and permit EBA to contribute to promoting and monitoring the efficient, effective and consistent functioning of the college, in accordance with Article 116(1) of the capital requirements directive.

(6) The appropriate regulator must—

- (a) inform members in advance about the organisation of and agenda for any meeting of the college of supervisors, including any activities to be considered at that meeting;
- (b) decide which competent authorities may attend any meeting or participate in any activity;
- (c) chair any meeting;
- (d) inform members in a timely manner of the actions taken at any meeting or any activities carried out.

(7) When making a decision under paragraph (6)(b), the appropriate regulator must take into account the relevance to each competent authority of the supervisory activity to be planned or coordinated, and in particular—

- (a) the potential impact on the stability of the financial system in the EEA State concerned; and
- (b) the competent authority's obligations as the competent authority of the home EEA State under Article 51(2) of the capital requirements directive.

(8) Subject to confidentiality requirements under section 2 of Chapter 1 of Title 7 of the capital requirements directive and, where applicable, Articles 54 and 58 of Directive [2004/39/EC](#), the appropriate regulator must—

- (a) inform EBA of the activities of the college of supervisors, including in emergency situations; and
- (b) provide EBA with all information that is of particular relevance for the purposes of supervisory convergence.

PART 7

Exercise of supervision by the PRA and FCA

Supervisory powers: own funds

34.—(1) The PRA and FCA must require an institution to hold own funds in excess of—

- (a) the requirements of Chapter 4 of Title 7 of the capital requirements directive; and
- (b) the requirements of the capital requirements regulation relating to risks or elements of risks not covered by Article 1 of the capital requirements regulation;

in the circumstances mentioned in paragraph (2).

(2) The circumstances referred to in paragraph (1) are—

- (a) an institution does not meet the requirements set out in Articles 73 and 74 of the capital requirements directive or in Article 393 of the capital requirements regulation;
- (b) risks or elements of risks are not covered by the own funds requirements set out in Chapter 4 of Title 7 of the capital requirements directive or in the capital requirements regulation;
- (c) the sole application of other administrative measures is unlikely to improve the institution's arrangements, processes, mechanisms and strategies sufficiently within an appropriate timeframe;
- (d) the review referred to in Article 98(4) or Article 101(4) of the capital requirements directive reveals that non-compliance with the requirements for the application of the respective approach will likely lead to inadequate own funds requirements;
- (e) the risks are likely to be underestimated despite compliance with the applicable requirements of the capital requirements directive or capital requirements regulation; or
- (f) an institution reports to the competent authority in accordance with Article 377(5) of the capital requirements regulation that the stress test results referred to in that Article materially exceed its own funds requirement for the correlation trading portfolio.

(3) For the purposes of determining the appropriate level of own funds on the basis of the review and evaluation carried out in accordance with Section 3 of Chapter 2 of Title 7 to the capital requirements directive, the PRA and FCA must assess whether any imposition of an additional own funds requirement in excess of the own funds requirement is necessary to capture risks to which an institution is or might be exposed, taking into account the following:

- (a) the quantitative and qualitative aspects of the institution's assessment process referred to in Article 73 of the capital requirements directive;
- (b) the institution's arrangements, processes and mechanisms referred to in Article 74 of the capital requirements directive;
- (c) the outcome of the review and evaluation carried out in accordance with Article 97 or 101 of the capital requirements directive; and
- (d) the assessment of systemic risk.

Specific liquidity requirements

35. For the purposes of determining the appropriate level of liquidity requirements on the basis of the review and evaluation carried out in accordance with Section 3 of Chapter 2 of Title 7 to the capital requirements directive, the appropriate regulator must assess whether the imposition of a specific liquidity requirement is necessary to capture liquidity risks to which an institution is or might be exposed, taking into account the following—

- (a) the particular business model of the institution;
- (b) the institution's arrangements, processes and mechanisms (as referred to in Section 2 of Chapter 2 of Title 7 to the capital requirements directive, in particular in Article 86);
- (c) the outcome of the review and evaluation carried out in accordance with Article 97 of the capital requirements directive; and
- (d) any systemic liquidity risk that threatens the integrity of the financial markets of the United Kingdom.

Employee remuneration

36. The appropriate regulator must—

- (a) collect the information disclosed by institutions in accordance with the criteria for disclosure set out at points (g), (h) and (i) of Article 450(1) of the capital requirements regulation and use it to benchmark remuneration trends and practices;
- (b) collect the information specified in Article 75(3) of the capital requirements directive on the number of employees in each institution that are remunerated 1 million euros or more per financial year;
- (c) collect the information disclosed by institutions about any decisions taken by their shareholders, owners or members to approve a higher ratio between the fixed and variable components of remuneration approved in accordance with Article 94(1)(g)(ii) of the capital requirements directive and use it to benchmark practices in relation to the level of such ratios; and
- (d) provide EBA with the information referred to in paragraphs (a) to (c).

Diversity practices

37. The appropriate regulator must—

- (a) collect the information disclosed by institutions in accordance with Article 435(2)(c) of the capital requirements regulation and use it to benchmark diversity practices; and
- (b) provide EBA with the information referred to in paragraph (a).

Consultation with EBA: supervisory benchmarking of internal approaches for calculation own funds requirements

38.—(1) In addition to benchmark portfolios developed by EBA and referred to in Article 78(8) (b) of the capital requirements directive, the appropriate regulator may develop benchmark portfolios in accordance with Article 78(2) of the capital requirements directive to monitor the range of risk weighted exposure amounts or own funds requirements for institutions permitted to use internal approaches.

(2) Where the appropriate regulator chooses to develop such portfolios they shall do so in consultation with EBA.

PART 8

Permissions under the CRR

Meaning of “permission” and “protected item” in this Part

39. In this Part—

“permission” means a decision made by an appropriate regulator in relation to an institution under a power conferred on the appropriate regulator by—

- (a) the capital requirements regulation; or
- (b) any directly applicable regulation made under the capital requirements regulation.

“protected item” has the same meaning as in section 413 of FSMA.

Applications for permissions: process, information and documents

40.—(1) This regulation applies to an application to the appropriate regulator for—

- (a) the grant of a permission;
- (b) an amendment to an existing permission;
- (c) an amendment to a condition to which an existing permission is subject.

(2) An application must—

- (a) be made in such manner as the appropriate regulator may direct; and
- (b) contain, or be accompanied by, such other information or documents as the appropriate regulator may reasonably require.

(3) At any time after receiving the application and before determining it, the appropriate regulator may require the applicant to provide it with such further information or documents as it may reasonably require.

(4) The appropriate regulator may require any information provided under this regulation to be provided in such form and verified in such manner as it may reasonably require.

(5) The appropriate regulator may require any documents provided under this regulation to be produced at such place and authenticated in such manner as it may reasonably require.

(6) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(7) The powers conferred on the appropriate regulator by this regulation may not be used to require the production of a protected item.

Decisions: written notices

41.—(1) On determining an application for the grant of a permission, the appropriate regulator must give the applicant a written notice stating—

- (a) its decision; and
- (b) if the permission is granted, any conditions to which the permission is subject and the date on which the permission takes effect.

(2) Where the appropriate regulator varies or revokes a permission, it must give the institution concerned a written notice stating—

- (a) that the permission is varied or revoked; and
- (b) the date on which the variation or revocation takes effect.

(3) Where the appropriate regulator amends a condition to which a permission is subject, it must give the institution concerned a written notice stating—

- (a) the amended condition; and
- (b) the date on which the amendment takes effect.

Appeals

42.—(1) Where an applicant is aggrieved at the determination of an application for the grant of a permission, it may refer the matter to the Tribunal.

(2) Where an institution has been granted a permission and is aggrieved at the variation or revocation of the permission or the amendment of a condition to which the permission is subject, it may refer the matter to the Tribunal.

(3) Part 9 of FSMA (hearings and appeals) applies to a reference to the Tribunal under this regulation as it applies to a reference to the Tribunal under an Act.

Publication of written notices

43.—(1) Subject to paragraph (2), the appropriate regulator must publish a relevant notice in the way appearing to the regulator to be best calculated for bringing it to the attention of—

- (a) persons likely to be affected by it; and
- (b) persons who are, in the opinion of the regulator, likely to make an application for a similar permission.

(2) Paragraph (1) does not apply if—

- (a) the relevant notice relates to an application for a permission which has been refused; or
- (b) the regulator is satisfied that it is inappropriate or unnecessary to publish the relevant notice.

(3) In deciding whether it is satisfied of the matters mentioned in paragraph (2)(b), the regulator must consider whether—

- (a) publication would prejudice, to an unreasonable degree, the commercial interests of the person concerned or any other member of the person's immediate group;
- (b) publication of the relevant notice without mentioning the identity of the person concerned might avoid any adverse consequence of publication.

(4) In this regulation, “relevant notice” means a written notice—

- (a) given under regulation 41 in relation to a decision of a regulator; or
- (b) stating that an event referred to in paragraph (5) has occurred in relation to that decision.

- (5) The events mentioned in paragraph (4)(b) are—
- (a) the decision has been referred to the Tribunal;
 - (b) the decision has been suspended by the Tribunal;
 - (c) any suspension of the decision has been revoked by the Tribunal;
 - (d) the reference has been dismissed by the Tribunal.

Transitional provision for matters done before commencement

- 44.**—(1) This regulation applies to a decision made before 1st January 2014 to—
- (a) refuse an application for the grant of a permission;
 - (b) vary or revoke a permission; or
 - (c) amend a condition to which a permission is subject.
- (2) Regulations 40 to 43 apply to such a decision with the following modifications—
- (a) omit regulation 40;
 - (b) the appropriate regulator must comply with the requirements of regulations 41 and 43 in relation to the decision no later than 1st January 2014; and
 - (c) regulation 42 applies to the decision, but with the period of time within which a reference may be made to the Tribunal commencing on 1st January 2014.

PART 9

Misleading the PRA or FCA

Misleading the PRA or FCA

45. Section 398 of FSMA (misleading FCA or PRA: residual cases) applies to a requirement imposed by or under—

- (a) the capital requirements regulation;
- (b) a directly applicable regulation made under the capital requirements directive or capital requirements regulation; or
- (c) these Regulations;

as it applies to a requirement imposed by or under FSMA.

PART 10

Amendments and revocations

Amendments and revocations

46.—(1) Schedule 2, which contains amendments to primary and secondary legislation, has effect.

- (2) Schedule 3, which contains revocations of secondary legislation, has effect.

9th December 2013

David Evennett
Mark Lancaster
Two of the Lords Commissioners of Her
Majesty's Treasury