STATUTORY INSTRUMENTS.

S.I. No. 627 of 2010

EUROPEAN COMMUNITIES (DIRECTIVE 2009/111/EC) REGULATIONS 2010

(Prn. A10/1916)

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ARRANGEMENT OF REGULATIONS

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I, BRIAN LENIHAN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) (as amended by the European Communities Act 2007 (No. 18 of 2007)), and for the purposes of giving effect to Directive 2009/111/EC[1] of the European Parliament and of the Council of 16 September 2009 and giving further effect to Regulations (EU) No 1092/2010[2], No. 1093/2010[3], No. 1094/2010[4] and No. 1095/2010[5] of the European Parliament and of the Council of 24 November 2010, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (Directive 2009/111/EC) Regulations 2010.

Commencement

2. These Regulations come into operation on 31 December 2010.

Amendments

3. (1) The Central Bank Act 1942 (No. 22 of 1942) is amended as set out in Schedule 1.

(2) The European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992) are amended as set out in Schedule 2.

(3) The European Communities (Capital Adequacy of Investment Firms) Regulations 2006 (S.I. No. 660 of 2006) are amended as set out in Schedule 3.

(4) The European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. No. 661 of 2006) are amended as set out in Part 1 of Schedule 4.

(5) Each provision of the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. No. 661 of 2006) set out in Part 2 of Schedule 4 is amended by substituting "Recast Credit Institutions Directive" for "recast Directive (CI)".

[1] O J No. L302, 17.11.2009, p.97.
[2] O J No. 331, 15.12.2010, p. 1.
[3] O J No. 331, 15.12.2010, p. 12.
[4] O J No. 331, 15.12.2010, p. 48.
[5] O J No. 331, 15.12.2010, p. 120.

Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 28*th December*, 2010.

(6) Each provision of the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 set out in Part 3 of Schedule 4 is amended by deleting "to the recast Directive (CI)".

(7) The European Communities (Credit Institutions) (Consolidated Supervision) Regulations 2009 (S.I. No. 475 of 2009) are amended as set out in Schedule 5.

SCHEDULE 1

Regulation 3(1)

Amendments of the Central Bank Act 1942

Item	Provision amended	Amendment
1	Section 33AK	After subsection (3), insert: "(3A) Where a provision of any of the Supervisory Directives, or of any of the following Regulations of the European Parliament and of the Council, requires or permits the Bank to report information to a supervisory body established by that Regulation, the Bank may do so: (*a*) Regulation (EU) No. 1092/2010 of 24 November 2010[2]; (*b*) Regulation (EU) No. 1093/2010 of 24 November 2010[3]; (*c*) Regulation (EU) No. 1094/2010 of 24 November 2010[4]; (*d*) Regulation (EU) No. 1095/2010 of 24 November 2010[5].".
2	Section 33AK(5)(z)	Substitute: "(*z*) to— (i) the Minister, in accordance with the provisions of the Supervisory Directives in relation to the Minister's responsibility for policy on the supervision of supervised entities, (ii) authorities in other Member States with responsibilities corresponding to that of the Minister referred to in subparagraph (i), or (iii) where the Bank is the chair of a college of supervisors established under Regulation 11A of the European Communities (Credit Institutions) (Consolidated Supervision) Regulations 2009 (S.I. No. 475 of 2009), to the Committee of European Banking Supervisors, (*za*) to an inspector appointed by the Minister and acting on the Minister's behalf, or".

Regulation 3(2)

SCHEDULE 2

Amendments of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992

Item	Provision amended	Amendment
1	Regulation 2(1)	After the definition of "branch", insert: " 'CEBS' means Committee of European Banking Supervisors;".
2	Regulation 2(1), definitions of "the Commission" and "Community"	Substitute: " 'Commission' means the European Commission;".
3	Regulation 2(1), definition of "credit union"	Substitute: " 'credit union' has the meaning given by section 2(1) of the Credit Union Act 1997 (No. 15 of 1997);".
4	Regulation 2(1), definitions of "Directive" and "ECU"	Delete.
5	Regulation 2(1), definition of "initial capital"	Delete "the Directive", substitute "the Recast Credit Institutions Directive".
6	Regulation 2(1), definition of "Member State"	Substitute: "Member State" means a Member State of the European Economic Area (that is, each of the Member States of the European Union and Iceland, Liechtenstein and Norway);".
7	Regulation 2(1), definition of "proposed acquirer"	Delete "paragraph (2);"; substitute "paragraph (1B);".
8	Regulation 2(1)	After the definition of "qualifying holding", insert: " 'Recast Credit Institutions Directive' means Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006[6] relating to the taking up and pursuit of the business of credit institutions (recast), as last amended by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009[7];".
9	Regulation 2(1), definition of "supervisory enactments"	Substitute: " 'supervisory enactments' means the Central Bank Acts 1942 to 2010, the Building Societies Act 1989 (No. 17 of 1989), the Trustee Savings Banks Act 1989 (No. 21 of 1989), and any other enactment relating to supervision by the Bank and for the time being in force;".
10	Regulation 2	Insert after paragraph (1C): "(1D) A reference in these Regulations to a significant branch of a credit institution is a reference to a branch of a credit institution that has been designated as significant under Regulation 26A or 26B.".
11	Regulation 2(2)	Substitute: "(2) A word or expression that is used in these Regulations and is also used in the Recast Credit Institutions Directive has, unless the contrary intention appears, the same meaning in these Regulations as it has in that Directive.".
12	Regulation 3(1)	Delete "the Directive", substitute "the Recast Credit Institutions Directive".

[6] OJ No. L 177, 30.6.2006. p. 1.
[7] OJ No. L 302, 17.11.2009, p. 97.

Item	Provision amended	Amendment
13	Regulation 3(3)	Substitute: "(3) The institutions to which, pursuant to Article 2 of the Recast Credit Institutions Directive, that Directive does not apply (other than the central banks of the Member States) shall be treated as financial institutions for the purposes of Section 1 of Chapter 4 of Title V to that Directive.".
14	Regulation 4, definition of "solvency ratio"	Delete "the Directive", substitute "the Recast Credit Institutions Directive".
15	Regulation 6(1)	Delete each occurrence of "5,000,000 ECU", substitute "€5,000,000".
16	Regulation 6(3)	Delete "5,000,000 ECU", substitute "€5,000,000".
17	Regulation 11(1)	Delete "the Directive", substitute "the Recast Credit Institutions Directive".
18	Regulation 11(2)	Delete "the Directive,", substitute "the Recast Credit Institutions Directive".
19	Regulation 13(3)	Delete "the Directive", substitute "the Recast Credit Institutions Directive".
20	Regulation 14B(9)(a)	Delete "the Community", substitute "the European Union".
21	Regulation 15(5)	Delete "the Directive", substitute "the Recast Credit Institutions Directive".
22	Regulation 17	Substitute: "**Exercise of certain functions by Bank.** **17**.—(1) In exercising a function assigned to it by these Regulations or by a supervisory enactment, the Bank shall— (*a*) where necessary, collaborate, to the extent that the Bank considers reasonable, with the competent authority in each other Member State exercising, in that State, similar functions to those of the Bank under these Regulations or the supervisory enactments, (*b*) duly consider the potential impact of its decisions on the stability of the financial system in every other Member State concerned (particularly in an emergency), based on information available at the time, (*c*) participate in the activities of CEBS, and (*d*) follow the guidelines, recommendations, standards and other measures agreed by CEBS, setting out, where relevant, the reasons for not following measures agreed by CEBS. (2) Nothing in these Regulations affects the responsibility of the Bank under the Central Bank Acts 1942 to 2010, or under any other enactment, in respect of— (*a*) the supervision, in co-operation with the relevant competent authorities in another Member State, of the liquidity of branches in the State of credit institutions not authorised by the Bank, or (*b*) the implementation of monetary policies by the Bank.".
23	Regulation 18(2)	Delete "the Directive", substitute "the Recast Credit Institutions Directive".
24	Regulation 20(3)(g)	Substitute: "(*g*) the financial institution is supervised on a consolidated basis by the competent authority in the Member State in which the parent undertaking or parent undertakings are authorised as a credit institution or credit institutions, as the case may be, and such supervision is carried out in that Member State in accordance with provisions giving effect to the Recast Credit Institutions Directive and any other relevant law of the European Union;".

Item	Provision amended	Amendment
25	Regulation 20(6)	Substitute: "(6) For the purposes of these Regulations and for the purpose of the mutual recognition of the provision of banking services in the European Union, the Bank may give a certificate, in such form and containing such particulars as the Bank decides, to the competent authority in another Member State that a credit institution authorised by the Bank, or a financial institution to which paragraph (3) applies, carries on one or more of the activities set out in the Schedule.".
26		After Regulation 26, insert: "**Designation of branch of credit institution in State as significant.** **26A**.—(1) Where a credit institution that is not authorised in the State has a branch in the State, the Bank may request— (*a*) the competent authority of the Member State in which the credit institution is authorised, or (*b*) a competent authority that is a consolidating supervisor in relation to the credit institution, to designate the branch in the State as significant. (2) A request by the Bank under paragraph (1) shall include reasons for considering the branch in the State as significant, with particular regard to— (*a*) whether the market share, in terms of deposits, of the branch in the State exceeds 2 per cent, (*b*) the likely effect of a suspension or closure of the operations of the credit institution on market liquidity and the payment and clearing and settlement systems in the State, and (*c*) the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of the State. (3) The Bank shall do everything within its power to reach a joint decision with the competent authority to which the relevant request was made on the designation of a branch as being significant. (4) If a joint decision has not been reached within 2 months, the Bank may, within a further period of 2 months, determine that the branch is significant. The Bank shall take into account any views and reservations of the competent authority to which the relevant request was made. (5) A decision taken pursuant to paragraph (3) or (4) shall be set out in a document that shall also contain the reasons for the decision. This document shall be communicated to the competent authorities referred to in paragraph (1). **Designation of branch of credit institution in another Member State as significant.** **26B**.—(1) If— (*a*) the Bank is responsible for the supervision of a credit institution controlled by one or more EU parent financial holding companies or is the consolidating supervisor, (*b*) the credit institution or EU parent credit institution has a branch in another Member State (in this Regulation called the 'host Member State'), and (*c*) the Bank receives a request from a competent authority of the host Member State to designate the branch as significant, the Bank shall do everything in its power to reach a joint decision on the designation of the branch as significant with that competent authority. (2) In endeavouring to reach a joint decision in accordance with paragraph (1), the Bank may request the competent authority that made the request referred to in paragraph (1)(c) to provide any information that the Bank considers necessary, in particular with regard to: (*a*) whether the market share, in terms of deposits, of the branch concerned in the host Member State exceeds 2 per cent,

Item	Provision amended	Amendment
		(*b*) the likely impact of a suspension or closure of the operations of the credit institution on market liquidity and the payment and clearing and settlement systems in the host Member State, and (*c*) the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of the host Member State. (3) A joint decision taken pursuant to paragraph (1) shall be set out in a document that shall also contain the reasons for the decision. This document shall be communicated to the competent authority referred to in that paragraph. (4) Nothing in this Regulation affects the rights and responsibilities of the Bank under the Central Bank Acts 1942 to 2010, or under any other designated enactment or designated statutory instrument. (5) In paragraph (4) 'designated enactment' and 'designated statutory instrument' have the same respective meanings as in the Central Bank Act 1942 (No. 22 of 1942). (6) If— (*a*) the Bank is responsible for the supervision of a credit institution or the consolidated supervision of an EU parent credit institution and credit institutions controlled by an EU parent financial holding company, and (*b*) a branch in another Member State of the credit institution, EU parent credit institution or credit institution controlled by an EU parent financial holding company has been designated as significant, the Bank shall provide the competent authority of the host Member State with the following information: (i) any information that the Bank has on any adverse developments in those credit institutions or in other entities of the group which could seriously affect the credit institutions; (ii) any information that the Bank has on any major sanctions and exceptional measures taken by a competent authority in accordance with a law giving effect to the Recast Credit Institutions Directive, including— (I) any imposition of an additional capital charge under a law giving effect to Article 136 of that Directive, and (II) any imposition of a limitation on the use of the Advanced Measurement Approach for the calculation of the own funds requirements under a law giving effect to Article 105 of that Directive. (7) The Bank is responsible for the planning and coordination of supervisory activities in cooperation with the competent authorities, and if necessary with central banks, in preparation for and during emergency situations (including adverse developments in credit institutions or in financial markets) using, where possible, existing defined channels of communication." (8) Where— (*a*) an emergency (including adverse developments in financial markets) arises which potentially jeopardises the market liquidity and the stability of the financial system in a Member State where entities of a group have been authorised or where significant branches are established, and (*b*) the Bank is responsible for the supervision of a credit institution or is responsible for the exercise of supervision on a consolidated basis, it shall— (i) as soon as is practicable, alert the other central banks concerned and the administrative authorities of central governments concerned with financial supervision policy, and (ii) communicate to them all information that is essential for the performance of their tasks.

Item	Provision amended	Amendment
		Bank to establish college of supervisors for significant branches. **26C**.—(1) Where— (*a*) Regulation 11A of the European Communities (Credit Institutions) (Consolidated Supervision) Regulations 2009 (S.I. No. 475 of 2009) does not apply, and (*b*) the Bank is responsible for the supervision of a credit institution with significant branches in other Member States, it shall establish and chair a college of supervisors to facilitate cooperation with the competent authorities of those other Member States. The establishment and functioning of the college shall be based on written arrangements determined, after consultation with those competent authorities, by the Bank. (2) The Bank shall decide which competent authorities participate in a meeting or in an activity of the college. (3) The decision of the Bank shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned, and the obligations referred to in Regulation 26B(6) of these Regulations and in Regulation 68(1) of the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. No. 661 of 2006). (4) The Bank shall keep all the members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered. (5) The Bank shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out every year starting from 1 January 2011.".
27	Regulation 28	Delete "the Directive", substitute "the Recast Credit Institutions Directive".
28	Regulation 29(5)	Delete "the Directive", substitute "the Recast Credit Institutions Directive".

SCHEDULE 3

Regulation 3(3)

AMENDMENTS OF THE EUROPEAN COMMUNITIES (CAPITAL ADEQUACY OF INVESTMENT FIRMS) REGULATIONS 2006

Item	Provision amended	Amendment
1	Regulation 2(1), definition of "credit institutions"	Substitute: " 'credit institution' has the same meaning as in the CRD Regulations (CI);".
2	Regulation 2(1), definition of "Directive 2006/48/EC"	Delete.
3	Regulation 2(1), definition of "original own funds"	Substitute: " 'original own funds' means the sum of the items referred to in subparagraphs (a), (b) and (ba) of Regulation 3(1) of the CRD Regulations (CI), less the sum of the items referred to in subparagraphs (a), (b) and (c) of Regulation 3(2) of those Regulations;".
4	Regulation 2(1), definitions of "over-the-counter (OTC) derivative instruments" and "own funds"	Substitute: " 'own funds' means own funds as defined in the Recast Credit Institutions Directive;".
5	Regulation 2	After the definition of "parent investment firm in a Member State", insert: " 'Recast Credit Institutions Directive' has the same meaning as in the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992);".
6	Regulation 2(1), definition of "recognized third country investment firms", paragraph (a)	Delete "the Community", substitute "the European Union".
7	Paragraphs (4), (5) and (6) of Regulation 2	Substitute: "(4) In these Regulations— 'asset management company', 'financial institution', 'parent undertaking' and 'subsidiary undertaking' have the respective meanings given by Article 4 of the Recast Credit Institutions Directive; 'ancillary services undertaking', 'EU parent financial holding company', 'financial holding company' and 'parent financial holding company in a Member State' have the respective meanings given by Article 4 of the Recast Credit Institutions Directive, except that a reference to a credit institution in a definition of any of those terms in that Article shall be read as a reference to, or as including, an investment firm. (5) For the purposes of applying the CRD Regulations (CI) to groups to which paragraphs (1) to (5) of Regulation 3 apply but which do not include a credit institution— 'financial holding company' means a financial institution— (*a*) the subsidiary undertakings of which are exclusively or mainly investment firms or other financial institutions, at least one of which is an investment firm, and (*b*) which is not a mixed financial holding company within the meaning of Directive 2002/87/EC of 16 December 2002[8];"

[8] OJ No. L 035, 11.02.2003, p. 1

Item	Provision amended	Amendment
		'mixed-activity holding company' means a parent undertaking (other than a financial holding company or an investment firm or a mixed financial holding company within the meaning of Directive 2002/87/EC [8]) the subsidiaries of which include at least one investment firm.".
8	Paragraph 3(6)	Substitute: "(6) Subject to Regulations 22(1) and 23(1), where a group covered by paragraphs (1) to (5) does not include a credit institution, the CRD Regulations (CI) apply, subject to the following modifications: (*a*) references to credit institutions shall be construed as references to investment firms; (*b*) Article 140(1) of the Recast Credit Institutions Directive shall have effect as if its first sentence were as follows: 'Where an investment firm, a financial holding company or a mixed-activity holding company controls one or more subsidiaries which are insurance companies, the competent authorities and the authorities entrusted with the public task of supervising insurance undertakings shall cooperate closely.'.".
9	Paragraphs (a) and (b) of Regulation 6	Substitute: "(*a*) initial capital of €50,000; (*b*) professional indemnity insurance covering the whole territory of the European Union, or some other comparable guarantee against liability arising from professional negligence, representing at least €1,000,000 applying to each claim and in aggregate €1,500,000 per year for all claims;".
10	Paragraphs (a) and (b) of Regulation 7	Substitute: "(*a*) initial capital of €25,000; (*b*) professional indemnity insurance covering the whole territory of the European Union, or some other comparable guarantee against liability arising from professional negligence, representing at least €500,000 applying to each claim and in aggregate €750,000 per year for all claims;".
11	Regulation 11(1)	Delete "Directive 2006/48/EC", substitute "the Recast Credit Institutions Directive".
12	Regulation 11(5)(a)	Delete "Directive 2006/48/EC", substitute "the Recast Credit Institutions Directive".
13	Regulation 15(1)	Delete "Directive 2006/48/EC", substitute "the Recast Credit Institutions Directive".
14	Regulation 17(2)	Delete each occurrence of "Directive 2006/48/EC", substitute "the Recast Credit Institutions Directive".
15	Regulation 18(4)	Delete "Directive 2006/48/EC", substitute "the Recast Credit Institutions Directive".
16	Regulation 24(4)(a)	Delete "Directive 2006/48/EC", substitute "the Recast Credit Institutions Directive".
17	Regulation 26(1)	Substitute: "**26**.—(1) Subject to paragraph (2), an institution, except an investment firm that satisfies the criteria set out in paragraphs (2) and (3) of Regulation 18, shall monitor and control its large exposures in accordance with Part 6 of the CRD Regulations (CI).".
18	Regulation 28(1)(b)(ii)	Substitute: "(ii) paragraphs (7) to (13) of Regulation 57:".

Item	Provision amended	Amendment
19	Regulation 28(6)	Substitute: "(6) The Bank may allow assets constituting claims and other exposures on— (*a*) recognised third-country investment firms, and (*b*) recognised clearing houses and exchanges, to be treated in the same way as claims on institutions specified in the following provisions of the CRD Regulations (CI): (i) paragraphs (1) to (3) of Regulation 57; (ii) subparagraph (c) of the definition of 'exposure' in Regulation 52.".
20	Regulation 29	Substitute: "**Circumstances in which limits set out in Regulations 57 to 60A of CRD Regulations (CI) may be exceeded.** **29**.—(1) The Bank may authorise an institution to exceed the limits specified in Regulations 57 to 60A of the CRD Regulations (CI), but only subject to the following conditions: (*a*) the exposure on the non-trading book to the client or group of clients concerned shall not exceed the applicable limit set out in paragraphs (1) to (3) of Regulation 57 of the CRD Regulations (CI) (the limit being calculated with reference to own funds as specified in the Recast Credit Institutions Directive, so that the excess arises entirely on the trading book); (*b*) the institution shall meet an additional capital requirement on the excess in respect of the limits specified in paragraphs (1) to (3) of Regulation 57 of the CRD Regulations (CI) (calculated in accordance with Annex VI to Directive 2006/49/EC[9]); (*c*) where no more than 10 days has elapsed since the excess occurred, the trading-book exposure to the client or group of connected clients in question shall not exceed 500 per cent of the institution's own funds; (*d*) any excesses that have persisted for more than 10 days do not, in aggregate, exceed 600 per cent of the institution's own funds; (*e*) the institution shall report to the Bank, after the end of each period of 3 months, all cases where a limit set out in any of paragraphs (1) to (3) of Regulation 57 of the CRD Regulations (CI) has been exceeded during that period. (2) For the purposes of paragraph (1)(e), on each occasion on which the institution exceeds the limit, it shall report the amount of the excess and the name of the client concerned.".
21	Regulation 30(1)	Substitute: "**30**.—(1) The Bank shall establish procedures to prevent an institution from deliberately avoiding the additional capital requirements that it would otherwise incur on an exposure exceeding a limit set out in paragraphs (1) to (3) of Regulation 57 of the CRD Regulations (CI) once the exposure has been maintained for more than 10 days by means of either or both of the following: (*a*) temporarily transferring the exposure in question to another company, whether within the same group or not; (*b*) undertaking artificial transactions to close out the exposure during the 10-day period and create a new exposure.".
22	Regulation 30(4)	Delete "own funds as defined in Directive 2006/48/EC.", substitute "own funds.".
23	Regulation 33	Insert after paragraph (6): "(7) An investment firm shall comply with the requirements referred to in paragraphs (3) and (4) of Regulation 18 of the CRD Regulations (CI) in relation to uniform formats, frequencies and dates of reporting.".
24	Regulation 35(1)(a)	Delete "Directive 2006/48/EC", substitute "the Recast Credit Institutions Directive".

[9] O J No. L177, 30.6.2006, p. 201

Item	Provision amended	Amendment
25	Regulation 35(1)(c)	Delete "Directive 2006/48/EC", substitute "the Recast Credit Institutions Directive".
26	Regulation 36(3)(c)	Delete "Directive 2006/48/EC", substitute "the Recast Credit Institutions Directive".
27	Regulation 36	Insert after paragraph (3): "(4) Regulations 26A, 26B and 26C of the European Communities (Licensing and Supervision) Regulations 1992 (S.I. No. 395 of 1992) (except paragraph (2)(a) of either Regulation) applies (with any necessary changes) to the supervision of an investment firm except an investment firm that meets the criteria set out in— (*a*) paragraphs (2) and (3) of Regulation 18, or (*b*) Regulation 41.".
28	Regulation 38	Substitute: "**Exposures to third-country investment firms, etc. to be treated as exposures to institutions.** **38**.—For the purposes of the calculation of minimum capital requirements for counterparty risk under these Regulations, and for credit risk under the CRD Regulations (CI), and without prejudice to point 6 of Part 2 of Annex III to that Directive, exposures to recognised third-country investment firms and exposures incurred to recognised clearing houses and exchanges shall be treated as exposures to institutions.".
29	Regulation 40(3)	Delete.
30	Regulation 40(4)(c)	Delete "Directive 2006/48/EC", substitute "the Recast Credit Institutions Directive".
31	Regulation 40	Insert after paragraph (5): "(6) This regulation ceases to have effect on 31 December 2014.".
32	Regulation 42	Substitute: "**Transitional provisions—specific risk model recognition before 1 January 2007.** **42**.—(1) In the case of an institution that was granted specific risk model recognition before 1 January 2007 in accordance with point 1 of Annex V to the recast Directive (IF), points 4 and 8 of Annex VIII of Directive 93/6/EEC have effect as those points stood immediately before 1 January 2007. (2) The Bank may direct that paragraph (1) shall cease to apply to a particular institution. (3) This regulation ceases to have effect on 31 December 2010.".
33	Regulation 43(2)	Substitute: "(2) The exemption under paragraph (1) ceases to have effect— (*a*) on 31 December 2014, or (*b*) if before that date any modification pursuant to points 2 and 3 of Article 48 of the recast Directive (IF) comes into operation, on the coming into operation of the modification.".
34	Regulation 44(2)	Substitute: "(2) Subject to paragraph (3), paragraphs (8) to (14) of Regulation 82 of the CRD Regulations (CI) apply with any necessary changes for the purposes of these Regulations. (3) Where the discretion referred to in Regulation 82(8) of the CRD Regulations (CI) is exercised— (*a*) references in point 7 of Annex II to the recast Directive (IF) to the Recast Credit Institutions Directive shall be read as references to Directive 2000/12/EC as that Directive stood immediately before 1 January 2007, and (*b*) point 4 of Annex II to the recast Directive (IF) applies as it stood immediately before 1 January 2007.".

SCHEDULE 4

Regulation 4(1)

Amendments of the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006

Part 1

General amendments

Item	Provision amended	Amendment
1	Regulation 2(1)	After the definition of "Bank", insert: " 'CEBS' means Committee of European Banking Supervisors;".
2	Regulation 2(1), definition of "Consolidated Accounts Directive"	Delete.
3	Regulation 2(1), definitions of "European Act" and "European Communities"	Delete.
4	Regulation 2(1), definition of "recast Directive (CI)"	Substitute " 'Recast Credit Institutions Directive' has the same meaning as in the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992);".
5	Regulation 2(2)	Substitute: "(2) A word or expression that is used in these Regulations and in the Recast Credit Institutions Directive has in these Regulations the same meaning as it has in that Directive unless the contrary intention appears. (3) A reference in these Regulations to an Annex numbered with a roman numeral is, unless the contrary intention appears, a reference to the Annex so numbered in the Recast Credit Institutions Directive.".
6	Regulation 3(1)(a)	Substitute: "(*a*) capital (within the meaning of Article 22 of Directive 86/635/EEC of the European Parliament and of the Council of 8 December 1986[10]), in so far as— (i) it and the related share premium accounts have been paid up, (ii) it fully absorbs losses in going concern situations, and (iii) it ranks after all other claims in the event of bankruptcy or liquidation;".
7	Regulation 3(1)	Insert after subparagraph (b): " (*ba*) instruments (other than those referred to in subparagraph (a)) which meet the requirements set out in— (i) subparagraphs (a), (c), (d) and (e) of Regulation 8(2), and (ii) Regulation 8A,".
8	Subparagraphs (i) and (j) of Regulation 3(2)	Substitute: "(*i*) for a credit institution calculating risk-weighted exposure amounts under Chapter 3 of Part 4, negative amounts resulting from the calculation set out in point 36 of Part 1 of Annex VII and expected loss amounts calculated in accordance with points 32 and 33 of Part 1 of that Annex, (*j*) the exposure amount of securitisation positions which receive a risk weight of 1,250 per cent under Part 4 of Annex IX, calculated in the manner there specified, and".

[10] OJ No. L 372, 31.12.1986, p.1

Item	Provision amended	Amendment
9	Regulation 3(3)	Substitute: "(3) For the purposes of paragraph (1)(b), interim or year end profits shall be included before a formal decision has been taken only if— (*a*) the profit has been verified by persons responsible for the auditing of the accounts, and (*b*) it is proved to the satisfaction of the Bank that the amount of it— (i) has been evaluated in accordance with the principles set out in Directive 86/635/EEC, and (ii) is net of any foreseeable charge or dividend.".
10	Regulation 3(1)	Substitute "Subject to the limits imposed in Regulation 11, the unconsolidated own funds of a credit institution shall consist of the following items:" for "Subject to the limits imposed by or under Regulation 11 or paragraph (5), the unconsolidated own funds of a credit institution consist of the following items:".
11	Regulation 3(5)	Substitute: "(5) The Bank may authorise the institution to exceed the limits specified in paragraphs (1) and (1A) of Regulation 11 temporarily during emergency situations.".
12	Regulation 6(3)	Substitute: "(3) This Regulation has effect for the purposes of all the prudential rules harmonised by or under laws of the State that give effect to laws of the European Union.".
13	Regulation 8	After paragraph (3), insert: "(3A) Instruments referred to in Regulation 3(1)(ba) shall comply with the requirements set out in subparagraphs (a), (c), (d) and (e) of paragraph (2).".
14	Regulation 8(4)	Substitute: "(4) For a credit institution calculating risk-weighted exposure amounts under Chapter 3 of Part 4— (*a*) positive amounts resulting from the calculation set out in point 36 of Part 1 of Annex VII may, up to 0.6 per cent of risk-weighted exposure amounts calculated under Chapter 3 of Part 4, be accepted as other items, (*b*) value adjustments and provisions included in the calculation set out in point 36 of Part 1 of that Annex shall not be included in own funds other than in accordance with this paragraph and paragraph (5).".
15		After regulation 8, insert: "**Requirements for instruments referred to in Regulation 3(1)(ba).** **8A**.—(1) The requirements with which an instrument referred to in Regulation 3(1)(ba) is required to comply are those in paragraphs (2) to (10). (2) Such an instrument— (*a*) shall be undated or have an original maturity of at least 30 years, (*b*) may include one or more call options at the sole discretion of the issuer, but they shall not be redeemable before 5 years after the date of issue, (*c*) in the case of an undated instrument, if, in the opinion of the Bank, it provides for a moderate incentive for the credit institution to redeem, the incentive shall not occur within 10 years of the date of issue, and (*d*) in the case of a dated instrument, shall not provide an incentive to redeem on a date other than the maturity date. (3) The instrument shall allow the credit institution to cancel, when necessary, the payment of interest or dividends for an unlimited period of time, on a non-cumulative basis.

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		(4) The instrument shall provide for principal, unpaid interest or dividends to be such as to absorb losses and not to hinder the recapitalisation of the credit institution through appropriate mechanisms, as elaborated by CEBS. (5) In the event of the bankruptcy or liquidation of the credit institution, the instrument shall rank after the items referred to in Regulation 8(2). (6) An instrument (whether dated or undated) may be called or redeemed only with the prior consent of the Bank. The Bank may grant consent if it is requested to do so at the initiative of the credit institution and the financial or solvency conditions of the credit institution are not unduly affected. The Bank may require the credit institution to replace the instrument by items of the same or better quality of a kind referred to in subparagraph (a) or (ba) of Regulation 3(1). (7) The Bank shall require the redemption of a dated instrument to be suspended if the credit institution concerned does not comply with the capital requirements set out in Regulation 19 and may require such suspension at other times based on the financial and solvency situation of the credit institution concerned. (8) The Bank may at any time grant permission for early redemption of an instrument (whether dated or undated) if there is a change in the applicable tax treatment or regulatory classification of the instrument which was unforeseen at the date of issue. (9) A credit institution shall cancel payment of interest and dividends under an instrument if the credit institution does not comply with the capital requirements set out in Regulation 19. (10) The Bank may require the cancellation of payments of interest and dividends under an instrument based on the financial and solvency situation of the credit institution concerned. Any such cancellation does not prejudice the right of the credit institution to substitute a payment in the form of an instrument referred to in Regulation 3(1)(a) for the payment of interest or dividends, if doing so allows the credit institution to preserve its financial resources. The Bank may impose a condition or conditions on such a substitution.".
16	Regulation 10(2)(a)	Substitute: "(*a*) any minority interests (within the meaning of Article 21 of Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts[11]), where the global integration method is used;".
17	Regulation 10	After paragraph (3), insert: "(4) An instrument referred to in Regulation 3(1)(ba) which gives rise to minority interests shall meet the requirements under subparagraphs (a), (c), (d) and (e) of Regulation 8(2) and Regulations 8A and 11.".
18	Paragraphs (1) to (4) of Regulation 11	Substitute: "**11**.—(1) The items referred to in subparagraphs (c), (d) and (e) of Regulation 3(1) are subject to the following limits: (*a*) the total of those items shall not exceed 100 per cent of the total of the items referred to in referred to in subparagraphs (a), (b), and (ba) of Regulation 3(1) minus the total of the items referred to in subparagraphs (a), (b) and (c) of Regulation 3(2); (*b*) the total of the items referred to in Regulation 3(1)(e) shall not exceed 50 per cent of the total of the items referred to in subparagraphs (a), (b), and (ba) of Regulation 3(1) minus the total of the items referred to in subparagraphs (a), (b) and (c) of Regulation 3(2).

[11] OJ No. L 193, 18.7.1983, p.1

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		(1A) The total of the items in Regulation 3(1)(ba) is subject to the following limits: (*a*) instruments that— (i) are required to be converted during emergency situations, and (ii) may at any time, at the initiative of the Bank, based on the financial and solvency situation of the issuer, be converted into items referred to in Regulation 3(1)(a) within a pre-determined range, shall not in total exceed 50 per cent of the total of the items referred to in subparagraphs (a), (b), and (ba) of Regulation 3(1) minus the total of the items referred to in subparagraphs (a), (b) and (c) of Regulation 3(2); (*b*) within the limit set out in subparagraph (a), the total of all other instruments shall not exceed 35 per cent of the total of the items referred to in subparagraphs (a), (b), and (ba) of Regulation 3(1) minus the total of the items referred to in subparagraphs (a), (b) and (c) of Regulation 3(2); (*c*) within the limits set out in subparagraphs (a) and (b), the total of dated instruments and instruments with provisions that provide for an incentive for the credit institution to redeem shall not exceed 15 per cent of the total of the items referred to in subparagraphs (a), (b), and (ba) of Regulation 3(1) minus the total of the items referred to in subparagraphs (a), (b) and (c) of Regulation 3(2). (1B) The amount of any item that exceeds the limits set out in subparagraphs (a), (b) and (c) is subject to the limit set out in paragraph (1). (2) The total of the items referred to in subparagraphs (d) to (k) of Regulation 3(2) shall be deducted as follows: (*a*) half from the total of the items referred to in subparagraphs (a), (b), and (ba) of Regulation 3(1) minus the total of the items referred to in subparagraphs (a), (b) and (c) of Regulation 3(2); (*b*) half from the total of the items referred to in subparagraphs (c), (d) and (e) of Regulation 3(1), after the application of the limits set out in paragraph (1). (3) To the extent that half of the total of the items referred to in subparagraphs (d) to (k) of Regulation 3(2) exceeds the total of the items referred to in subparagraphs (c), (d) and (e) of Regulation 3(1), the excess shall be deducted from the total of the items referred to in subparagraphs (a), (b), and (ba) of Regulation 3(1) minus the total of the items referred to in subparagraphs (a), (b) and (c) of Regulation 3(2). (4) The item referred to in subparagraph (j) of Regulation 3(2) shall not be deducted if it has already been included in the calculation of risk-weighted exposure amounts for the purposes of Regulation 19 as specified in Part 4 of Annex IX.".
19	Regulation 18	Substitute:: "**Calculation and reporting requirements.** **18**.—(1) Except where otherwise provided, the valuation of assets and off-balance-sheet items shall be effected in accordance with the accounting framework to which the credit institution is subject under Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002[12] and the European Communities (Credit Institutions: Accounts) Regulations 1992 (S.I. No. 294 of 1992). (2) Notwithstanding Regulations 13 to 16, the calculations to verify the compliance of credit institutions with the obligations set out in Regulation 19 shall be carried out at least twice in each year. (3) The credit institutions shall communicate the results and any component data required to the Bank. (4) For the communication of the calculations referred to in paragraph (3) by credit institutions, the Bank shall apply, from 31 December 2012, uniform formats, frequencies and dates of reporting, based on guidelines elaborated by CEBS.".

[12] OJ No. L 243, 11.9.2003, p.1]

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20	Paragraphs (3) and (4) of Regulation 22	Substitute: "(3) In the case of a credit institution using the Financial Collateral Comprehensive Method under Part 3 of Annex VIII, where an exposure takes the form of securities or commodities sold, posted or lent under a repurchase transaction, a securities or commodities lending or borrowing transaction, or a margin lending transaction, the exposure value shall be increased by the volatility adjustment appropriate to such securities or commodities as prescribed in points 34 to 59 of that Part of that Annex. (4) The exposure value of a derivative instrument listed in Annex IV shall be determined in accordance with Annex III with the effects of contracts of novation and other netting agreements taken into account for the purposes of those methods in accordance with Annex III.".
21	Paragraphs (2) and (3) of Regulation 25	Substitute: "(2) The Bank shall recognise an ECAI as eligible for the purposes of Regulation 24 only if it is satisfied that its assessment methodology is objective, independent, and transparent and is subject to ongoing review, and that the resulting credit assessments are credible and transparent. (3) For the purposes of paragraph (2), the Bank shall take into account the technical criteria set out in Part 2 of Annex VI. (3A) In the case of an ECAI registered as a credit rating agency in accordance with Regulation (EC) No 1060/2009 of 16 September 2009 of the European Parliament and of the Council[13], the Bank shall consider that the requirements of objectivity, independence, ongoing review and transparency with respect to its assessment methodology are satisfied.".
22	Regulation 26(1)	Substitute: "**26**.—(1) The Bank shall determine, objectively and consistently and taking into account the technical criteria set out in Part 2 of Annex VI, which of the credit quality steps set out in Part 1 of that Annex that the relevant credit assessments of an eligible ECAI are to be associated with.".
23	Regulation 27(1)	Substitute: "**27**.—(1) The use of ECAI credit assessments for the calculation of a credit institution's risk-weighted exposure amounts shall be consistent and in accordance with Part 3 of Annex VI.".
24	Paragraphs (1) and (2) of Regulation 28	Substitute: "**28**.—(1) For the purposes of applying point 5 of Part 1 of Annex VI, where the competent authority of a third country which applies supervisory and regulatory arrangements at least equivalent to those applied in the European Union assigns a risk-weight which is lower than point 1 or 2 of that Part indicates, a credit institution may apply risk-weights to such exposures in the same manner. (2) For the purposes of applying point 11 of Part 1 of Annex VI, where the competent authority of a third country which applies supervisory and regulatory arrangements at least equivalent to those applied in the European Union treats exposures to regional governments and local authorities as exposures to the central government, a credit institution may apply risk-weights to exposures to such regional governments and local authorities in the same manner as that competent authority does.".
25	Regulation 32(7)	Substitute: "(7) The Bank shall allow a credit institution to use the approach set out in points 25 and 26 of Part 1 of Annex VII only if the credit institution meets the minimum requirements set out in points 115 to 123 of Part 4 of that Annex.".

[13] OJ No. L 302, 17.11.2009, p. 1.

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26	Regulation 32(12)	Substitute: "(12) For exposures belonging to the exposure classes referred to in subparagraphs (a), (b) and (c) of Regulation 31(1), a credit institution shall apply the LGD values set out in point 8 of Part 2 of Annex VII, and the conversion factors set out in point 9(a) to (d) of Part 3 of that Annex.".
27	Paragraphs (15) to (17) of Regulation 32	Substitute: "(15) Where an exposure in the form of a collective investment undertaking (in this Regulation called a 'CIU') meets the criteria set out in points 77 and 78 of Part 1 of Annex VI and the credit institution is aware of all or parts of the underlying exposures of the CIU, the credit institution shall look through to those underlying exposures to calculate risk-weighted exposure amounts and expected loss amounts in accordance with the methods set out in this Chapter. (15A) Paragraphs (17) to (20) apply to the part of the underlying exposures of the CIU that the credit institution is not aware of or could not reasonably be aware of. In particular, paragraphs (17) to (20) shall apply where it would be unduly burdensome for the credit institution to look through the underlying exposures in order to calculate risk-weighted exposure amounts and expected loss amounts in accordance with methods set out in this Chapter. (16) A credit institution that does not meet the conditions for using methods set out in this Chapter for all or parts of the underlying exposures of the CIU shall calculate risk-weighted exposure amounts and expected loss amounts as follows: (*a*) for an exposure belonging to the exposure class referred to in Regulation 31(1)(e), as set out in points 19 to 21 of Part 1 of Annex VII; (*b*) for all other underlying exposures, as set out in Chapter 2 subject to the following modifications: (i) for exposures subject to a specific risk weight for unrated exposures or subject to the credit quality step yielding the highest risk weight for a given exposure class, the risk weight shall be multiplied by a factor of 2 but shall not be higher than 1,250 per cent, and (ii) for all other exposures, the risk weight shall be multiplied by a factor of 1.1 and shall not be lower than 5 per cent. (16A) Where, for the purposes of paragraph 16(a), a credit institution is unable to differentiate between private equity, exchange-traded and other equity exposures, it shall treat the exposures concerned as other equity exposures. Without prejudice to paragraphs (7) and (8) of Regulation 84, where those exposures, taken together with the credit institution's direct exposures in that exposure class, are not material within the meaning of paragraphs (3) and (4) of Regulation 34, the credit institution may apply paragraphs (1) and (2) of Regulation 34 if the Bank so approves. (17) Where exposures in the form of a CIU do not meet the criteria set out in points 77 and 78 of Part 1 of Annex VI, or the credit institution is not aware of all of the underlying exposures of the CIU, the credit institution shall look through to the underlying exposures and calculate risk-weighted exposure amounts and expected loss amounts in accordance with points 19 to 21 of Part 1 of Annex VII.".
28	Regulation 32(20)	Substitute: "(20) As an alternative to using the method described in paragraphs (17), (18) and (19), a credit institution may calculate (or rely on a third party to calculate) and report the average risk weighted exposure amounts based on the CIU's underlying exposures in accordance with the approaches referred to in subparagraphs (a) and (b) of paragraph (16), if the correctness of the calculation and the report is adequately ensured.".

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29	Regulation 34(1)(d)	Substitute: "(*d*) exposures to central governments of the Member States and their regional governments, local authorities and administrative bodies if— (i) there is no difference in risk between the exposures to the central government and the other exposures because of specific public arrangements, and (ii) exposures to the central government are subject to a zero per cent risk-weight under Chapter 2,".
30	Subparagraphs (h) and (i) of Regulation 34(1)	Substitute: "(*h*) the exposures identified in point 40 of Part 1 of Annex VI, meeting the conditions specified in that point, and (*i*) State and State-reinsured guarantees pursuant to point 19 of Part 2 of Annex VIII.".
31	Regulation 41(1)	Substitute: "**41**.—(1) Where significant credit risk associated with securitised exposures has been transferred from the originator credit institution in accordance with Part 2 of Annex IX, that credit institution may— (*a*) in the case of a traditional securitisation, exclude the exposures which it has securitised from its calculation of risk-weighted exposure amounts and, as relevant, expected loss amounts, and (*b*) in the case of a synthetic securitisation, calculate risk-weighted exposure amounts and, as relevant, expected loss amounts, in respect of the securitised exposures in accordance with Part 2 of Annex IX.".
32	Regulation 43(2)	Substitute: "(2) The Bank shall recognise an ECAI as eligible for the purpose referred to in paragraph (1) only if— (*a*) it is satisfied as to the ECAI's compliance with the requirements set out in Regulation 25 taking into account the technical criteria set out in Part 2 of Annex VI, and (*b*) it is satisfied that the ECAI has a demonstrated ability in the area of securitisation, which may be evidenced by strong market acceptance. (2A) Where an ECAI is registered as a credit rating agency in accordance with Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009[14] the Bank shall consider the requirements of objectivity, independence, ongoing review and transparency with respect to its assessment methodology to be satisfied.".
33	Regulation 52	Substitute: "Interpretation (Part 6). **52**.—(1) In this Part— 'exposure' means any asset or off-balance item referred to in Chapter 2 of Part 4 without application of the risk-weights or degrees of risk provided for in that Chapter, but does not include— (*a*) in the case of a foreign exchange transaction, exposures incurred in the ordinary course of settlement during the 2 working days following payment, (*b*) in the case of a transaction for the purchase or sale of securities, exposures incurred in the ordinary course of settlement during the 5 working days following payment or delivery of the securities (whichever is the earlier), (*c*) in the case of the provision of money transmission (including the execution of payment services, clearing and settlement in any currency and correspondent banking or financial instruments clearing, settlement and custody services to clients), delayed receipts in funding and other exposure arising from client activity not lasting longer than the next business day, and

[14] O J No. L 350, 29.12.2009, p. 59.

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		(*d*) in the case of the provision of money transmission (including the execution of payment services, clearing and settlement in any currency and correspondent banking), intra-day exposures to institutions providing those services; 'guarantee' includes credit derivatives recognised in accordance with Chapter 4 of Part 4, other than credit linked notes. (2) For the purpose of calculating the value of an exposure in accordance with this Part, a reference to a credit institution includes a private or public undertaking (including any branches) that— (*a*) carries on the business of a credit institution, and (*b*) has been authorised in a third country.".
34	Regulation 53	Substitute: "**Calculation of exposures, etc.** **53**.—(1) Exposures arising from the items referred to in Annex IV shall be calculated in accordance with one of the methods set out in Annex III. (2) For the purposes of this Part, point 2 of Part 2 of Annex III also applies. (3) All elements entirely covered by own funds may, with the agreement of the Bank, be excluded from the determination of exposures, provided that such own funds are not included in the credit institution's own funds for the purposes of Regulation 19 or in the calculation of other monitoring ratios provided for in laws of the State giving effect to the Recast Credit Institutions Directive and other applicable laws of the European Union. (4) To determine the existence of a group of connected clients in respect of exposures referred to in subparagraphs (m), (o) and (p) of Regulation 23(1) where there is an exposure to underlying assets, a credit institution shall assess the scheme, its underlying exposures, or both. For that purpose, a credit institution shall evaluate the economic substance of the transaction and the risks inherent in its structure.".
35	Regulation 56	Substitute: "**Reporting of large exposures.** **56**.—(1) A credit institution shall report the following information about every large exposure (including large exposures to which paragraphs (1) to (3) of Regulation 57 do not apply) to the Bank: (*a*) the identification of the client or group of connected clients to which the credit institution has the large exposure; (*b*) the value of the exposure before taking into account the effect of any credit risk mitigation when applicable; (*c*) the type of funded or unfunded credit protection, if any; (*d*) the value of the exposure after taking into account the effect of the credit risk mitigation calculated for the purpose of paragraphs (1) to (3) of Regulation 57. (2) If a credit institution is subject to Regulations 29 to 35, it shall ensure that its 20 largest exposures on a consolidated basis (excluding exposures to which paragraphs (1) to (3) of Regulation 57 do not apply) are available to the Bank. (3) A credit institution shall report all large exposures to the Bank at least twice a year. (4) The Bank shall apply, from 31 December 2012, uniform formats, frequencies and dates of reporting as developed by CEBS. (5) A credit institution shall analyse, to the extent possible, its exposures to collateral issuers, providers of unfunded credit protection and underlying assets pursuant to Regulation 53(4) for possible concentrations and, where appropriate, take action and report any significant findings to the Bank.".
36	Regulation 57	Substitute: "**Large exposures to single clients or groups of connected clients.** **57**.—(1) A credit institution shall not incur an exposure to a client or group of connected clients the value of which, after taking into account the effect of any credit risk mitigation in accordance with Regulations 52, 58, 59, 60 and 60A, exceeds 25 per cent of its own funds.

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		(2) If a client is an institution or a group of connected clients that includes one or more institutions, that value shall not exceed the higher of 25 per cent of the credit institution's own funds or €150,000,000. However, the sum of the values of exposures, after taking into account the effect of any credit risk mitigation in accordance with Regulations 52, 58, 59, 60 and 60A, to all groups of connected clients that are not institutions shall not exceed 25 per cent of the credit institution's own funds. (3) Where the amount of €150,000,000 is higher than 25 per cent of the credit institution's own funds, the value of the exposure referred to at paragraph (1), after taking into account the effect of any credit risk mitigation in accordance with Regulations 52, 58, 59, 60 and 60A, shall not exceed a reasonable limit in terms of the credit institution's own funds. The credit institution shall determine that limit, consistently with the policies and procedures referred to in point 7 of Annex V to address and control concentration risk, but the limit determined shall not be higher than 100 per cent of the credit institution's own funds. (4) A credit institution shall ensure that at all times it complies with the relevant limits specified in paragraphs (1), (2) and (3). (5) If, in an exceptional case, an exposure of a credit institution exceeds a limit specified in paragraph (1), (2) or (3), the institution shall, without delay, notify the Bank of the occurrence, and the Bank may, if it considers that the circumstances warrant it, allow the credit institution a specified period within which it is required to comply with those limits. (6) Where the limit of €150,000,000 referred to in paragraph (2) applies, the Bank may, on a case-by-case basis, allow the 100 per cent limit in terms of the credit institution's own funds to be exceeded. (7) For the purposes of Part 6, if an exposure of a credit institution— (*a*) is secured by mortgages on residential property or by shares in Finnish residential housing companies, operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation, or (*b*) relates to a leasing transaction over residential property under which the lessor retains full ownership of the residential property for as long as the lessee has not exercised his option to purchase, the credit institution may reduce the value of the exposure by up to 50 per cent of the value of the residential property concerned. (8) For the purposes of paragraph (7), the value of the property concerned shall be calculated, to the satisfaction of the Bank, on the basis of prudent valuation standards laid down by law, regulation or administrative provisions. Valuation shall be carried out at least once every three years for residential property. (9) In paragraphs (7) and (8) 'residential property' means a residence to be occupied or let by the owner. (10) Part 2, point 8, and Part 3, points 62 to 65, of Annex VIII apply for the purposes of paragraphs (7) and (8). (11) For the purposes of Part 6, if an exposure of a credit institution— (*a*) is secured by mortgages on offices or other commercial premises, or by shares in Finnish housing companies operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation, in respect of offices or other commercial premises, or (*b*) relates to property leasing transactions concerning offices or other commercial premises, the credit institution may reduce the value of the exposure by up to 50 per cent of the value of so much of those offices or commercial premises as are qualifying commercial property, but only if the Bank or (if the property is situated in another Member State) the competent authority of that other Member State allows the exposures to receive a 50 per cent risk weight in accordance with Chapter 2 of Part 4.

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		(12) For the purposes of paragraph (11), the value of the qualifying commercial property shall be calculated, to the satisfaction of the Bank, on the basis of prudent valuation standards laid down by law, regulation or administrative provisions. (13) In paragraphs (11) and (12), 'qualifying commercial property' means commercial property that is fully constructed, leased and produces appropriate rental income.". (14) The Bank may apply a limit of €250,000 instead of €150,000,000 to an investment firm, on a case by case basis. (15) For the application of this regulation to an investment firm— (*a*) references in paragraphs (1) to (6) to a credit institution shall be read as references to an investment firm, and (*b*) in the case of an investment firm to which the Bank has, under paragraph (14), applied a limit of €250,000, '€250,000' shall be taken to be substituted for '€150,000,000'.".
37	Regulation 58(1)	Substitute: "(1) Subject to paragraph (2), where, under Regulations 59, 60 and 60A the recognition of funded or unfunded credit protection may be permitted, the recognition is required to be subject to compliance with the eligibility requirements and other minimum requirements set out in Chapter 4 of Part 4.".
38	Regulation 58	Insert after paragraph (2): "(3) For the purpose of Part 6, a credit institution shall not take into account collateral referred to in points 20 to 22 of Part 1 of Annex VIII unless permitted to do so under paragraphs (7) to (13) of Regulation 57.".
39	Regulation 59(1)	Substitute: "**59**.—(1) Regulation 57 does not apply to the following exposures of a credit institution: (*a*) any asset item that constitutes a claim on a central government or central bank that would, if unsecured, be assigned a zero per cent risk-weight under Chapter 2 of Part 4; (*b*) any asset item that constitutes a claim on an international organisation or a multilateral development bank that would, if unsecured, be assigned a zero per cent risk-weight under Chapter 2 of Part 4; (*c*) any asset item that constitutes a claim carrying an explicit guarantee of a central government, central bank, international organisation, multilateral development bank or public sector entity if unsecured claims on the entity that is providing the guarantee would be assigned a zero per cent risk-weight under Chapter 2 of Part 4; (*d*) any other exposure attributable to, or guaranteed by, a central government, central bank, international organisation, multilateral development bank or public sector entity if unsecured claims on the entity to which the exposure is attributable, or by which it is guaranteed, would be assigned a zero per cent risk-weight under Chapter 2 of Part 4; (*e*) any asset item constituting— (i) a claim on a regional government or local authority of a Member State that would be assigned a zero per cent risk-weight under Chapter 2 of Part 4, and (ii) any other exposure to or guaranteed by such a regional government or local authority, claims on which would be assigned a zero per cent risk weight under Chapter 2 of Part 4; (*f*) subject to paragraph (1A), any exposure to a counterparty referred to in paragraph (9) to (12) of Regulation 24 if the exposure would be assigned a zero per cent risk weight under Chapter 2 of Part 4; (*g*) any asset item or other exposure that is, to the satisfaction of the Bank, secured by collateral in the form of cash deposits placed with—

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		(i) the credit institution, or (ii) another credit institution that is the parent undertaking or a subsidiary of the credit institution; (*h*) any asset item or other exposure that is, to the satisfaction of the Bank, secured by collateral in the form of certificates of deposit— (i) issued by the credit institution, or (ii) issued by another credit institution that is the parent undertaking or a subsidiary of the credit institution and lodged with either of them; (*i*) any exposure arising from an undrawn credit facility that is classified as a low-risk off-balance-sheet item in Annex II, but only if an agreement has been concluded with the client or group of connected clients concerned under which the facility may be drawn only if it has been ascertained that doing so will not cause the limit applicable under paragraphs (1) to (3) of Regulation 57 to be exceeded; (*j*) any covered bonds falling within the terms of Annex VI, Part 1, points 68, 69 and 70; (*k*) 80 per cent of any asset item constituting a claim on a regional government or local authority of a Member State if the claim would be assigned a 20 per cent risk weight under Chapter 2 of Part 4 and other exposures to or guaranteed by those regional governments or local authorities, claims on which would be assigned a 20 per cent risk weight under Chapter 2 of Part 4; (*l*) notwithstanding subparagraph (f), and subject to paragraph (2A) and to the prior approval of the Bank, any exposure including participation and any other kind of holding, incurred by a credit institution to— (i) its parent undertaking, (ii) other subsidiaries of its parent undertaking, or (iii) its own subsidiaries, in so far as the undertaking is covered by the supervision on a consolidated basis to which the credit institution itself is subject, in accordance with a law of a Member State giving effect to the Recast Credit Institutions Directive or with equivalent standards in force in a third country; (*m*) any asset item constituting a claim on a central bank in the form of required minimum reserves held at the central bank and denominated in its national currency; (*n*) any asset item constituting a claim on a central government in the form of statutory liquidity requirements held in government securities denominated and funded in the national currency, but only if the credit assessment of the central government assigned by a nominated ECAI is investment grade; (*o*) 50 per cent of any medium/low risk off-balance-sheet documentary credit and of any medium/low risk off-balance-sheet undrawn credit facility referred to in Annex II. (1A) Any exposure of a kind referred to in subparagraph (f) of paragraph (1) that does not meet the criteria set out in that subparagraph, whether or not paragraphs (1) to (3) of Regulation 57 apply to it, shall be treated as an exposure to a third party.".
40	Regulation 59(3)	Substitute: "(2A) Any exposure of a kind referred to in paragraph (1)(l) that does not meet the criteria set out in that paragraph, whether or not exempted from paragraphs (1) to (3) of Regulation 57, shall be treated as an exposure to a third party.".
41	Paragraphs (1) to (3) of Regulation 60	Substitute: "**60**.—(1) Subject to paragraphs (7) to (11), for the purposes of calculating the value of exposures for the purposes of paragraphs (1) to (3) of Regulation 57, a credit institution may use the "fully adjusted exposure value" as calculated under Chapter 4 of Part 4, taking into account the credit risk mitigation, volatility adjustments, and any maturity mismatch (E*). (3) Subject to paragraphs (7) to (11), if a credit institution—

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		(*a*) is permitted to use own estimates of LGDs and conversion factors for an exposure class under Chapter 3 of Part 4, and (*b*) is able to estimate, to the satisfaction of the Bank, the effects of financial collateral on its exposures separately from other LGD-relevant aspects, it may take into account those effects in calculating the value of exposures of the class referred to in subparagraph (a) for the purposes of paragraphs (1) to (3) of Regulation 57.".
42	Paragraphs (6) and (7) of Regulation 60	Substitute: "(6) A credit institution permitted to use own estimates of LGDs and conversion factors for an exposure class under Chapter 3 of Part 4 which does not calculate the value of its exposures using the method referred to in paragraph (3) may use— (*a*) the Financial Collateral Comprehensive Method, or (*b*) the approach set out in Regulation 60A(2), for calculating the value of those exposures. (7) A credit institution that makes use of the Financial Collateral Comprehensive Method or is permitted to use the method described in paragraphs (3) to (6) in calculating the value of exposures for the purposes of paragraphs (1) to (3) of Regulation 57 shall conduct periodic stress tests of its credit-risk concentrations, including in relation to the realisable value of any collateral taken.".
43	Paragraphs (10) to (13) of Regulation 60	Substitute: "(10) Where a stress test indicates a lower realisable value of collateral taken than would be permitted to be taken into account while making use of the Financial Collateral Comprehensive Method or the method described in paragraphs (3) to (6), the value of collateral permitted to be recognised in calculating the value of exposures for the purposes of paragraphs (1) to (3) of Regulation 57 shall be reduced accordingly. (11) A credit institution referred to in paragraph (10) shall include the following in its strategies to address concentration risk: (*a*) policies and procedures to address risks arising from maturity mismatches between exposures and any credit protection on those exposures; (*b*) policies and procedures in the event that a stress test indicates a lower realisable value of collateral than taken into account while making use of the Financial Collateral Comprehensive Method or the method described in paragraphs (3) to (6); (*c*) policies and procedures relating to concentration risk arising from the application of credit risk mitigation techniques, and in particular large indirect credit exposures (for example, a single issuer of securities taken as collateral).".
44	Regulation 60A	Substitute: "**Other requirements applicable to funded and unfunded credit protection.** **60A**.—(1) If an exposure to a client is guaranteed by a third party, the credit institution concerned may treat the guaranteed part of the exposure as having been incurred to the guarantor rather than to the client if the unsecured exposure to the guarantor would be assigned a risk weight equal to or lower than the risk weight that would be assigned to the unsecured exposure to the client in accordance with Chapter 2 of Part 4. (2) Where a credit institution applies paragraph (1)— (*a*) if the guarantee is denominated in a currency different from that in which the exposure is denominated, the institution shall calculate the amount of the exposure to be covered in accordance with the provisions on the treatment of currency mismatch for unfunded credit protection set out in Annex VIII, (*b*) the institution shall treat a mismatch between the maturity of the exposure and the maturity of the protection in accordance with the provisions on the treatment of maturity mismatch set out in that Annex, and

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		(*c*) the institution may recognise partial coverage in accordance with the treatment set out in that Annex. (3) Subject to paragraph (4), where an exposure to a client is secured by recognised collateral issued by a third party, the credit institution concerned may treat the part of the exposure collateralised (to the extent of the market value of the collateral) as having been incurred to the third party rather than to the client, if the collateralised part would be assigned a risk weight equal to or lower than the risk weight that would be assigned to the unsecured exposure to the client in accordance with Chapter 2 of Part 4. (4) A credit institution shall not use the approach referred to in paragraph (3) where there is a mismatch between the maturity of the exposure and the maturity of the protection. (5) For the purpose of this Part, a credit institution may use both the Financial Collateral Comprehensive Method and the treatment provided for in paragraph (3) only if the credit institution is permitted to use both the Financial Collateral Comprehensive Method and the Financial Collateral Simple Method in calculating own funds for the purposes of Regulation 19(a).".
45	Regulation 61	Delete "recast Directive (CI)", substitute "Recast Credit Institutions Directive".
46		After regulation 64, insert: "Part 7A Exposures to transferred credit risk Chapter 1 Preliminary **Application of this Part.** **64A**.—(1) This Part applies to a new securitisation issued on or after 1 January 2011. (2) From 1 January 2015, this Part applies to an existing securitisation if a new underlying exposure is added or substituted after that date. (3) The Bank may temporarily suspend the requirements of Regulations 64B and 64C during periods of general market liquidity stress. **Retention of net economic interest.** **64B**.—(1) For the purposes of this Part, the originator, sponsor or original lender of a securitisation position retains a net economic interest in the position if it retains: (*a*) no less than 5 per cent of the nominal value of each of the tranches sold or transferred to the investors, (*b*) in the case of securitisations of revolving exposures, the originator's interest of no less than 5 per cent of the nominal value of the securitised exposures, (*c*) randomly selected exposures equivalent to 5 per cent or more of the nominal amount of the securitised exposures, where such exposures would otherwise have been securitised in the securitisation, provided that the number of potentially securitised exposures is no less than 100 at origination; or (*d*) the first loss tranche and, if necessary, other tranches having the same risk profile or a more severe one than those transferred or sold to investors and not maturing any earlier than those transferred or sold to investors, so that the total retention is 5 per cent or more of the nominal value of the securitised exposure. (2) Net economic interest— (*a*) shall be measured at the origination, (*b*) shall be maintained on an ongoing basis (that is, retained positions, interest or exposures shall not be hedged or sold), (*c*) shall not be subject to any credit risk mitigation or any short positions or any other hedge, and (*d*) shall be determined by the notional value for off-balance-sheet items.

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		(3) There shall be no multiple applications of the retention requirements for any given securitisation. Chapter 2 Credit institutions not acting as originator, etc. **Obligation to retain net economic interest.** **64C**. A credit institution, other than when acting as an originator, a sponsor or original lender, is to be treated as exposed to the credit risk of a securitisation position in its trading book or non-trading book only if the originator, sponsor or original lender has explicitly disclosed to the credit institution that it will retain a net economic interest in the position that is in accordance with Regulation 64B. **Limits of application of Regulation 64C.** **64D**.—(1) Regulation 64C does not apply where the securitised exposures are claims or contingent claims on, or fully, unconditionally and irrevocably guaranteed by— (*a*) central governments or central banks, (*b*) regional governments, local authorities and public sector entities of Member States, (*c*) institutions exposures to which a risk-weight of 50 per cent or less is assigned in accordance with Chapter 2 of Part 4, or (*d*) multilateral development banks. (2) Regulation 64C does not apply to— (*a*) transactions based on a clear, transparent and accessible index, where the underlying reference entities are identical to those that make up an index of entities that is widely traded, or are other tradable securities other than securitisation positions, or (*b*) syndicated loans, purchased receivables or credit default swaps where such instruments are not used to package or hedge a securitisation that is covered by Regulation 64C. **Requirements for prior due diligence.** **64E**.—(1) Before investing, and as appropriate thereafter, a credit institution is required to be able to demonstrate to the Bank, for each of its individual securitisation positions, that— (*a*) it has a comprehensive and thorough understanding of, and (*b*) it has implemented formal policies and procedures appropriate to its trading book and non-trading book and commensurate with the risk profile of its investments in securitised positions for analysing and recording, the following matters— (i) information disclosed under Regulation 64C by the originator or sponsor of the position to specify the net economic interest that the originator or sponsor maintains in the securitisation position, (ii) the risk characteristics of the individual securitisation position, (iii) the risk characteristics of the exposures underlying the securitisation position, (iv) the reputation and loss experience in earlier securitisations of the originators or sponsors in the relevant exposure classes underlying the securitisation position, (v) the statements and disclosures made by the originator or sponsor, or by any agent or advisor of an originator or sponsor, about the due diligence on the securitised exposures and, where applicable, on the quality of the collateral supporting the securitised exposures, (vi) where applicable, the methodologies and concepts on which the valuation of collateral supporting the securitised exposures is based and the policies adopted by the originator or sponsor to ensure the independence of the valuer, and (vii) all the structural features of the securitisation that can materially affect the performance of the securitisation position.

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		(2) A credit institution shall regularly perform its own stress tests appropriate to its securitisation positions. In doing so, a credit institution may rely on financial models developed by an ECAI if the credit institution can demonstrate, at the request of the Bank, that it took due care, before investing, to validate the relevant assumptions in and structuring of the models and to understand methodology, assumptions and results. **Ongoing monitoring of securitisation positions.** **64F**.—(1) Subject to paragraph (2), a credit institution shall establish and implement formal procedures appropriate to its trading book and non-trading book and commensurate with the risk profile of its investments in securitised positions to monitor, on an ongoing basis and in a timely manner, performance information on the exposures underlying its securitisation positions. (2) Paragraph (1) does not require the implementation of the procedures when a credit institution is acting as originator, sponsor or original lender. (3) Where relevant, the performance information referred to in paragraph (1) shall include— (*a*) the exposure type, (*b*) the percentage of loans more than 30, 60 and 90 days past due, (*c*) default rates, prepayment rates, loans in foreclosure, collateral type and occupancy, (*d*) frequency distribution of credit scores or other measures of credit worthiness across underlying exposures, (*e*) industry and geographical diversification, and (*f*) frequency distribution of loan to value ratios with bandwidths that facilitate adequate sensitivity analysis. (4) Where the underlying exposures referred to in paragraph (1) are themselves securitisation positions, credit institutions shall have the following information on the underlying securitisation tranches: (*a*) the information set out in paragraph (3); (*b*) the issuer name and credit quality; (*c*) the characteristics and performance of the pools underlying the securitisation tranches. (5) A credit institution shall have a thorough understanding of all structural features of a securitisation transaction likely to materially impact the performance of the credit institution's exposures to the transaction such as the contractual waterfall and waterfall-related triggers, credit enhancements, liquidity enhancements, market value triggers, and deal-specific definition of default. Chapter 3 Credit institutions acting as originator, etc. **Securitisations by EU parent credit institution or EU financial holding companies.** **64G**.—(1) Where an EU parent credit institution or an EU financial holding company, or one of its subsidiaries, as an originator or a sponsor, securitises exposures from several credit institutions, investment firms or other financial institutions which are included in the scope of supervision on a consolidated basis, the requirement to retain a net economic interest may be satisfied on the basis of the consolidated situation of the EU parent credit institution or EU financial holding company. (2) Paragraph (1) applies only where the credit institution, investment firm or financial institution which created the securitised exposures has committed itself— (*a*) to adhere to the requirements set out in Regulation 64H and (*b*) to deliver, in a timely manner, to the originator or sponsor and to the EU parent credit institution or EU financial holding company concerned the information needed to satisfy the requirements referred to in Regulation 64I.

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		Application of credit-granting criteria to securitised exposures. **64H**.—(1) A credit institution that is a sponsor or originator of a securitisation shall apply the same sound and well-defined criteria for credit-granting in accordance with point 3 of Annex V to exposures to be securitised as it applies to exposures to be held on its book. For that purpose, a credit institution that is an originator or sponsor of a securitisation shall apply the same processes for approving and, where relevant, amending, renewing and refinancing credits. (2) A credit institution shall also apply the same standards of analysis to participations or underwritings in securitisation issues purchased from third parties whether such participations or underwritings are to be held on its trading or non-trading book. (3) If a credit institution that is a sponsor or originator of a securitisation does not comply with the requirements in paragraphs (1) and (2), the credit institution shall not apply Regulation 41(1) and shall not be allowed to exclude the securitised exposures from the calculation of its capital requirements under these Regulations. **Disclosure of net economic interest retained.** **64I**.—(1) A credit institution that is a sponsor or originator of a securitisation position shall disclose to investors the level of the net economic interest that it retains in a securitisation. (2) A credit institution that is a sponsor or originator of a securitisation position shall ensure that prospective investors have ready access to— (*a*) all materially relevant data on the credit quality and performance of the individual underlying exposures, cash flows and collateral supporting a securitisation exposure, and (*b*) the information necessary to conduct comprehensive and well-informed stress tests on the cash flows and collateral values supporting the underlying exposures. For that purpose, what data is materially relevant shall be determined as at the date of the securitisation and, where appropriate because of the nature of the securitisation, after that. Chapter 4 Effect on risk weights **Bank may increase risk weights, etc.** **64J**.—(1) Where a credit institution fails in any material respect to meet any requirement of any of Regulations 64E, 64F or 64I by reason of the negligence or omission of the credit institution, the Bank shall impose a proportionate additional risk weight of no less than 250 per cent (but no more than 1,250 per cent) of the risk weight that would, but for this Regulation, apply to the relevant securitisation position under Part 4 of Annex IX, and shall progressively increase the risk weight with each subsequent failure of the credit institution to meet any of those requirements. (2) The Bank shall take into account the exemptions for certain securitisations provided in Regulation 64D by reducing the risk weight it would otherwise impose under this Part in respect of a securitisation to which Regulation 64D applies. Chapter 5 Disclosure of information **Disclosure by the Bank.** **64K**.—(1) The Bank shall— (*a*) by 31 December 2010, make public the general criteria and methodologies it has adopted to review compliance with this Part, and (*b*) by 31 December 2011 and each subsequent 31 December, make public a summary description of the outcome of the supervisory review and description of the measures imposed in cases of non-compliance with this Part identified during the previous year.

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		(2) The disclosures required by paragraph (1)— (*a*) shall be sufficient to enable meaningful comparison with the approaches adopted by the competent authorities of other Member States, (*b*) shall be published in the common format determined by CEBS and updated regularly, and (*c*) shall be accessible at a single electronic location.".
47	Regulation 67(1)	Substitute: "(1) Where the Bank is responsible for the exercise of supervision, on a consolidated basis, of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies, it shall: (*a*) coordinate the gathering and dissemination of relevant or essential information in going-concern and emergency situations, (*b*) plan and coordinate supervisory activities in going-concern situations, including in relation to the activities referred in Articles 123, 124 and 136 and in Annex V of the Recast Credit Institutions Directive, in cooperation with the other competent authorities involved, and (*c*) plan and coordinate supervisory activities in cooperation with the other competent authorities involved, and if necessary with other central banks, in preparation for and during emergency situations, including adverse developments in credit institutions or in financial markets using, where possible, existing defined channels of communication for facilitating crisis management. (1A) The planning and coordination of supervisory activities referred to in paragraph (1)(c) includes— (*a*) exceptional measures referred to in Article 132(3)(b) of the Recast Credit Institutions Directive, (*b*) the preparation of joint assessments, (*c*) the implementation of contingency plans, and (*d*) communication to the public."
48		After regulation 67, insert: **Joint decisions of competent authorities on consolidated level of own funds.** **67A**.—(1) Where the Bank is responsible for supervision on a consolidated basis, or the supervision of subsidiaries, of an EU parent credit institution or an EU parent financial holding company in a Member State, it shall make reasonable efforts to reach a joint decision with the other competent authorities concerned on— (*a*) the application of Regulations 65 and 66 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 Regulation 70(4) to each entity within the group and on a consolidated basis. (2) Where the Bank is responsible for the exercise of supervision on a consolidated basis, it shall submit a report containing the risk assessment of the group in accordance with Articles 123 and 124 to the other competent authorities concerned to enable a joint decision in accordance with paragraph (1) to be reached. (3) The Bank shall make reasonable efforts to reach a joint decision with the other competent authorities on the application of Articles 123 and 124 within 6 months. The joint decision shall also consider the risk assessment of subsidiaries performed by the relevant competent authorities in accordance with Articles 123 and 124. (4) In the event of disagreement, the Bank shall consult CEBS, if any other competent authority concerned so requests. The Bank may consult CEBS on its own initiative.

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		(5) Where the Bank is responsible for the exercise of supervision on a consolidated basis, it shall provide the joint decision referred in paragraph (1) to the EU parent credit institution concerned in a document containing the fully reasoned decision. (6) Where the Bank is responsible for the exercise of supervision on a consolidated basis, it may, if a joint decision is not reached between it and the other competent authorities concerned within 6 months, take a decision on the application of Articles 123, 124 and 134(2)on a consolidated basis after duly considering the risk assessment of subsidiaries performed by relevant competent authorities. (7) Where the Bank is responsible for supervision of subsidiaries of an EU parent credit institution or an EU parent financial holding company on an individual or sub-consolidated basis, it shall take a decision on the application of Articles 123, 124 and 134(2)only after considering the views and reservations expressed by the competent authority responsible for the exercise of supervision on a consolidated basis. (8) A decision referred to in paragraph (6) or (7) shall be set out in a document containing the fully reasoned decision and shall take into account the risk assessment, views and reservations of the other competent authorities expressed during the 6-month period. Where the Bank is responsible for supervision on a consolidated basis it shall provide the document to all competent authorities concerned and to the EU parent credit institution concerned. (9) Where CEBS has been consulted in accordance with paragraph (4), the Bank shall consider the advice of CEBS, and shall explain any significant deviation from it in any decision taken in accordance with paragraph (6) or (7). (10) A joint decision referred to in paragraph (1) or a decision taken in accordance with paragraph (6) or (7) in the absence of a joint decision shall be recognised as determinative and shall be applied by the Bank. (11) On and after 1 January 2013, this Regulation has effect as if— (*a*) '4 months' were substituted for '6 months' in paragraphs (3) and (6), and (*b*) '4-month period' were substituted for '6-month period' in paragraph (8). **Annual updating of joint decisions.** **67B**.—(1) A decision taken under regulation 67A shall be updated annually. (2) In exceptional circumstances, where the Bank is responsible for the supervision of one or more subsidiaries of an EU parent credit institution or an EU parent financial holding company, it may make a written and fully reasoned request to the competent authority responsible for supervision on a consolidated basis to update a joint decision referred to in Regulation 67A(1)(b). (3) Where the Bank is responsible for supervision on a consolidated basis, it may update a joint decision pursuant to Regulation 67A(1) on the basis of a written and fully reasoned request from a competent authority responsible for the supervision of subsidiaries of an EU parent credit institution or an EU parent financial holding company. (4) An update of a joint decision in accordance with paragraph (2) or (3) may be addressed on a bilateral basis between the Bank and each other relevant competent authority.".
49	Regulation 68(1)	Substitute: "**68**.—(1) Where— (*a*) an emergency (including adverse developments in financial markets) arises which potentially jeopardises the market liquidity and the stability of the financial system in a Member State where entities of a group have been authorised or where significant branches (as defined in Article 42A of the Recast Credit Institutions Directive) are established, and

Item	Provision amended	Amendment
		(*b*) the Bank is responsible for the exercise of supervision on a consolidated basis, it shall— (i) as soon as is practicable, alert the other central banks concerned and the administrative authorities of central governments concerned with financial supervision policy, and (ii) communicate to them all information that is essential for the performance of their tasks. (1A) Where possible, the Bank shall use, for the purposes of subparagraphs (i) and (ii) of paragraph (1), existing defined channels of communication.".
50	Regulation 71	Substitute: "Publication of certain information by Bank. **71**.—(1) The Bank shall publish the following information: (*a*) the texts of Acts, administrative rules and general guidance adopted in the State in the field of prudential regulation, (*b*) the manner of its exercise of the options and discretions under the laws of the State that give effect to the law of the European Union, (*c*) the general criteria and methodologies it uses in the review and evaluation referred to in Regulation 66, and (*d*) aggregate statistical data on key aspects of the implementation of the prudential framework in the State. (2) The publication required by paragraph (1)— (*a*) shall be sufficient to enable a meaningful comparison of the approaches adopted by the competent authorities of the different Member States, (*b*) shall be in the common format determined by CEBS and updated regularly, and (*c*) shall be accessible at a single electronic location.".
51	Regulation 72(1)	Substitute: "**72**.—(1) A credit institution shall publicly disclose the information set out in Part 2 of Annex XII.".
52	Paragraphs (1) and (2) of Regulation 73	Substitute: "**73**.—(1) Notwithstanding Regulation 72, a credit institution may omit one or more of the disclosures listed in Part 2 of Annex XII if the information that would be provided by such disclosure is not, in the light of the criterion specified in point 1 of Part 1 of that Annex, regarded as material. (2) Notwithstanding Regulation 72, credit institutions may omit an item of information included in the disclosures listed in Parts 2 and 3 of Annex XII if the item includes information which, in the light of the criteria specified in points 2 and 3 of Part 1 of that Annex, is regarded as proprietary or confidential.".
53	Regulation 83	Substitute: "**Transitional provisions—calculation of risk-weighted exposure amounts for certain exposures, etc.** **83**.—(1) In the calculation of risk-weighted exposure amounts for exposures arising from property leasing transactions concerning offices or other commercial premises situated in their territory and meeting the criteria set out in point 54 of Part 1 of Annex VI, the Bank may, until 31 December 2012, allow a 50 per cent risk-weighting to be applied without the application of points 55 and 56 of that Part. (2) Until 31 December 2010, the Bank may, for the purpose of defining the secured portion of a past due loan for the purposes of the Recast Credit Institutions Directive, recognise collateral other than eligible collateral as set out under Chapter 4 of Part 4. (3) In the calculation of risk-weighted exposure amounts for the purposes of point 4 of Part 1 of Annex VI, the same risk weight shall be assigned in relation to an exposure to a Member State's central government or central bank denominated and funded in the domestic currency of any Member State as would be applied to such an exposure denominated and funded in that Member State's currency. (4) Paragraph (3) ceases to have effect on 31 December 2015.".

Item	Provision amended	Amendment
54	Regulation 84	Insert after paragraph (10): "(11) A credit institution which does not comply by 31 December 2010 with the limits set out in Regulation 11(1A) shall develop strategies and processes on the necessary measures to comply with those limits before the applicable date set out in paragraph (12). Those measures shall be reviewed in accordance with Regulation 66. (12) Instruments that by 31 December 2010, according to the law of the State, were considered equivalent to the items referred to in subparagraphs (a) and (b) of Regulation 3(1) but do not fall within subparagraph (a) or do not comply with the criteria set out in Regulation 8A shall be taken to fall within Regulation 3(1)(ba) until 31 December 2040, subject to the following limitations: (*a*) between 1 January 2021 and 31 December 2030, no more than the amount calculated for the credit institution by the formula: **0.2 (A — B)** where: **A** is the sum of the items mentioned in subparagraphs (a) to (ba) of Regulation 3(1); **B** is the sum of the items mentioned in subparagraphs (a) to (c) of Regulation 3(2); (*b*) between 1 January 2031 and 31 December 2040, no more than the amount calculated for the credit institution by the formula: **0.1 (C — D)** where: **C** is the sum of the items mentioned in subparagraphs (a) to (ba) of Regulation 3(1); **D** is the sum of the items mentioned in subparagraphs (a) to (c) of Regulation 3(2). (13) For the purpose of Part 6, asset items constituting claims on, and other exposures to, institutions incurred on or before 31 December 2009 shall continue to be treated in accordance with paragraphs (9) to (11) of Regulation 57 as those paragraphs were in operation immediately before 7 December 2009. (14) Paragraph (13) ceases to have effect on 31 December 2012.".

Part 2 *Regulation 3(5)*

PROVISIONS AMENDED BY SUBSTITUTING "RECAST CREDIT INSTITUTIONS DIRECTIVE" FOR "RECAST DIRECTIVE (CI)"

Paragraph 3(2)(*g*)
Paragraphs (1), (2) and (3) of Regulation 15
Regulation 16(5)
Regulation 66(2)
Regulation 70(1)
Regulation 70(3)
Regulation 82(6)
Regulation 82(8)
Regulation 82(13)

Regulation 3(6)

Part 3

PROVISIONS AMENDED BY DELETING "TO THE RECAST DIRECTIVE (CI)"

Paragraphs (2) and (4) of Regulation 16(2)
Regulation 22(1)(*b*)
Paragraphs (2), (5) and (7) of Regulation 22
Paragraphs (1), (2), (3) and (5) of Regulation 24
Regulation 24(11)(*d*)
Regulation 28(3)
Paragraphs (3) to (6) of Regulation 29
Regulation 30(3)
Regulation 31(9)
Paragraphs (1), (2), (5), (6), (8) to (11), (13) and (19) of Regulation 32
Paragraphs (1) to (3), (6) and (7) of Regulation 33
Paragraphs (1) to (4) of Regulation 34
Paragraphs (3)(*a*) and (6)(*a*) of Regulation 38
Regulation 38(7)
Regulation 39(1)
Paragraphs (1) and (2) of Regulation 40
Regulation 41(2)
Paragraphs (1) and (5) of Regulation 42
Regulation 43(6)
Regulation 44(1)
Regulation 45(1)
Regulation 46(1)
Regulation 48(4)
Regulation 49
Paragraphs (1), (2), (4) and (5) of Regulation 50
Paragraphs (2), (4) and (5) of Regulation 51
Regulation 66(1)
Regulation 67(2)
Regulation 72(2)
Regulation 73(3)
Regulation 74(2)
Regulation 76(*a*)
Paragraphs (1) and (9) of Regulation 84

SCHEDULE 5

Regulation 3(7)

Amendments of the European Communities (Credit Institutions) (Consolidated Supervision) Regulations 2009

Item	Provision amended	Amendment
1	Regulation 3(1), definition of "Member State"	Delete "Communities", substitute "Union".
2	Regulation 3(1), definition of "credit institution"	Substitute: " 'CRD Regulations (CI)' means the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. No. 661 of 2006); 'credit institution' has the same meaning as in the CRD Regulations (CI);".
3	Regulation 3(1), definition of "Recast Credit Institutions Directive"	" 'Recast Credit Institutions Directive' has the same meaning as in the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992);".
4	Regulation 10(5)(d)(i)	Substitute: "(i) the imposition of an additional capital charge under Regulation 70 of the CRD Regulations (CI), and".
5	Regulation 10(9)(b)	Substitute: "(*b*) major sanctions or exceptional measures taken by a competent authority, including the imposition of an additional capital charge under Regulation 70 of the CRD Regulations (CI) and the imposition of any limitation on the use of the Advanced Measurement Approaches for the calculation of the own funds requirements under Regulation 51 of those Regulations.".
6		After regulation 11, insert: "Bank to establish college of supervisors. **11A**.—(1) Where the Bank is responsible for supervision on a consolidated basis it shall establish colleges of supervisors— (*a*) to facilitate the tasks referred to in Regulations 67 and 68 of the CRD Regulations (CI), and (*b*) subject to paragraph (2), to ensure coordination and cooperation with relevant third-country competent authorities where appropriate. (2) In carrying out coordination and cooperation with the competent authority of a third country the Bank shall act in compliance with— (*a*) confidentiality requirements equivalent to those applicable if the competent authority were that of a Member State, (*b*) any other applicable law of the European Communities or the European Union. (3) The purpose of a college of supervisors is to provide a framework for the Bank, where it is responsible for supervision on a consolidated basis or is otherwise a participant in supervision on a consolidated basis, to carry out the following tasks with other competent authorities concerned: (*a*) exchanging information; (*b*) agreeing on voluntary entrusting of tasks and voluntary delegation of responsibilities where appropriate;

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		(*c*) determining supervisory examination programmes based on a risk assessment of the group; (*d*) increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to information requests referred to in paragraphs (6) and (7) of Regulation 10 of these Regulations and Regulation 68(2) of the CRD Regulations (CI); (*e*) consistently applying the prudential requirements under the Recast Credit Institutions Directive across all entities within a banking group, subject to the options and discretions available in the law of each Member State concerned (being law that gives effect to the law of the European Union); (*f*) planning and coordination of supervisory activities in cooperation with the competent authorities involved, and if necessary with central banks, in preparation for and during emergency situations, including adverse developments in credit institutions or in financial markets, taking into account the work of other forums that may be established in this area. (4) Where the Bank is a participant in a college of supervisors, it shall cooperate closely with the other competent authorities participating in the college. (5) The establishment and functioning of a college of supervisors do not affect the powers and responsibilities of the Bank under these Regulations or any other designated enactment or designated statutory instrument (within the respective meanings given by the Central Bank Act 1942 (No. 22 of 1942)). (6) The establishment and functioning of a college of supervisors shall be based on written arrangements of the kind referred to in Regulation 11, determined by the Bank after consultation with the other competent authorities concerned. (7) The following may participate in a college of supervisors established by the Bank: (*a*) competent authorities responsible for the supervision of subsidiaries of the EU parent credit institution or EU parent financial holding company concerned; (*b*) the competent authority of each host country where significant branches are established; (*c*) other central banks as appropriate; (*d*) third countries' competent authorities where appropriate and subject to confidentiality requirements that are equivalent, in the opinion of all participating competent authorities in Member States, to the requirements under Section 2 of Chapter 1 of Title V of the Recast Credit Institutions Directive. (8) Where the Bank has established a college of supervisors, it shall chair the meetings of the college and shall decide which competent authorities may participate in a meeting or in an activity of the college. The Bank shall keep all the members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered. The Bank shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out. (9) A decision taken by the Bank in its role as a chair of a college of supervisors shall take account of the relevance of the supervisory activity to be planned or coordinated for other competent authorities, and in particular to— (*a*) the potential impact on the stability of the financial system in the Member States concerned, and (*b*) the obligations referred to in Article 42a(2) of the Recast Credit Institutions Directive. (10) Where the Bank, is the chair of a college of supervisors, it shall inform CEBS of the activities of the college, including in emergency situations, and shall communicate to CEBS all information that is of particular relevance for the purposes of supervisory convergence.".

L.S.

GIVEN under my Official Seal,
21 December 2010.

BRIAN LENIHAN,
Minister for Finance.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

This Statutory Instrument transposes Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management.

The Statutory Instrument amends the following instruments: the Central Bank Act 1942 (No. 22 of 1942); the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992); the European Communities (Capital Adequacy of Investment Firms) Regulations 2006 (S.I. No. 660 of 2006); the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. No. 661 of 2006); and the European Communities (Credit Institutions) (Consolidated Supervision) Regulations 2009 (S.I. No. 475 of 2009).

The Statutory Instrument also gives further effect to Regulations (EU) No. 1092/2010, No. 1093/2010, No. 1094/2010 and No. 1095/2010 of the European Parliament and of the Council of 24 November 2010. These EU Regulations respectively establish three new European supervisory authorities and the European Systemic Risk Board. The Statutory Instrument amends section 33AK of the Central Bank Act 1942 to enable the Central Bank of Ireland meet its obligations under these Regulations to report relevant information to the new authorities or to the European Systemic Risk Board.

The Statutory Instrument also updates various definitions and references to Directives 2006/48/EC and 2006/49/EC and to the annexes to those Directives contained in the parent Statutory Instruments.

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