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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.7.2004
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Proposal for

DIRECTIVES OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

Re-casting Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions and Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions.

(presented by the Commission)

↓ 93/6/EEC (adapted)

Proposal for a

~~COUNCIL~~ DIRECTIVE ⌦ OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ⌫

on the capital adequacy of investment firms and credit institutions

(recast)

⌦ THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, ⌫

Having regard to the Treaty establishing the European ~~Economic~~ Community, and in particular ~~the first and third sentences of~~ Article ~~57~~ ⌦ 47 ⌫ (2) thereof,

Having regard to the proposal from the Commission[1],

~~In cooperation with the European Parliament[2],~~

Having regard to the opinion of the European Economic and Social Committee[3],

⌦ Having regard to the opinion of the Committee of the Regions[4], ⌫

⌦ Acting in accordance with the procedure laid down in Article 251 of the Treaty[5], ⌫

Whereas:

⇩ new

(1) Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions[6] has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.

↓ 93/6/EEC Recitals 1 (adapted)

(2) ~~Whereas the main~~ ⌦ One of the ⌫ objectives of ~~Council~~ Directive ~~93/22/EEC of 10 May 1993 on investment services in the securities field~~ [7] ⌦ 2004/39/EC of the

1 OJ C […], […], p. […].
2 OJ C
3 OJ C […], […], p. […].
4 OJ C […], […], p. […].
5 OJ C […], […], p. […].
6 OJ L No 141, 11.6.1993 p.1, as last amended by Directive 2004/xx/EC, OJ […]
7 ~~OJ L No 141, 11.06.1993 p. 0027, as last amended by Directive [2004/…/EC (OJ ………..)]~~

European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of 20 March 2000 relating to the taking up and pursuit of credit institutions[8] and repealing Council Directive 93/22/EEC[9] ⌫ is to allow investment firms authorized by the competent authorities of their home Member States and supervised by the same authorities to establish branches and provide services freely in other Member States~~;~~. ~~whereas t~~That Directive accordingly provides for the coordination of the rules governing the authori~~z~~sation and pursuit of the business of investment firms~~;~~.

↓ 93/6/EEC Recital 2 (adapted)

(3) ~~Whereas t~~That Directive does not, however, establish common standards for the own funds of investment firms nor indeed does it establish the amounts of the initial capital of such firms; ~~whereas~~ ⌦ neither does ⌫ it ~~does not~~ establish a common framework for monitoring the risks incurred by the same firms~~;~~. ~~whereas it refers, in several of its provisions, to another Community initiative, the objective of which would be precisely to adopt coordinated measures in those fields;~~

↓ 93/6/EC Recital 3 (adapted)

(4) ~~Whereas the approach that has been adopted is~~ ⌦ It is appropriate ⌫ to effect only the essential ~~harmonization~~ harmonisation that is necessary and sufficient to secure the mutual recognition of ~~authorization~~ authorisation and of prudential supervision systems; ~~whereas the adoption of~~ ⌦ In order to achieve mutual recognition within the framework of the internal financial market, ⌫ measures ⌦ should be laid down ⌫ to coordinate the definition of the own funds of investment firms, the establishment of the amounts of their initial capital and the establishment of a common framework for monitoring the risks incurred by investment firms ~~are essential aspects of the harmonization necessary for the achievement of mutual recognition within the framework of the internal financial market;~~.

⇩ new

(5) Since the objective of the proposed action cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale and the effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

↓ 93/6/EEC Recital 4

(6) ~~Whereas i~~It is appropriate to establish different amounts of initial capital depending on the range of activities that investment firms are authorized to undertake~~;~~.

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8 OJ No 126, 26.5.2000, p.1

9 OJ L No 145, 30.04.2004, p. 1

↓ 93/6/EC Recital 5 (adapted)

(7) ~~Whereas~~ Existing investment firms should be permitted, under certain conditions, to continue their business even if they do not comply with the minimum amount of initial capital fixed for new ⌦ investment ⌫ firms~~;~~.

↓ 93/6/EEC Recital 6 (adapted)

(8) ~~Whereas the~~Member States ~~may~~ ⌦ should ⌫ ~~also~~ ⌦ be able to ⌫ establish rules stricter than those provided for in this Directive~~;~~.

↓ 93/6/EC Recital 7 (adapted)

~~Whereas this Directive forms part of the wider international effort to bring about approximation of the rules in force regarding the supervision of investment firms and credit institutions (hereinafter referred to collectively as «institutions»);~~

⇩ new

(9) The smooth operation of the internal market requires not only legal rules but also close and regular cooperation and significantly enhanced convergence of regulatory and supervisory practices between the competent authorities of the Member States.

↓ 93/6/EEC Recital 8 (adapted)

~~Whereas common basic standards for the own funds of institutions are a key feature in an internal market in the investment services sector, since own funds serve to ensure the continuity of institutions and to protect investors;~~

⇩ new

(10) Since investment firms face in respect of their trading book business the same risks as credit institutions, it is appropriate for the pertinent provisions of Directive 2000/12/EC to apply equally to investment firms.

↓ 93/6/EEC Recital 9 (adapted)
⇨ new

(11) ~~Whereas in a common financial market, institutions, whether they are~~ ⇨ The own funds of ⇦ investment firms or credit institutions, ⇨ (hereinafter referred to collectively as «institutions») can serve to absorb losses which are not matched by a sufficient volume of profits, to ensure the continuity of institutions and to protect investors. The own funds also serve as an important yardstick for the competent authorities, in particular for the assessment of the solvency of institutions and for other prudential purposes. Furthermore, institutions, whether they are investment firms or credit institutions, in the internal market ⇦ engage in direct competition with ~~one~~ ⌦ each ⌫ ~~an~~other. ⇨ Therefore, in order to strengthen the Community financial

system and to prevent distortions of competition, it is appropriate to lay down common basic standards for own funds. ⇦

🡻 93/6/EC Recital 10 (adapted)

~~Whereas it is therefore desirable to achieve equality in the treatment of credit institutions and investment firms;~~

⇩ new

(12) For these purposes, it is appropriate for the definition of own funds laid down in Directive 2000/12/EC to serve as a basis and to provide for supplementary specific rules which take into account the different scope of market risk related capital requirements.

🡻 93/6/EEC Recital 11 (adapted)

(13) ~~Whereas, a~~As regards credit institutions, common standards ~~are~~ ⌦ have ⌫ already ⌦ been ⌫ established for the supervision and monitoring of ⌦ different types of ⌫ ~~credit~~ risks ~~in Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions~~[10] ⌦by Directive 2000/12/EC ⌫~~;~~.

⇩ new

(14) In that respect, the provisions on minimum capital requirements should be considered in conjunction with other specific instruments also harmonising the fundamental techniques of the supervision of institutions.

🡻 93/6/EEC Recital 12

(15) ~~Whereas i~~It is necessary to develop common standards for market risks incurred by credit institutions and provide a complementary framework for the supervision of the risks incurred by institutions, in particular market risks, and more especially position risks, counterparty/settlement risks and foreign-exchange risks~~;~~.

🡻 93/6/EC Recital 13 (adapted)

(16) ~~Whereas i~~It is necessary to ~~introduce~~ ⌦ provide for ⌫ the concept of a «trading book» comprising positions in securities and other financial instruments which are held for trading purposes and are subject mainly to market risks and exposures relating to certain financial services provided to customers~~;~~.

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10 ~~OJ No L 386, 30. 12. 1989, p. 14. Directive as amended by Directive 92/30/EEC (OJ No L 110, 28. 4. 1992, p. 52).~~

↓ 93/6/EEC Recital 14 (adapted)

(17) ~~Whereas it is desirable that~~ ⌦ With a view to reduce the administrative burden for ⌫ institutions with negligible trading-book business, in both absolute and relative terms, ⌦ such institutions ⌫ should be able to apply Directive ~~89/647/EEC~~ ⌦ [2000/12/EC] ⌫ , rather than the requirements imposed in Annexes I and II to this Directive~~;~~.

↓ 93/6/EC Recital 15 (adapted)

(18) ~~Whereas~~ It is important that monitoring of settlement/delivery risks should take account of the existence of systems offering adequate protection ~~that reduces~~ ⌦ reducing ⌫ that risk~~;~~.

↓ 93/6/EEC Recital 16 (adapted)

(19) ~~Whereas,~~ in any case, institutions ~~must~~ ⌦ should ⌫ comply with this Directive as regards the coverage of the foreign-exchange risks on their overall business~~;~~ ⌦ . ⌫ ~~whereas l~~Lower capital requirements should be imposed for positions in closely correlated currencies, whether statistically confirmed or arising out of binding intergovernmental agreements~~, with a view in particular to the creation of the European Monetary Union;~~.

↓ 93/6/EC Recital 17 (adapted)

(20) ~~Whereas t~~The existence~~, in all institutions,~~ of internal systems for monitoring and controlling interest-rate risks on all ~~of their~~ business ⌦ of institutions ⌫ is a particularly important way of ~~minimizing~~ minimising such risks~~;~~ ⌦ . ⌫ ~~whereas, c~~Consequently, such systems ~~must be subject to overview~~ ⌦ should be supervised ⌫ by the competent authorities~~;~~.

↓ 93/6/EEC Recital 18 (adapted)

(21) ~~Whereas Council Directive 92/121/EEC of 21 December 1992 on the monitoring and control of large exposures of credit institutions~~[11] ⌦ Since Directive [2000/12/EC] ⌫ ~~is not aimed at establishing~~ ⌦ does not establish ⌫ common rules for monitoring ⌦ and control of ⌫ large exposures in activities which are principally subject to market risks ⌦ , it is therefore appropriate to provide for such rules ⌫ ~~; whereas that Directive makes reference to another Community initiative intended to adopt the requisite coordination of methods in that field;~~.

↓ 93/6/EEC Recital 19 (adapted)

~~Whereas it is necessary to adopt common rules for the monitoring and control of large exposures incurred by investment firms;~~

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11 ~~OJ No L 29, 5. 2. 1993, p. 1.~~

⇩ new

(22) Operational risk is a significant risk faced by institutions requiring coverage by own funds. It is essential to take account of the diversity of institutions in the EU by providing alternative approaches.

🡻 93/6/EEC Recitals 20 to 22 (adapted)

~~Whereas the own funds of credit institutions have already been defined in Council Directive 89/299/EEC of 17 April 1989 on the own funds of credit institutions~~ [~~12~~] ;

~~Whereas the basis for the definition of the own funds of institutions should be that definition;~~

~~Whereas, however, there are reasons why for the purposes of this Directive the definition of the own funds of institutions may differ from that in the aforementioned Directive in order to take account of the particular characteristics of the activities carried on by those institutions which mainly involve market risks;~~

🡻 93/6/EEC Recital 23 (adapted)

(23) ~~Whereas~~ ~~Council Directive 92/30/EEC of 6 April 1992 on the supervision of credit institutions on a consolidated basis~~[~~13~~] ⌦ Directive [2000/12/EC] ⌫ states the principle of consolidation~~;~~ ⌦ . ⌫ ~~whereas i~~It does not establish common rules for the consolidation of financial institutions which are involved in activities principally subject to market risks~~;~~. ~~whereas that Directive makes reference to another Community initiative intended to adopt coordinated measures in that field;~~

⇩ new

(24) In order to ensure adequate solvency of institutions within a group it is essential that the minimum capital requirements apply on the basis of the consolidated financial situation of the group. In order to ensure that own funds are appropriately distributed within the group and available to protect investments where needed, the minimum capital requirements should apply to individual institutions within a group, unless this objective can be effectively otherwise achieved.

🡻 93/6/EEC Recital 24 (adapted)

(25) ~~Whereas~~ Directive ~~92/30/EEC~~ ⌦ [2000/12/EC] ⌫ does not apply to groups which include one or more investment firms but no credit institutions~~;~~. ~~whereas it was, however, felt desirable to provide~~ ~~a~~A common framework for the introduction of the supervision of investment firms on a consolidated basis ⌦ should therefore be provided for ⌫ ~~;~~.

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12 ~~OJ No L 124, 5. 5. 1989, p. 16. Directive as last amended by Directive 92/30/EEC (OJ No L 110, 24. 9. 1992, p. 52).~~

13 ~~OJ No L 110, 28. 4. 1992, p. 52.~~

⇩ new

(26) Institutions should ensure that they have internal capital which, having regard to the risks to which they are or might be exposed, is adequate in quantity, quality and distribution. Accordingly, institutions should have strategies and processes in place for assessing and maintaining the adequacy of their internal capital.

(27) Competent authorities should evaluate the adequacy of own funds of institutions, having regard to the risks to which the latter are exposed.

(28) In order for the internal market to operate effectively it is essential that there should be significantly enhanced convergence in implementation and application of the provisions of harmonised Community legislation.

(29) For the same reason and to ensure that Community institutions which are active in several Member States are not disproportionately burdened as a result of the continued responsibilities of individual Member State competent authorities for authorisation and supervision, it is essential to significantly enhance the cooperation between competent authorities. In this context the role of the consolidated supervisor should be strengthened.

(30) In order for the internal market to operate with increasing effectiveness and for citizens of the Community to be afforded adequate levels of transparency it is necessary that competent authorities disclose publicly and in a way which allows for meaningful comparison the manner in which the requirements of this Directive are implemented.

(31) In order to strengthen market discipline and stimulate institutions to improve their market strategy, risk control and internal management organisation, appropriate public disclosures by institutions should be provided for.

🡻 93/6/EEC Recital 25 (adapted)
⇨ new

(32) ~~Whereas technical adaptations to the detailed rules laid down in this Directive may from time to time be necessary to take account of new developments in the investment services field; whereas the Commission will accordingly propose such adaptations as are necessary~~ ⇨ The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[14]. ⇦~~;~~

🡻 93/6/EEC Recital 26

~~Whereas the Council should, at a later stage, adopt provision for the adaptation of this Directive to technical progress in accordance with Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the~~

[14] OJ L 184, 17.7.1999, p. 23.

~~Commission[15]; whereas meanwhile the Council itself, on a proposal from the Commission, should carry out such adaptations;~~

🡻 93/6/EEC Recital 27 (adapted)

~~Whereas provision should be made for the review of this Directive within three years of the date of its application in the light of experience, developments on financial markets and work in international fora of regulatory authorities; whereas that review should also include the possible review of the list of areas that may be subject to technical adjustment;~~

🡻 93/6/EEC Recital 28

~~Whereas this Directive and Directive 93/22/EEC on investment services in the securities field are so closely interrelated that their entry into force on different dates could lead to the distortion of competition;~~

⇩ new

(33) In order to avoid disruption to markets and to ensure continuity in overall levels of own funds, it is appropriate to provide for specific transitional arrangements.

(34) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union as general principles of Community law.

(35) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.

(36) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex VIII, Part B.

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15 ~~OJ No L 197, 18. 7. 1987, p. 33.~~

↓ 93/6/EEC (adapted)

~~HAS~~HAVE ADOPTED THIS DIRECTIVE:

⌦ CHAPTER I ⌫

⌦ Subject matter, scope and definitions ⌫

⌦ SECTION 1 ⌫

⌦ SUBJECT MATTER AND SCOPE ⌫

↓ 93/6/EEC (adapted)

Article 1

1. ⌦ This directive lays down the capital adequacy requirements applying to investment firms and credit institutions, the rules for their calculation and the rules for their prudential supervision. ⌫ Member States shall apply the requirements of this Directive to investment firms and credit institutions as defined in Article 2.

2. A Member State may impose additional or more stringent requirements on the investment firms and credit institutions that it has authori~~z~~sed.

⇩ new

Article 2

1. Subject to Articles 18, 20, 28 to 32, 34 and 39 of this Directive, Articles 68 to 73 of Directive [2000/12/EC] shall apply *mutatis mutandis* to investment firms.

In addition, Articles 71 to 73 of Directive [2000/12/EC] shall apply in the following situations:

(a) an investment firm has as a parent a parent credit institution in a Member State;

(b) a credit institution has as a parent a parent investment firm in a Member State.

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

↓ 93/6/EEC Art 7 (1) and (2) (adapted)

~~*Article 7*~~

~~**General Principles**~~

~~1. The capital requirements imposed in Articles 4 and 5 for institutions which are neither parent undertakings nor subsidiaries of such undertakings shall be applied on a solo basis.~~

~~2. The requirements imposed in Articles 4 and 5 for:~~

~~– any institution which has a credit institution within the meaning of Directive 92/30/EEC, an investment firm or another financial institution as a subsidiary or which holds a participation in such an entity, and~~

~~– any institution the parent undertaking of which is a financial holding company~~

~~shall be applied on a consolidated basis in accordance with the methods laid down in the abovementioned Directive and in paragraphs 7 to 14 of this Article.~~

↓ 93/6/EEC Art. 7 (3) (adapted)
➔1 2004/xx/EC Art. 1
⇨ new

2. When a group covered by ~~paragraph 2~~ ⌦ paragraph 1⌫does not include a credit institution, Directive ~~92/30/EEC~~ ⌦ [2000/12/EC] ⌫ shall apply, subject to the following ~~adaptations~~:

– ~~« financial holding company » shall means a financial institution, the subsidiary undertakings of which are either exclusively or mainly investment firms or other financial institutions, at least one of which is an investment firm, and which is not a mixed financial holding company within the meaning of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate[16],~~

– ~~«mixed-activity holding company » shall means a parent undertaking, other than a financial holding company or an investment firm or a mixed financial holding company within the meaning of Directive 2002/87/EC, the subsidiaries of which include at least one investment firm,~~

– ~~– *competent authorities* shall means the national authorities which are empowered by law or regulation to supervise investment firms~~

– ~~the second subparagraph of Article 3 (5) of Directive 92/30/EEC shall not apply,~~

16 ~~OJ L 35, 11.2.2003, p.1~~

⇨ (a) every reference to *credit institutions* shall be construed as a reference to *investment firms*; ⇦

(b) in Articles ~~4~~ ⌦ 125 ⌫ ~~(1) and (2)~~ and ~~7~~ ⌦ 140 (2) ⌫ ~~(5)~~ of Directive ~~92/30/EEC~~ ⌦ [2000/12/EC] ⌫ each reference to ⌦ other articles of ⌫ Directive ~~77/780/EEC~~ ⌦ [2000/12/EC] ⌫ shall be ⌦ construed as ⌫ ~~replaced by~~ a reference to Directive ~~93/22/EEC~~ ⌦ 2004/39/EC ⌫ ;

(c) for the purpose of Article ~~3 (9)~~ ~~and~~ ~~8~~ ⌦ 39(3) ⌫ of Directive ~~92/30/EEC~~ ⌦ [2000/12/EC] ⌫ the references to the ➔1 European Banking Committee ➔ shall be ⌦ construed as ⌫ ~~substituted by~~ references to the Council and the Commission;

(d) ⌦ by derogation to Article 140(1) of Directive [2000/12/EC], where a group does not include a credit institution, ⌫ the first sentence of ⌦ that ⌫ Article ~~7~~ shall be replaced by the following: «Where an investment firm, a financial holding company or a mixed-activity holding company controls one or more subsidiaries which are insurance companies, the competent authorities and the authorities entrusted with the public task of supervising insurance undertakings shall cooperate closely».

🡻 93/6/EEC Art 7 (4)

~~4. The competent authorities required or mandated to exercise supervision of groups covered by paragraph 3 on a consolidated basis may, pending further coordination on the supervision of such groups on a consolidated basis and where the circumstances justify it, waive that obligation provided that each investment firm in such a group:~~

~~(i) uses the definition of own funds given in paragraph 9 of Annex V;~~

~~(ii) meets the requirements imposed in Articles 4 and 5 on a solo basis;~~

~~(iii) sets up systems to monitor and control the sources of capital and funding of all other financial institutions within the group.~~

🡻 93/6/EC Art. 7 (5) and (6) (adapted)

~~5. The competent authorities shall require investment firms in a group which has been granted the waiver provided for in paragraph 4 5 to notify them of those the risks including those associated with the composition and sources of their capital and funding, which could undermine their financial positions, including those associated with the composition and sources of their capital and funding. If the competent authorities then consider that the financial positions of those investment firms is not adequately protected, they shall require them to take measures including, if necessary, limitations on the transfer of capital from such firms to group entities.~~

~~6. Where the competent authorities waive the obligation of supervision on a consolidated basis provided for in paragraph 4 5 they shall take other appropriate measures to monitor the risks, namely large exposures, of the whole group, including any undertakings not located in a Member State.~~

↓ 93/6/EEC (adapted)

⌦ SECTION 2 ⌫

DEFINITIONS

↓ 93/6/EEC Art. 2 (1) (adapted)
⇨ new

Article 3

1. For the purposes of this Directive ⇨ the following definitions shall apply: ⇦

(a)~~1.~~ *credit institutions* ~~shall mean~~ ⌦ means credit institutions as defined in Article 4(1) of Directive [2000/12/EC]; ⌫; ~~all institutions that satisfy the definition in the first indent of Article 1 of the First Council Directive (77/780/EEC) of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions[17] which are subject to the requirements imposed by Directive 89/647/EEC;~~

↓ 2004/39/EC Art. 67.2 (adapted)
⇨ new

(b) *investment firms* ~~shall mean~~ ⌦ means ⌫ ~~all~~ institutions ~~that satisfy the definition~~ ⌦ as defined in Article 4(1) of Directive 2004/39/EC ⌫ ~~of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments~~, which are subject to the requirements imposed by ~~the same~~ ⌦ that ⌫ Directive, excluding:

~~(a)~~(i) credit institutions;

~~(b)~~(ii) local firms as defined in ~~20~~ ⌦ point (p) of paragraph 1 of this Article; ⌫~~, and~~

~~(c)~~(iii) firms which ⇨ are ⇦ only ⇨ authorised to provide the service of investment advice and/or ⇦ receive and transmit orders from investors without ~~in both cases~~ holding money or securities belonging to their clients and which for that reason may not at any time place themselves in debit with their clients;

[17] ~~OJ No L 322, 17. 12. 1977, p. 30. Directive as amended by Directive 89/646/EEC (OJ No L 386, 30. 12. 1989, p. 1).~~

🡣 93/6/EEC Art 2(3) to (4) (adapted (adapted)

~~3.~~ (c) *institutions* ~~shall mean~~ ⌦means ⌫ credit institutions and investment firms;

~~4.~~ (d) *recogni~~z~~zed third-country investment firms* ~~shall mean~~ ⌦means ⌫ firms ⌦ meeting the following conditions: ⌫

⌦ (i) firms ⌫ which, if they were established within the Community, would be covered by the definition of investment firm;

⌦ (ii) firms ⌫ ~~in 2~~ which are authori~~z~~sed in a third country;

⌦ (iii) firms ⌫ ~~and~~ which are subject to and comply with prudential rules considered by the competent authorities as at least as stringent as those laid down in this Directive;

🡣 93/6/EEC (adapted)
⇨ new

~~5.~~ (e) *financial instruments* ~~shall mean~~ ⌦means ⌫ ~~the instruments listed in Section B of the Annex to Directive 93/22/EEC~~⇨ any contract that gives rise to both a financial asset of one party and a financial liability or equity instrument of another party ⇦;

🡣 93/6/EEC Art. 2(6) (7)

~~6. the trading book of an institution shall consist of:~~

~~(a) its proprietary positions in financial instruments, commodities and commodity derivatives which are held for resale and/or which are taken on by the institution with the intention of benefiting in the short term from actual and/or expected differences between their buying and selling prices, or from other price or interest-rate variations, and positions in financial instruments, commodities and commodity derivatives, arising from matched principal broking, or positions taken in order to hedge other elements of the trading book;~~

~~(b) the exposures due to the unsettled transactions, free deliveries and over-the-counter (OTC) derivative instruments referred to in paragraphs 1, 2, 3 and 5 of Annex II, the exposures due to repurchase agreements and securities and commodities lending which are based on securities or commodities included in the trading book as defined in (a) referred to in paragraph 4 of Annex II, those exposures due to reverse repurchase agreements and securities-borrowing and commodities-borrowing transactions described in the same paragraph, provided the competent authorities so approve, which meet either conditions (i), (ii), (iii) and (v) or conditions (iv) and (v) as follows:~~

~~(i) the exposures are marked to market daily following the procedures laid down in Annex II;~~

~~(ii) the collateral is adjusted in order to take account of material changes in the value of the securities or commodities involved in the agreement or transaction in question, according to a rule acceptable to the competent authorities;~~

~~(iii) the agreement or transaction provides for the claims of the institution to be automatically and immediately offset against the claims of its counter-party in the event of the latter's defaulting;~~

~~(iv) the agreement or transaction in question is an interprofessional one;~~

~~(v) such agreements and transactions are confined to their accepted and appropriate use and artificial transactions, especially those not of a short-term nature, are excluded; and~~

~~(c) those exposures in the form of fees, commission, interest, dividends and margin on exchange-traded derivatives which are directly related to the items included in the trading book referred to in paragraph 6 of Annex II.~~

~~Particular items shall be included in or excluded from the trading book in accordance with objective procedures including, where appropriate, accounting standards in the institution concerned, such procedures and their consistent implementation being subject to review by the competent authorities;~~

↓ 93/6/EEC Art 2(7) (adapted)

~~7. parent undertaking, subsidiary undertaking, and financial institution shall be defined in accordance with Article 1 of Directive 92/30/EEC;~~

↓ 93/6/EEC Art 2(8) (adapted)

~~8. financial holding company shall mean a financial institution the subsidiary undertakings of which are either exclusively or mainly credit institutions, investment firms or other financial institutions, one of which at least is a credit institution or an investment firm;~~

⇩ new

(f) *parent investment firm in a Member State* means an investment firm which has an institution or another financial institution as a subsidiary or which holds a participation in such entities, and which is not itself a subsidiary of another institution authorised in the same Member State, or of a financial holding company set up in the same Member State, and in which no other institution authorised in the same Member State holds a participation;

(g) *EU parent investment firm* means a parent investment firm in a Member State which is not a subsidiary of another institution authorised in any Member State, or of a financial holding company set up in any Member State, and in which no other institution authorised in any Member State holds a participation;

🡻 93/6/EEC Art 2 (9) (adapted)

~~9. risk weightings shall mean the degrees of credit risk applicable to the relevant counter-parties under Directive 89/647/EEC. However assets constituting claims on and other exposures to investment firms or recognized third-country investment firms and exposures incurred to recognized clearing houses and exchanges shall be assigned the same weighting as that assigned where the relevant counterparty is a credit institution;~~

🡻 98/33/EC Art. 3.1 (adapted)

~~10~~(h) *over-the-counter (OTC) derivative instruments* ~~shall mean~~ ⌦means ⌫ the ~~off balance sheet~~ items ⌦ falling within the list in Annex IV to Directive [2000/12/EC] other than those items to which an exposure value of zero is attributed under paragraph 2 of Annex III of that Directive; ⌫ ~~to which according to the first subparagraph of Article 6(3) of Directive 89/647/EEC the methods set out in Annex II to the said Directive shall be applied;~~

🡻 93/6/EEC (adapted)

~~11.~~(i) *regulated market* ~~shall mean~~ ⌦means ⌫ a market ~~that satisfies the definition given in Article 1 (13) of Directive 93/22/EEC;~~ ⌦ as defined in Article 4(14) of Directive 2004/39/EC ⌫;

🡻 93/6/EEC (adapted)

~~12. *qualifying items* shall mean long and short positions in the assets referred to in Article 6 (1) (b) of Directive 89/647/EEC and in debt instruments issued by investment firms or by recognized third-country investment firms. It shall also mean long and short positions in debt instruments provided that such instruments meet the following conditions: such instruments must firstly be listed on at least one regulated market in a Member State or on a stock exchange in a third country provided that that exchange is recognized by the competent authorities of the relevant Member State; and secondly both be considered by the institution concerned to be sufficiently liquid and, because of the solvency of the issuer, be subject to a degree of default risk which is comparable to or lower than that of the assets referred to in Article 6 (1) (b) of Directive 89/647/EEC; the manner in which the instruments are assessed shall be subject to scrutiny by the competent authorities, which shall overturn the judgment of the institution if they consider that the instruments concerned are subject to too high a degree of default risk to be qualifying items.~~

~~Notwithstanding the foregoing and pending further coordination, the competent authorities shall have the discretion to recognize as qualifying items instruments which are sufficiently liquid and which, because of the solvency of the issuer, are subject to a degree of default risk which is comparable to or lower than that of the assets referred to in Article 6 (1) (b) of Directive 89/647/EEC. The default risk associated with such instruments must have been evaluated at such a level by at least two credit-rating agencies recognized by the competent authorities or by only one~~

~~such credit-rating agency so long as they are not rated below such a level by any other credit-rating agency recognized by the competent authorities.~~

~~The competent authorities may, however, waive the condition imposed in the preceding sentence if they judge it inappropriate in the light of, for example, the characteristics of the market, the issuer, the issue, or some combination of those characteristics.~~

~~Furthermore, the competent authorities shall require the institutions to apply the maximum weighting shown in Table 1 in paragraph 14 of Annex I to instruments which show a particular risk because of the insufficient solvency of the issuer or liquidity.~~

~~The competent authorities of each Member State shall regularly provide the Council and the Commission with information concerning the methods used to evaluate the qualifying items, in particular the methods used to assess the degree of liquidity of the issue and the solvency of the issuer;~~

~~13. central government items shall mean long and short positions in the assets referred to in Article 6 (1) (a) of Directive 89/647/EEC and those assigned a weighting of 0 % in Article 7 of the same Directive;~~

↓ 93/6/EEC Art 2 (14) (adapted)

~~14.~~(j) *convertible* ~~shall mean~~ ⌦means ⌫ a security which, at the option of the holder, may be exchanged for another security~~, usually the equity of the issue~~;

↓ 98/31/EC Art. 1.1(b) (adapted)

~~15.~~(k) «warrant» ~~shall mean~~ ⌦means ⌫ a security which gives the holder the right to purchase an underlying at a stipulated price until or at the ~~warrants'~~ expiry date ⌦ of the warrant and which ⌫ may be settled by the delivery of the underlying itself or by cash settlement;

~~16.~~ (l)«stock financing» ~~shall mean~~ ⌦means ⌫ positions where physical stock has been sold forward and the cost of funding has been locked in until the date of the forward sale;

↓ 98/31/EC Art. 1.1(c) (adapted)

~~17.~~(m) «repurchase agreement» and «reverse repurchase agreement» ~~shall mean~~ ⌦ mean ⌫ any agreement in which an institution or its counter-party transfers securities or commodities or guaranteed rights relating to title to securities or commodities where that guarantee is issued by a recognised exchange which holds the rights to the securities or commodities and the agreement does not allow an institution to transfer or pledge a particular security or commodity to more than one counter-party at one time, subject to a commitment to repurchase them – ~~(~~or substituted securities or commodities of the same description~~)~~ – at a specified price on a future date specified, or to be specified, by the transferor, being a repurchase agreement for the institution selling the securities or commodities and a reverse repurchase agreement for the institution buying them;

🡻 93/6/EEC Art 2(17) 2nd paragraph

~~A reverse repurchase agreement shall be considered an interprofessional transaction when the counter-party is subject to prudential coordination at Community level or is a Zone A credit institution as defined in Directive 89/647/EEC or is a recognized third-country investment firm or when the agreement is concluded with a recognized clearing house or exchange;~~

🡻 98/31/EC Art. 1.1(d) (adapted)

~~18.~~(n)«securities or commodities lending» and «securities or commodities borrowing» ~~shall mean~~ ⌦ mean ⌫ any transaction in which an institution or its counter-party transfers securities or commodities against appropriate collateral subject to a commitment that the borrower will return equivalent securities or commodities at some future date or when requested to do so by the transferor, that transaction being securities or commodities lending for the institution transferring the securities or commodities and being securities or commodities borrowing for the institution to which they are transferred;

🡻 98/31/EC Art. 1.1(d)

~~Securities or commodities borrowing shall be considered an interprofessional transaction when the counter-party is subject to prudential coordination at Community level or is a Zone A credit institution as defined in Directive 89/647/EEC or is a recognised third-country investment firm or when the transaction is concluded with a recognised clearing house or exchange;~~

🡻 93/6/EEC Art 2(19) (adapted)

~~19.~~(o)*clearing member* ~~shall mean~~ ⌦means ⌫ a member of the exchange or the clearing house which has a direct contractual relationship with the central counterparty (market guarantor); ~~non-clearing members must have their trades routed through a clearing member;~~

🡻 93/6/EEC Art 2(20) (adapted)
⇨ new

~~20.~~(p)*local firm* ~~shall mean~~ ⌦means ⌫ a firm dealing ~~only for its~~ on own account ⇨ on markets ⇦ in ~~a~~ financial-futures or options ~~exchange~~ ⇨ or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets or which deals ⇦ for the accounts of ~~or making a price to~~ other members ⇨ of those markets ⇦ ~~the same exchange~~ and ⇨ which are ⇦ guaranteed by ~~a~~ clearing members of the same ~~exchange~~ ⇨ markets, where ⇦ ~~R~~responsibility for ensuring the performance of contracts entered into by such ~~a~~ firms ~~must be~~ ⌦ is ⌫ assumed by ~~a~~ clearing members of the same

~~exchange~~ ⇨ markets; ⇦ ~~, and such contracts must be taken into account in the calculation of the clearing member's overall capital requirements so long as the local firm's positions are entirely separate from those of the clearing member~~;

🡻 93/6/EEC Art 2(21) (adapted)

~~21.~~(q)*delta* ~~shall mean~~ ⌦means ⌫ the expected change in an option price as a proportion of a small change in the price of the instrument underlying the option;

🡻 93/6/EEC Art 2(22) (adapted)

~~22. for the purposes of paragraph 4 of Annex I, *long position* shall mean a position in which an institution has fixed the interest rate it will receive at some time in the future, and *short position* shall mean a position in which it has fixed the interest rate it will pay at some time in the future;~~

🡻 93/6/EEC Art 2(23) (adapted)

~~23.~~(r) *own funds* ~~shall mean~~ ⌦means ⌫ own funds as defined in Directive ~~89/299/EEC~~ ⌦ [2000/12/EC] ⌫~~.This definition may, however, be amended in the circumstances described in Annex V~~;

🡻 93/6/EC Art. 2 (24) and (25) (adapted)

~~24. initial capital shall mean items 1 and 2 of Article 2(1) of Directive 89/299/EEC;~~

~~25 original own funds shall mean the sum of items 1, 2 and 3, less the sum of items 9, 10 and 11 of Article 2 (1) of Directive 89/299/EEC;~~

🡻 93/6/EEC Art 2 (26)

~~26.~~(s)*capital* shall mean own funds~~;~~.

🡻 93/6/EEC Art 2(27) (adapted)

~~27. modified duration shall be calculated using the formula set out in paragraph 26 of Annex I.~~

⇩ new

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

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

↓ 93/6/EEC Art 2 (7) and (8) (adapted)

2. ⌦ The terms ⌫"*parent undertaking*", "*subsidiary undertaking*", ⌦ "*asset management company*" ⌫ and "*financial institution*" shall ~~be~~ ⌦ cover undertakings ⌫ defined ~~in accordance with~~ ⌦ as such in Article 4⌫ ~~Article 1~~ of Directive ~~92/30/EEC~~ ⌦[2000/12/EC] ⌫.

⌦ The terms ⌫ "financial holding company", ⌦ "parent financial holding company in a Member State", "EU parent financial holding company" and "ancillary services undertaking" ⌫ ~~shall mean a financial institution the subsidiary undertaking of which are either exclusively or mainly credit institutions, investment firms or other financial institutions, one of which at least is a credit institution or an investment firm~~ ⌦ shall cover undertakings defined as such in Article 4 of Directive [2000/12/EC], save that every reference to credit institutions shall be read as a reference to institutions. ⌫

⇩ new

3. For the purposes of applying Directive [2000/12/EC] to groups covered by Article 2(1), which do not include a credit institution, the following definitions shall apply:

↓ 2002/87/EC Art. 26 (adapted)

~~1.~~(a) «financial holding company » means a financial institution, the subsidiary undertakings of which are either exclusively or mainly investment firms or other financial institutions, at least one of which is an investment firm, and which is not a mixed financial holding company within the meaning of Directive 2002/87/EC[18] ~~of the European Parliament and of the Council.~~;

~~2.~~ (b) «mixed-activity holding company » means a parent undertaking, other than a financial holding company or an investment firm or a mixed financial holding company within the meaning of Directive 2002/87/EC, the subsidiaries of which include at least one investment firm;

~~3.~~ (c) "*competent authorities*" means the national authorities which are empowered by law or regulation to supervise investment firms.

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18 OJ L 35, 11.2.2003, p.1

↓ 93/6/EEC (adapted)

⌦ CHAPTER II ⌫

INITIAL CAPITAL

↓ 93/6/EEC Art 2(24) (adapted)

Article 4

~~1.~~ *Initial capital* ~~shall mean~~ ⌦means points (a) and (b) ⌫ ~~items 1 and 2~~ of Article ⌦ 57 ⌫ ~~2 (1)~~ of Directive ~~89/299/EEC~~ ⌦[2000/12/EC]⌫.

↓ 93/6/EEC Art. 3(1) and (2) (adapted)

Article 5

1. Investment firms ⌦ that do not deal in any financial instruments for their own account or underwrite issues of financial instruments on a firm commitment basis, but ⌫ which hold clients' money and/or securities and which offer one or more of the following services~~,~~ shall have initial capital of ~~ECU~~ ⌦ EUR ⌫ 125 000:

(a) the reception and transmission of investors' orders for financial instruments;

(b) the execution of investors' orders for financial instruments;

(c) the management of individual portfolios of investments in financial instruments.

~~provided that they do not deal in any financial instruments for their own account or underwrite issues of financial instruments on a firm commitment basis.~~

~~The holding of non-trading-book positions in financial instruments in order to invest own funds shall not be considered as dealing for the purposes set out in the first paragraph or for the purposes of paragraph 2.~~

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

(a) such positions arise only as a result of the firm's failure to match investors' orders precisely;

(b) the total market value of all such positions is subject to a ceiling of 15 % of the firm's initial capital;

(c) the firm meets the requirements ~~imposed~~ ⌦ laid down ⌫ in Articles 18, 20 and 28; ~~and~~

(d) such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.

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

3.~~2~~ Member States may reduce the amount referred to in paragraph 1 to ~~ECU~~ ⌦ EUR ⌫ 50000 where a firm is not authoris~~z~~ed to hold clients' money or securities, to deal for its own account, or to underwrite issues on a firm commitment basis.

↓ 93/6/EEC Art 3 (3) (adapted)

~~3. All other investment firms shall have initial capital of ECU 730 000.~~

↓ 2004/39/EC Art. 67(2) (adapted)

Article 6

~~4. The firms referred to in point (b) of Article 2(2)~~⌦ Local firms ⌫ shall have initial capital of EUR 50 000 in so far as they benefit from the freedom of establishment or to provide services ⌦ specified in ⌫ ~~under~~ Articles 31 or 32 of Directive 2004/39/EC.

↓ 2004/39/EC Article 67 (3) (adapted)

Article 7

~~Pending revision of Directive 93/6/EEC, the~~Coverage for the firms referred to in point (b)(iii) of Article ~~2~~ ⌦ 3 ⌫ (1) shall take one of the following forms:

(a) initial capital of EUR 50 000;

(b) professional indemnity insurance covering the whole territory of the Community or some other comparable guarantee against liability arising from professional negligence, representing at least EUR 1 000 000 applying to each claim and in aggregate EUR 1 500 000 per year for all claims;

(c) a combination of initial capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to that referred to in points (a) or (b).

The amounts referred to in the first subparagraph shall be periodically reviewed by the Commission in order to take account of changes in the European Index of Consumer Prices as published by Eurostat, in line with and at the same time as the adjustments made under Article 4(7) of Directive 2002/92/EC of the European Parliament and of the Council[19] (*).

⌦ Article 8 ⌫

If an investment firm referred to in point (b)(iii) of Article ~~2~~ ⌦ 3 ⌫ (1) is also registered under Directive 2002/92/EC it shall comply with Article 4(3) of that Directive and have coverage in one of the following forms:

(a) initial capital of EUR 25 000;

(b) professional indemnity insurance covering the whole territory of the Community or some other comparable guarantee against liability arising from professional negligence, representing at least EUR 500 000 applying to each claim and in aggregate EUR 750 000 per year for all claims;

(c) a combination of initial capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to that referred to in points (a) or (b).

🡻 93/6/EEC Art 3(3) (adapted)

Article 9

All other investment firms shall have initial capital of ~~ECU~~ ⌦ EUR ⌫ 730 000.

🡻 93/6/EEC Art 3(5) to (8) (adapted)

Article 10

1. ⌦ By derogation to Articles 5(1), 5(3), 6 and 9, ⌫ ~~Notwithstanding paragraphs 1 to 4,~~ Member States may continue the authorisation of investment firms and firms covered by ⌦ Article 6 ⌫ ~~paragraph 4~~ in existence before ⌦ 31 December 1995 ⌫ ~~this Directive is applied~~ the own funds of which are less than the initial capital levels specified for them in ⌦ Articles 5(1), 5(3), 6 and 9 ⌫ ~~paragraphs 1 to 4.~~

The own funds of such firms shall not fall below the highest reference level calculated after the date of notification of ~~this~~ Directive ⌦ 1993/6/EEC ⌫. That reference level shall be the average daily level of own funds calculated over a six-month period preceding the date of calculation. It shall be calculated every six months in respect of the corresponding preceding period.

2. If control of a firm covered by paragraph ~~5~~⌦ 1 ⌫ is taken by a natural or legal person other than the person who controlled it previously, the own funds of that firm must attain at least the level specified for it in ⌦ Articles 5(1), 5(3), 6 and 9 ⌫ ~~paragraphs 1 to 4,~~ except ~~in the following situations: (i)~~ in the case of the first transfer by inheritance

[19] OJ L 9, 15.1.2003, p. 3.

after ⌦ 31 December 1995 ⌫ ~~the application of this Directive, s~~ubject to the competent authorities' approval, for not more than 10 years after that transfer.~~;~~

~~(ii) in the case of a change in the composition of a partnership, as long as at least one of the partners at the date of the application of this Directive remains in the partnership, for not more than 10 years after the date of the application of this Directive.~~

3. In certain specific circumstances~~,~~ and with the consent of the competent authorities, ~~however,~~ in the event of a merger of two or more investment firms and/or firms covered by ~~paragraph 4~~⌦ Article 6⌫, the own funds of the firm produced by the merger need not attain the level specified in ~~paragraphs 1 to 4~~⌦ Articles 5(1), 5(3), 6 and 9 ⌫. Nevertheless, during any period when the levels specified in ~~paragraphs 1 to 4~~ ⌦ Articles 5(1), 5(3), 6 and 9 ⌫ have not been attained, the own funds of the new firm may not fall below the merged firms' total own funds at the time of the merger.

4. The own funds of investment firms and firms covered by ~~paragraph 4~~⌦ Article 6 ⌫ may not fall below the level specified in ~~paragraphs~~ ~~1 to 5 and 7~~ ⌦ Articles 5(1), 5(3), 6, 9, 10(1) and 10(3)⌫.

If they do, however, the competent authorities may, where the circumstances justify it, allow such firms a limited period in which to rectify their situations or cease their activities.

⇩ new

CHAPTER III

TRADING BOOK

Article 11

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

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

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

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

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

⇩ new

CHAPTER IV

OWN FUNDS

🡻 93/6/EEC Art. 2 (25) (adapted)

Article 12

Original own funds means the sum of ~~items 1, 2 and~~ ⌦ points (a) to (c) ⌫ , less the sum of ~~items 9, 10 and 11~~ ⌦ points (i) to (k) ⌫ of Article ~~2 (1)~~ ⌦ 57 ⌫ of Directive ~~89/299/EEC~~ ⌦ [2000/12/EC] ⌫.

⇩ new

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

🡻 93/6/EEC Annex V first and second subparagraph (adapted)
⇨ new

Article 13

1. ⇨ Subject to paragraphs 2 to 5 of this Article, and Articles 14 to 17,⇦ ~~T~~the own funds of investment firms and credit institutions shall be ~~defined~~ ⌦ determined ⌫ in accordance with Directive ~~89/299/EEC~~ ⌦ [2000/12/EC] ⌫ .

In addition, the first subparagraph applies to investment firms which do not have one of the legal forms referred to in Article 1 (1) of the Fourth Council Directive 78/660/EEC.

🡻 93/6/EEC Annex V (1) 2nd subparagraph (2) to (5) (adapted)
➔1 98/31/EC Art. 1.7 and Annex 4(a) (b)
⇨ new

2. ➔1 ~~Notwithstanding~~ ⌦ By derogation to ⌫ paragraph 1, the competent authorities may permit those institutions which are obliged to meet the capital ~~own-funds~~ requirements calculated in accordance with ⌦ Articles 21 and 28 to 32 and ⌫ ~~laid down in~~ Annexes I, ~~II, III, IV, VI, VII and VIII~~ ⌦ and III to VI ⌫ to use, for that purpose only, an alternative

~~definition when meeting those requirements only~~ ⌦ determination ⌫of own funds. ← No part of the own funds used for that purpose ~~thus provided~~ may be used simultaneously to meet other capital ~~own-funds~~ requirements.

This alternative ~~definition~~ ⌦ determination ⌫ shall be the sum of the items set out in points (a) to (c) below, minus the item set out in point (d) below, with ~~include the following items (a), (b) and (c) less item (d),~~ the deduction of that last item being left to the discretion of the competent authorities:

(a) own funds as defined in Directive ~~89/299/EEC~~ ⌦ [2000/12/EC] ⌫ excluding only ~~items (12)~~ ⌦ points (l) to (p) ⌫ ~~and (13)~~ of Article ~~2 (1)~~ ⌦ 57 ⌫ of that Directive for those investment firms which are required to deduct item (d) of this paragraph from the total of items (a), (b) and (c) of this paragraph;

(b) an institution's net trading-book profits net of any foreseeable charges or dividends, less net losses on its other business provided that none of those amounts has already been included in item (a) of this paragraph under the items set out in ~~paragraphs (2) or (11)~~ ⌦ points (b) or (k) ⌫ of Article ~~2 (1) of Directive 89/299/EEC~~ ⌦ 57 of Directive [2000/12/EC] ⌫;

(c) subordinated loan capital and/or the items referred to in paragraph~~s~~ 5, subject to the conditions set out in paragraphs 3 ~~to 7~~ ⌦ and 4 and Article 14 ⌫ ;

(d) illiquid assets as ~~defined~~ ⌦ specified ⌫ in ~~paragraph 8~~ ⌦ Article 15 ⌫ .

3. The subordinated loan capital referred to in ⌦ point (c) ⌫ of paragraph 2 shall have an initial maturity of at least two years. It shall be fully paid up and the loan agreement shall not include any clause providing that in specified circumstances other than the winding up of the institution the debt will become repayable before the agreed repayment date, unless the competent authorities approve the repayment. Neither the principal nor the interest on such subordinated loan capital may be repaid if such repayment would mean that the own funds of the institution in question would then amount to less than 100 % of ~~the~~ ⌦ that ⌫ institution's overall requirements.

In addition, an institution shall notify the competent authorities of all repayments on such subordinated loan capital as soon as its own funds fall below 120 % of its overall ⌦ capital ⌫ requirements.

4. The subordinated loan capital referred to in ⌦ point (c) of ⌫ paragraph 2 may not exceed a maximum of 150 % of the original own funds left to meet the requirements ⌦ calculated in accordance with Articles 21 and 28 to 32 and⌫ ~~laid down in~~ Annexes I~~, II, III, IV, VI, VII, and VIII~~ ⌦ to VI ⌫ and may approach that maximum only in particular circumstances acceptable to the relevant authorities.

5. The competent authorities may permit institutions to replace the subordinated loan capital referred to ⌦ in point (c) of paragraph 2 ⌫ ~~in paragraphs 3 and 4~~ with ~~items 3 and 5 to 8~~ ⌦ points (d) to (h) ⌫ of Article ~~2 (1) of Directive 89/299/EEC~~ ⌦ 57 of Directive [2000/12/EC] ⌫.

↓ 98/31/EC Annex .4(c) (adapted)

Article 14

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

2. The competent authorities may permit the ceiling for subordinated loan capital set out ~~prescribed~~ in ~~paragraph 4~~ ⌦ Article 13(4) ⌫ to be exceeded by a credit institution if they judge it prudentially adequate and provided that the total of such subordinated loan capital and ~~items (4) to (8)~~ ⌦ points (d) to (h) ⌫ of Article ~~35(2)~~ ⌦ 57 ⌫ of Directive [2000/12/EC] ~~referred to in paragraph 5~~ does not exceed 250 % of the original own funds left to meet the requirements calculated in accordance with ~~imposed in~~ Articles ⌦ 28 to 32 and ⌫ Annexes I, ~~II, III, IV, V and VI~~ ⌦ and III to VI ⌫.

↓ 93/6/EEC Annex V (8) (adapted)

Article 15

Illiquid assets ⌦ as referred to in point (d) of Article 12(2) shall include the following: ⌫

(a) tangible fixed assets, ~~(~~except to the extent that land and buildings may be allowed to count against the loans which they are securing~~)~~;

(b) holdings in, including subordinated claims on, credit or financial institutions which may be included in the own funds of ⌦ those ⌫ ~~such~~ institutions, unless they have been deducted under ~~items (12)~~ ⌦ points (l) to (p) ⌫ of Article ~~2 (1)~~ ⌦ 57 ⌫ of Directive ~~89/299/EEC~~ ⌦ [2000/12/EC] ⌫ or under Article 15(d) of this ~~Annex~~ ⌦ Directive ⌫ ;

(c) holdings and other investments, in undertakings other than credit institutions and other financial institutions, which are not readily marketable;

(d) deficiencies in subsidiaries;

(e) deposits made, other than those which are available for repayment within 90 days, and also excluding payments in connection with margined futures or options contracts;

(f) loans and other amounts due, other than those due to be repaid within 90 days;

(g) physical stocks, unless they are ⌦ already ⌫ subject to ~~the~~ capital requirements ~~imposed in Article 4 (2) and provided that such requirements are not less stringent than those imposed in Article 4 (1)(iii)~~ ⌦ at least as stringent as those set out in Articles 18 to 20 ⌫ .

🡻 93/6/EEC Annex V(8) second indent, second subparagraph (adapted)

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

🡻 93/6/EEC Annex V (9) (adapted)

Article 16

~~9. Those i~~ Investment firms included in a group ~~subject to~~ ⌦ which has been granted ⌫ the waiver provided for ~~described~~ in Article ~~7(4)~~ ⌦ 22 ⌫ shall calculate their own funds in accordance with ~~paragraphs 1 to 8~~ ⌦ Articles 13 to 15 ⌫ subject to the following ~~modifications~~:

(a)~~(i)~~ the illiquid assets referred to in ~~paragraph 2~~⌦ point (d) of Article 13(2) ⌫ shall be deducted;

(b)~~(ii)~~the exclusion referred to in ~~paragraph 2~~ ⌦ point (a) of Article 12(2) ⌫ shall not cover those components of ~~items 12~~ ⌦ points (l) to (p) ⌫ of Article ~~2 (1)~~ ⌦ 57 ⌫ of Directive ~~89/299/EEC~~ ⌦ [2000/12/EC] ⌫ which an investment firm holds in respect of undertakings included in the scope of consolidation as defined in Article ⌦ 2 (1) ⌫ of this Directive;

(c)~~(iii)~~ the limits referred to in points (a) and (b) of Article ~~6~~ ⌦ 66 ⌫ (1)~~(a) and (b)~~ of Directive ~~89/299/EEC~~ ⌦ [2000/12/EC] ⌫ shall be calculated with reference to the original own funds less ~~those~~ ⌦ the ⌫ components of ~~items (12)~~ ⌦ points (l) to (p) ⌫ of Article ~~2 (1)~~ ⌦ 57 ⌫ of Directive ~~89/299/EEC~~ ⌦[2000/12/EC] ⌫ ~~described in (ii)~~ ⌦ referred to in point (b) ⌫ which are elements of the original own funds of the undertakings in question;

(d)~~(iv)~~ ~~those~~ ⌦ the ⌫ components of ~~items (12)~~ ⌦ points (l) to (p) ⌫ of Article ~~2 (1)~~ ⌦ 57 ⌫ of Directive ~~89/299/EEC~~ ⌦[2000/12/EC] ⌫ referred to in point (c) shall be deducted from the original own funds rather than from the total of all items as laid down ~~prescribed~~ in point (c) of Article ~~6~~ ⌦ 66 ⌫(1) ~~(c)~~ of that ~~same~~ Directive for the purposes, in particular, of ~~paragraphs 4 to 7~~ ⌦ Articles 13(4), 13(5) and 14 ⌫ of this ~~Annex~~ ⌦ Directive ⌫ .

⇩ new

Article 17

1. Where an institution calculates risk-weighted exposure amounts for the purposes of Annex II in accordance with the provisions of Articles 84 to 89 of Directive [2000/12/EC], then for the purposes of the calculation provided for in Directive [2000/12/EC] Annex VII, Part 1, Sub-part 4, the following shall apply:

(a) value adjustments made to take account of the credit quality of the counterparty may be included in the sum of value adjustments and provisions made for the exposures indicated in Annex II;

(b) subject to the approval of the competent authorities, if the credit risk of the counterparty is adequately taken into account in the valuation of a position included in the trading book the expected loss amount for the counterparty risk exposure shall be zero.

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

2. For the purposes of this Article, Article 153 and 154 of Directive [2000/12/EC] shall apply.

🡻 93/6/EEC (adapted)

⌦ CHAPTER V ⌫

⌦ SECTION 1 ⌫

PROVISIONS AGAINST RISKS

🡻 93/6/EEC Art 4(1) 1st subparagraph (adapted)
⇨ new

Article 18

1. ~~The~~ ~~competent authorities shall require~~ ~~i~~Institutions ⇨ shall have ⇦ ~~to provide~~ own funds which are always more than or equal to the sum of ⌦ the following ⌫ :

↓ 98/31/EC Art. 1.2 (adapted)

~~i)~~ (a) the capital requirements, calculated in accordance with ⌦ the methods and options laid down in Articles 28 to 32 and ⌫ Annexes I, II and VI and, as appropriate, Annex V~~III~~, for their trading-book business;

~~ii)~~ (b) the capital requirements, calculated in accordance with ⌦ the methods and options laid down in ⌫ Annexes III and ~~VII~~ ⌦ IV ⌫ and, as appropriate, Annex V~~III~~, for all of their business activities.

↓ 93/6/EEC Art. 4.1 (iii) and (iv) (adapted)

~~(iii) the capital requirements imposed in Directive 89/647/EEC for all of their business activities, excluding both their trading-book business and their illiquid assets it they are deducted from own funds under paragraph 2 (d) of Annex V;~~

~~(iv) the capital requirements imposed in paragraph 2.~~

↓ 93/6/EEC Art. 4.1 (iii) to (iv), second subparagraph

~~Irrespective of the amount of the capital requirement referred to in (i) to (iv) the own-funds requirement for investment firms shall never be less than the amount prescribed in Annex IV.~~

↓ 93/6/EEC Art. 4 (2) to (5)

~~2. The competent authorities shall require institutions to cover the risks arising in connection with business that is outside the scope of both this Directive and Directive 89/647/EEC and considered to be similar to the risks covered by those Directives by adequate own funds.~~

~~3. If the own funds held by an institution fall below the amount of the own funds requirement imposed in paragraph 1, the competent authorities shall ensure that the institution in question takes appropriate measures to rectify its situation as quickly as possible.~~

~~4. The competent authorities shall require institutions to set up systems to monitor and control the interest-rate risk on all of their business, and those systems shall be subject to overview by the competent authorities.~~

~~5. Institutions shall be required to satisfy their competent authorities that they employ systems which can calculate their financial positions with reasonable accuracy at any time.~~

↓ 93/6/EEC Art 4(6) (adapted)

2. ~~Notwithstanding~~ ⌦ By derogation to ⌫ paragraph 1, the competent authorities may allow institutions to calculate the capital requirements for their trading book business in accordance with ~~Directive 89/647/EEC rather than in accordance with Annexes I and II to this Directive provided that~~ ⌦ Article 75(a) of Directive [2000/12/EC] and paragraphs 6, 7, 8 and 10 of Annex II of this Directive, ⌫ rather than in accordance with Annexes I and II of this

Directive, where the size of the trading book business meets the ⌦ following ⌫ requirements ~~set out below~~:

~~i)~~ (a) the trading-book business of such institutions does not normally exceed 5% of their total business;

~~ii)~~ (b) their total trading-book positions do not normally exceed ~~ECU~~ ⌦ EUR ⌫ 15 million; ~~and~~

~~iii)~~(c) the trading-book business of such institutions never exceeds 6% of their total business and their total trading-book positions never exceed ~~ECU~~ ⌦ EUR ⌫ 20 million.

🡻 93/6/EEC Art 4(7) (adapted)

3. In order to calculate the proportion that trading-book business bears to total business as in ⌦ points (a) and (c) of ⌫ paragraph ~~6~~ ⌦ 2 ⌫ ~~i) and iii)~~, the competent authorities may refer either to the size of the combined on- and off-balance-sheet business, to the profit and loss account or to the own funds of the institutions in question, or to a combination of those measurements. When the size of on- and off-balance-sheet business is assessed, debt instruments shall be valued at their market prices or their principal values, equities at their market prices and derivatives according to the nominal or market values of the instruments underlying them. Long positions and short positions shall be summed regardless of their signs.

🡻 93/6/EEC Art 4(8) (adapted)

4. If an institution should happen for more than a short period to exceed either or both of the limits imposed in paragraph ~~6~~ ⌦ 2 (a) and (b)⌫ ~~(i) and (ii)~~ or to exceed either or both of the limits imposed in paragraph ~~6~~ ⌦ 2 (c) ⌫ ~~(iii),~~ it shall be required to meet the requirements imposed in ~~Article~~ ⌦ paragraph 1 (a) ⌫ ~~4 (i)~~ rather than those of ⌦ Article 75(a) of ⌫Directive ~~89/647/EEC~~ ⌦ [2000/12/EC] ⌫ in respect of its trading-book business and to notify the competent authority.

⇩ new

Article 19

1. For the purposes of paragraph 14 of Annex I, subject to national discretion, a 0% weighting can be assigned to debt securities issued by the same entities and denominated and funded in domestic currency.

🡻 93/6/EEC Art 11(2) (adapted)

2. ~~Notwithstanding~~ ⌦ By derogation to ⌫ paragraphs ⌦ 13 and ⌫ 14 of Annex I, Member States may set a specific risk requirement for any bonds ~~assigned a weighting of 10% under Articles 11(2) of Directive 89/647/EEC~~ ⌦ falling within Annex VI, Part 1, paragraphs 65 to 67 of Directive [2000/12/EC], ⌫ equal to ~~half~~ the specific risk requirement for a qualifying item with the same residual maturity as such a bond ⌦ , reduced in

accordance with the percentages given in Annex VI, Part 1, paragraph 68 of Directive [2000/12/EC] ⌫ .

⇩ new

3. If, as set out in paragraph 52 of Annex I, a competent authority approves a third country CIU as eligible, a competent authority in another Member State may make use of this recognition without conducting its own assessment.

Article 20

1. Subject to paragraphs 2, 3 and 4 of this Article, and Article 34 of this Directive, the requirements in Article 75 of Directive [2000/12/EC] shall apply to investment firms.

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

(a) the sum of the capital requirements contained in points (a) to (c) of Article 75 of Directive [2000/12/EC];

(b) the amount laid down in Article 21 of this Directive.

3. By derogation to paragraph 1, competent authorities may allow investment firms which hold initial capital as set out in Article 9, but which fall within the following categories, to provide own funds which are always more than or equal to the sum of the capital requirements calculated in accordance with the requirements contained in points (a) to (c) of Article 75 of Directive [2000/12/EC] and the amount prescribed in Article 21 of this Directive:

(a) investment firms that deal on own account for the purpose of fulfilling or executing a client order or for the purpose of gaining entrance to a clearing and settlement system or a recognised exchange when acting in an agency capacity or executing a client order;

(b) investment firms:

(i) that do not hold client money or securities;

(ii) that undertake only dealing on own account;

(iii) that have no external customers;

(iv) the execution and settlement of whose transactions takes place under the responsibility of a clearing institution and are guaranteed by that clearing institution.

4. Investment firms referred to in paragraphs 2 and 3 shall remain subject to all other provisions regarding operational risk set out in Annex V of Directive [2000/12/EC].

↓ 93/6/EEC Annex IV

Article 21

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

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

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

↓ 93/6/EEC (adapted)

⌦ SECTION 2 APPLICATION OF REQUIREMENTS ON A CONSOLIDATED BASIS ⌫

⇩ new

Article 22

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

(a) each investment firm in such a group uses the definition of own funds given in Article 16;

(b) all investment firms in such a group fall within the categories in paragraphs 2 and 3 of Article 20;

(c) each investment firm in such a group meets the requirements imposed in Articles 18 and 20 on an individual basis and at the same time deducts from its own funds any contingent liability in favour of investment firms, financial institutions, asset management companies and ancillary services undertakings which would otherwise be consolidated;

(d) any financial holding company which is the parent undertaking of any investment firm in such a group holds at least as much capital, defined here as the sum of points (a) to (h) of Article 57 of Directive [2000/12/EC], as the sum of the full book value of any holdings, subordinated claims, and instruments referred to in Article 57 of Directive [2000/12/EC] in investment firms, financial institutions, asset management companies and ancillary services undertakings which would otherwise be consolidated, and the total amount of any contingent liability in favour of investment firms, financial institutions, asset management companies and ancillary services undertakings which would otherwise be consolidated;

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

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

🡻 93/6/EEC Art. 7(5) & (6) (adapted)

Article 23

The competent authorities shall require investment firms in a group which has been granted the waiver provided for in Article ~~20~~ ⌦ 22 ⌫ to notify them of the risks which could undermine their financial positions, including those associated with the composition and sources of their capital and funding. If the competent authorities then consider that the financial positions of those investment firms is not adequately protected, they shall require the investment firms to take measures including, if necessary, limitations on the transfer of capital from such firms to group entities.

Where the competent authorities waive the obligation of supervision on a consolidated basis provided for in ⌦ Article 22 ⌫ ~~paragraph 4~~ they shall take other appropriate measures to monitor the risks, namely large exposures, of the whole group, including any undertakings not located in a Member State.

⇩ new

Where the competent authorities waive the obligation of supervision on a consolidated basis provided for in Article 22, the requirements of Title V, Chapter 5 of Directive [2000/12/EC] shall continue to apply on an individual basis and the requirements of Article 124 of Directive [2000/12/EC] shall continue to apply to the supervision of investment firms on an individual basis.

🡻 93/6/EC Art. 7 (7) to (9)

~~7. Member States may waive the application of the requirements imposed in Articles 4 and 5, on an individual or subconsolidated basis, to an institution which, as a parent undertaking, is~~

~~subject to supervision on a consolidated basis, and to any subsidiary of such an institution which is subject to their authorization and supervision and is included in the supervision on a consolidated basis of the institution which is its parent company.~~

~~The same right of waiver shall be granted where the parent undertaking is a financial holding company which has its head office in the same Member State as the institution, provided that it is subject to the same supervision as that exercised over credit institutions or investment firms, and in particular the requirements imposed in Articles 4 and 5.~~

~~In both cases, if the right of waiver is exercised measures must be taken to ensure the satisfactory allocation of own funds within the group.~~

~~8. Where an institution the parent undertaking of which is an institution has been authorized and is situated in another Member State, the competent authorities which granted that authorization shall apply the rules laid down in Articles 4 and 5 to that institution on a individual or, where appropriate, a subconsolidated basis.~~

~~9. Notwithstanding paragraph 8, the competent authorities responsible for authorizing the subsidiary of a parent undertaking which is an institution may, by a bilateral agreement, delegate their responsibility for supervising the subsidiary's capital adequacy and large exposures to the competent authorities which authorized and supervise the parent undertaking. The Commission must be kept informed of the existence and content of such agreements. It shall forward such information to the competent authorities of the other Member States and to the Banking Advisory Committee and to the Council, except in the case of groups covered by paragraph 3.~~

⇩ new

Article 24

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

Where the requirements of the first sub-paragraph are met, the parent investment firm shall be required to provide own funds which are always more than or equal to the higher of the following two consolidated requirements, calculated as set out in Section 3 of this Chapter:

(a) the sum of the capital requirements contained in points (a) to (c) of Article 75 of Directive [2000/12/EC];

(b) the amount prescribed in Article 21.

Article 25

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

Where the requirements of the first sub-paragraph are met, the parent investment firm shall be required to provide own funds which are always more than or equal to the sum of the consolidated capital requirements, calculated as set out in Section 3 of this Chapter, of the requirements contained in points (a) to (c) of Article 75 of Directive [2000/12/EC] and the amount prescribed in Article 21 of this Directive.

↓ 93/6/EEC (adapted)

⌦ **SECTION 3** ⌫

~~CALCULATING~~ ⌦ CALCULATION OF ⌫ CONSOLIDATED REQUIREMENTS

↓ 98/31/EC Art. 1.4 (adapted)

Article 26

1. Where the right of waiver provided for in Article ~~20~~ ⌦ 22 ⌫ is not exercised, the competent authorities may, for the purpose of calculating the capital requirements set out in Annexes I and V~~III~~ and the exposures to clients set out in ⌦ Articles 28 to 32 and ⌫ Annex VI on a consolidated basis, permit positions in the trading book of one institution to offset positions in the trading book of another institution according to the rules set out in ⌦ Articles 28 to 32 ⌫ Annexes I, V~~I~~ and VI~~I~~.

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

↓ 93/6/EEC Art 7(11) (adapted)

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

~~i)~~ (a) those undertakings have been authorized in a third country and either satisfy the definition of credit institution given in ~~the first indent of~~ Article ~~1~~ ⌦ 4(1) ⌫ of Directive ~~77/780/EEC~~ ⌦ [2000/12/EC] ⌫ or are recognized third-country investment firms;

~~ii)~~ (b) such undertakings comply, on a solo basis, with capital adequacy rules equivalent to those laid down in this Directive;

~~iii)~~ (c) no regulations exist in the countries in question which might significantly affect the transfer of funds within the group.

↓ 93/6/EEC Art 7(12) (adapted)

3. The competent authorities may also allow the offsetting provided for in paragraph ~~10~~ ⌦ 1 ⌫ between institutions within a group that have been authorized in the Member State in question, provided that:

~~i)~~ (a) there is a satisfactory allocation of capital within the group;

~~ii)~~ (b) the regulatory, legal or contractual framework in which the institutions operate is such as to guarantee mutual financial support within the group.

↓ 93/6/EEC Art 7(13) (adapted)

4. Furthermore, the competent authorities may allow the offsetting provided for in paragraph ~~10~~ ⌦ 1 ⌫ between institutions within a group that fulfil the conditions imposed in paragraph ~~12~~ ⌦ 3 ⌫ and any institution included in the same group which has been authorized in another Member State provided that that institution is obliged to fulfil the capital requirements imposed in Articles ~~4 and 5~~ ⌦ 18, 20 and 28 ⌫ on ~~a solo~~ ⌦ an individual ⌫ basis.

↓ 93/6/EEC Art 7(14) & (15) (adapted)

Article 27

1. In the calculation of own funds on a consolidated basis Article ~~5~~ ⌦ 65 ⌫ of Directive ~~89/299/EEC~~ ⌦ [2000/12/EC] ⌫ shall apply.

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

↓ 93/6/EEC (adapted)

⌦ SECTION 4 ⌫

⌦ MONITORING AND CONTROL OF LARGE EXPOSURES ⌫

↓ 93/6/EEC Art 5(1) (adapted)

Article 28

1. Institutions shall monitor and control their large exposures in accordance with ~~Directive 92/121/EEC~~ ⌦ Articles 106 to 118 of Directive [2000/12/EC]. ⌫

↓ 98/31/EC Art. 1.3 (adapted)

2. ⌦ By derogation to paragraph 1, ⌫ ~~Notwithstanding~~ institutions which calculate the capital requirements for their trading-book business in accordance with Annexes I and II, and, as appropriate, Annex V~~III~~, shall monitor and control their large exposures in accordance with ~~Directive 92/121/EEC~~ ⌦ Articles 106 to 118 of Directive [2000/12/EC] ⌫ subject to the amendments laid down in Articles ~~27 to 30~~ ⌦ 29 to 32 ⌫ of this Directive.

⇩ new

3. By 31 December 2007, the Commission shall submit to the European Parliament and to the Council a report on the functioning of this Section, together with any appropriate proposals.

↓ 93/6/EEC Annex VI (2) (adapted)
⇨ new

Article 29

1. The exposures to individual clients which arise on the trading book shall be calculated by summing the following items~~ (i), (ii) and (iii)~~:

~~i)~~ (a) the excess — where positive — of an institution's long positions over its short positions in all the financial instruments issued by the client in question, ⌦ with ⌫ ~~(~~the net position in each of the different instruments being calculated according to the methods laid down in Annex I~~)~~;

~~ii)~~ (b) the net exposure, in the case of the underwriting of a debt or an equity instrument;~~, the institution's exposure shall be its net exposure; (which is calculated by deducting those underwriting positions which are subscribed or sub-underwritten by third parties on the basis of a formal agreement) reduced by the factors set out in paragraph 39 of Annex I.~~

~~iii)~~(c) the exposures due to the transactions, agreements and contracts referred to in Annex II with the client in question, such exposures being calculated in the manner laid down in that Annex, ⇨ for the calculation of exposure values ⇦ ~~without application of the weightings for counterparty risk~~.

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

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

⇨For the purposes of point (c), Articles 84 to 89 of Directive [2000/12/EC] shall be excluded from the reference in paragraph 5 of Annex II of this Directive.⇦

↓ 93/6/EEC Annex VI (3) (adapted)

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

↓ 93/6/EEC Annex VI (4) (adapted)

Article 30

1. The overall exposures to individual clients or groups of connected clients shall be calculated by summing the exposures which arise on the trading book and the exposures which arise on the non-trading book, taking into account Article ~~4~~ ⌦ 112 to 117 ⌫ ~~(6) to (12)~~ of Directive ~~92/121/EEC~~ ⌦ [2000/12/EC] ⌫.

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

↓ 93/6/EEC Annex VI (5) (adapted) ⇨ new

2. Institutions' overall exposures to individual clients and groups of connected clients calculated in accordance with paragraph 4 shall be reported in accordance with Article ~~3~~ ⌦ 110 ⌫ of Directive ~~92/121/EEC~~ ⌦ [2000/12/EC] ⌫.

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

↓ 93/6/EEC Annex VI (6) (adapted)

3. ~~That~~ ⌦ The ⌫ sum of the exposures to an individual client or group of connected clients ⌦ in paragraph 1 ⌫ shall be limited in accordance with ~~Article 4~~ ⌦ Articles 111 to 117 ⌫ of Directive ~~92/121/EEC~~ ⌦ [2000/12/EC] ⌫ ~~subject to the transitional provisions of Article 6 of the same Directive~~.

↓ 93/6/EEC Annex VI (7) (adapted)

4. ⌦ By derogation to ⌫ ~~Notwithstanding~~ paragraph ⌦ 3 ⌫ ~~6~~, ~~the~~ competent authorities may allow assets constituting claims and other exposures ~~investment firms~~ on ~~recognized~~ recognised third-country investment firms and ~~recognized~~ recognised clearing houses and exchanges in financial instruments to be subject to the same treatment accorded to those on institutions ⌦ laid out ⌫ in ~~Article~~ ⌦ Articles 113(2)(i), 115(2) and 116⌫ ~~4 (7) (i), (9) and (10)~~ of Directive ~~92/121/EEC~~ ⌦ [2000/12/EC]. ⌫

↓ 93/6/EEC Annex VI (8) (adapted)

Article 31

The competent authorities may authorize the limits laid down in ~~Article~~ ~~4~~ ⌦ Articles 111 to 117 ⌫ of Directive ~~92/121/EEC~~ ⌦ [2000/12/EC] ⌫ to be exceeded ~~subject to~~ ⌦ if ⌫ the following conditions ~~being met simultaneously~~ ⌦ are met ⌫:

~~1.~~ (a) the exposure on the non-trading book to the client or group of clients in question does not exceed the limits laid down in ~~Directive 92/121/EEC~~ ⌦ Articles 111 to 117 of [Directive 2000/12/EC] ⌫, calculated with reference to own funds as ~~defined~~ ⌦ specified ⌫ in Directive ~~89/299/EEC~~ ⌦ [2000/12/EC] ⌫, so that the excess arises entirely on the trading book;

~~2.~~(b) the ⌦ institution ⌫ ~~firm~~ meets an additional capital requirement on the excess in respect of the limits laid down in Article ~~4~~ ⌦ 111 ⌫ (1) and (2) of Directive ~~92/121/EEC~~ ⌦ [2000/12/EC], calculated in accordance with Annex VI of this Directive⌫;

~~3.~~(c) where 10 days or less has elapsed since the excess occurred, the trading-book exposure to the client or group of connected clients in question must not exceed 500 % of the institution's own funds;

~~4.~~(d) any excesses which have persisted for more than 10 days must not, in aggregate, exceed 600 % of the institution's own funds;

~~5~~ .(e) institutions must report to the competent authorities every three months all cases where the limits laid down in Article ~~4~~ ⌦ 111 ⌫ (1) and (2) of Directive ~~92/121/EEC~~ ⌦ [2000/12/EC] ⌫ have been exceeded during the preceding three months.

In relation to point (e), in each case in which the limits have been exceeded the amount of the excess and the name of the client concerned must be reported.

↓ 93/6/EEC Annex VI (9) & (12) (adapted)

Article 32

1. The competent authorities shall establish procedures ~~of which they shall notify the Council and the Commission~~to prevent institutions from deliberately avoiding the additional capital requirements that they would otherwise incur, on exposures exceeding the limits laid down in Article ~~4~~ ⌦ 111 ⌫ (1) and (2) of Directive ~~92/121/EEC~~ ⌦ [2000/12/EC] ⌫ once those exposures have been maintained for more than 10 days, by means of temporarily transferring the exposures in question to another company, whether within the same group or not, and/or by undertaking artificial transactions to close out the exposure during the 10 day period and create a new exposure. ~~Institutions shall maintain systems which ensure that any transfer which has this effect is immediately reported to the competent authorities.~~

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

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

2. The competent authorities may permit ~~those~~ institutions which are allowed to use the alternative ~~definition~~ ⌦ determination ⌫ of own funds under ~~paragraph 2 of Annex V~~ ⌦ Article 13(2) ⌫ to use that ~~definition~~ ⌦ determination ⌫ for the purposes of ~~paragraphs 5, 6 and 8 of this Annex~~ ⌦ Articles 30(2), 30(3) and 31 ⌫ provided that the institutions concerned are required~~, in addition,~~ to meet all of the obligations set out in Articles ~~3 and 4~~ ⌦ 110 to 117 ⌫ of Directive ~~92/121/EEC~~ ⌦ [2000/12/EC] ⌫, in respect of the exposures which arise outside their trading books by using own funds as defined in Directive ~~89/299/EEC~~ ⌦ [2000/12/EC] ⌫.

↓ 93/6/EEC (adapted)

⌦ **SECTION 5** ⌫

VALUATION OF POSITIONS FOR REPORTING PURPOSES

Article 33

⇩ new

1. All trading book positions shall be subject to prudent valuation rules as specified in Annex VII, Part B. These rules shall require institutions to ensure that the value applied to each of its trading book positions appropriately reflects the current market value. This value shall contain an appropriate degree of certainty having regard to the dynamic nature of trading

book positions, the demands of prudential soundness and the mode of operation and purpose of capital requirements in respect of trading book positions.

2. Positions shall be re-valued at least daily.

↓ 93/6/EEC Art. 6 (adapted)

~~1. Institutions shall mark to market their trading books on a daily basis unless they are subject to Article 4 (6).~~

~~2~~3. In the absence of readily available market prices, ~~for example in the case of dealing in new issues on the primary markets,~~ the competent authorities may waive the requirement imposed in paragraphs 1 ⌦ and 2 ⌫ and ⌦ shall ⌫ require institutions to use alternative methods of valuation provided that those methods are sufficiently prudent and have been approved by competent authorities.

↓ 93/6/EEC

~~**SUPERVISION ON A CONSOLIDATED BASIS**~~

~~⇩ new~~

~~**SCOPE OF APPLICATION**~~

↓ 96/3/EEC

~~*Article 7*~~

~~*General principles*~~

↓ 98/31EC Art. 7(10) (adapted)

~~10. Where the rights of waiver provided for in paragraphs 7 and 9 are not exercised, the competent authorities may, for the purpose of calculating the capital requirements set out in Annexes I and VIII and the exposures to clients set out in Annex VI on a consolidated basis, permit positions in the trading book of one institution to offset positions in the trading book of another institution according to the rules set out in Annexes I, VI and VIII.~~

~~In addition, they may allow foreign-exchange positions in one institution to offset foreign-exchange positions in another institution in accordance with the rules set out in Annex III and/or Annex VIII. They may also allow commodities positions in one institution to offset commodities positions in another institution in accordance with the rules set out in Annex VII and/or Annex VIII.~~

⇩ new

SECTION 6

RISK MANAGEMENT AND CAPITAL ASSESSMENT

Article 34

Competent authorities shall require that every investment firm, as well as meeting the requirements in Article 13 of Directive 2004/39/EC, shall meet the requirements in Articles 22 and 123 of Directive [2000/12/EC].

🡻 93/6/EEC (adapted)

⌦ SECTION 7 ⌫

REPORTING REQUIREMENTS

🡻 93/6/EEC Art. 8 (adapted)

Article 35

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

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

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

4. Credit institutions shall be obliged to report in the manner specified by the competent authorities as often as they are obliged to report under Directive ~~89/647/EEC~~ ⌦ [2000/12/EC] ⌫.

↓ 98/31/EC Art. 1.5

5. The competent authorities shall oblige institutions to report to them immediately any case in which their counter-parties in repurchase and reverse repurchase agreements or securities and commodities-lending and securities and commodities-borrowing transactions default on their obligations. ~~Commission shall report to the Council on such cases and their implications for the treatment of such agreements and transactions in this Directive not more than three years after the date referred to in Article 12. Such report shall also describe the way that institutions meet those of conditions (i) to (v) in Article 2(6)(b) that apply to them, in particular condition (v). Furthermore it shall give details of any changes in the relative volume of institutions' traditional lending and their lending through reverse repurchase agreements and securities-borrowing or commodities-borrowing transactions. If the Commission concludes on the basis of this report and other information that further safeguards are needed to prevent abuse, it shall make appropriate proposals.~~

↓ 93/6/EEC (adapted)

⌦ Chapter VI ⌫

⌦ SECTION 1 ⌫

COMPETENT AUTHORITIES

↓ 93/6/EEC Art. 9 (adapted)

Article 36

1. Member States shall designate the authorities which are ⌦ competent ⌫ to carry out the duties provided for in this Directive. They shall inform the Commission thereof, indicating any division of duties.

2. The ⌦ competent ⌫ authorities ~~referred to in paragraph 1 must~~ ⌦ shall ⌫ be public authorities or bodies officially recognized by national law or by public authorities as part of the supervisory system in operation in the Member State concerned.

3. The ⌦ competent ⌫ authorities concerned ~~must~~ ⌦ shall ⌫ be granted all the powers necessary for the performance of their tasks, and in particular that of overseeing the constitution of trading books.

1. ~~4. The competent authorities of the various Member States shall collaborate closely in the performance of the duties provided for in this Directive, particularly when investment services are provided on a services basis or through the establishment of branches in one or more Member States. They shall on request supply one another with all information likely to facilitate the supervision of the capital adequacy of investment firms and credit institutions, in particular the verification of their compliance with the rules laid down in this Directive. Any exchange of information~~

~~between competent authorities which is provided for in this Directive in respect of investment firms shall be subject to the obligation of professional secrecy imposed in Article 25 of Directive 93/22/EEC and, as regards credit institutions, to the obligation imposed in Article 12 of Directive 77/780/EEC, as amended by Directive 89/646/EEC.~~

⇩ new

SECTION 2

SUPERVISION

Article 37

1. Articles 124 to 132, 136 and 144 of Directive [2000/12/EC] shall apply *mutatis mutandis* to the supervision of investment firms in accordance with the following:.

(a) references to Article 6 of Directive [2000/12/EC] shall be construed as references to Article 5 of Directive 2004/39/EC;

(b) references to Article 22 and 123 of Directive [2000/12/EC] shall be construed as references to Article 34 of this Directive;

(c) references to Articles 44 to 52 of Directive [2000/12/EC] shall be read as references to Articles 54 and 58 of Directive 2004/39/EC.

Where an EU parent financial holding company has as subsidiary both a credit institution and an investment firm, one competent authority responsible for supervision of the credit institution shall be identified to be responsible for consolidated supervision of the entities controlled by that parent.

2. The requirements set out in Article 129(2) of Directive [2000/12/EC] shall also apply to the recognition of internal models of institutions under Annex V of this Directive.

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

🡻 93/6/EEC Art. 9 (4) (adapted)

Article 38

1. The competent authorities of the ~~various~~ Member States shall ⌦ cooperate ⌫~~collaborate~~ closely in the performance of the duties provided for in this Directive, particularly ~~when~~ ⌦ where ⌫investment services are provided on a services basis or through the establishment of branches ~~in one or more Member States~~.

They shall on request supply one another with all information likely to facilitate the supervision of the capital adequacy of ~~investment firms and credit~~ institutions, in particular the verification of their compliance with the rules laid down in this Directive.

2. Any exchange of information between competent authorities which is provided for in this Directive in respect of investment firms shall be subject to the ⌦ following ⌫ obligation ⌦ s ⌫ of professional secrecy ⌦ : ⌫

(a) ⌦ for investment firms, those ⌫ imposed in Article ~~25~~ ⌦ 54 and 58 ⌫ of Directive ~~93/22/EEC~~ ⌦ 2004/39/EC ⌫;

(b) ~~and, as regards~~⌦ for ⌫ credit institutions, ~~to the obligation~~ ⌦ those ⌫ imposed in Articles ⌦ 44 to 52 ⌫ ~~12 of Directive 77/780/EEC, as amended by Directive 89/646/EEC~~ ⌦of Directive [2000/12/EC] ⌫ .

⇩ new

Chapter VII

Disclosure

Article 39

The requirements set out in Title V, Chapter 5 of Directive [2000/12/EC] shall apply to investment firms.

🡻 93/6/EEC (adapted)

⌦ Chapter VIII ⌫

⌦ SECTION 1 ⌫

⇩ new

Article 40

For the purposes of the calculation of minimum capital requirements for counterparty risk under this directive, and for credit risk under Directive [2000/12/EC], and without prejudice to the provisions of the second to sixth paragraphs of Annex III of Directive [2000/12/EC], exposures to recognized third-country investment firms and exposures incurred to recognized clearing houses and exchanges shall be treated as exposures to institutions.

Article 41

By 31 December 2008, the Commission shall examine and, if necessary, revise the treatment of counterparty risk set out in Annex II.

↓ 93/6/EEC (adapted)

⌦ SECTION 2 ⌫

⌦POWERS OF EXECUTION⌫

↓ 93/6/EEC Art. 10 (adapted)
⇨ new

Article 42

1. ~~Pending adoption of a further Directive laying down provisions for adapting this Directive to technical progress in the areas specified below, the Council shall, acting by qualified majority on a proposal form the Commission, in accordance with Decision 87/373/EEC, adopt those adaptations which may be necessary as follows~~ ⌦The Commission shall decide on any amendments in the following areas in accordance with the procedure referred to in Article 43(2). ⌫

(a) clarification of the definitions in Article ~~2~~ ⌦ 3 ⌫ in order to ensure uniform application of this Directive throughout the Community;

(b) clarification of the definitions in Article ~~2~~ ⌦ 3 ⌫ to take account of developments on financial markets;

(c) alteration of the amounts of initial capital prescribed in Articles ~~3~~ ⌦ 5 to 9 ⌫ and the amount referred to in Article ~~4(6)~~ ⌦18(2)⌫ to take account of developments in the economic and monetary field;

⇨ (d) amendment of the categories of investment firms in Articles 20(2) and (3) to take account of developments on financial markets; ⇦

⇨ (e) clarification of the requirement laid down in Article 21 to ensure uniform application of this Directive throughout the Community; ⇦

(f) the alignment of terminology on and the framing of definitions in accordance with subsequent acts on institutions and related matters~~.~~;

⇨ (g) amendment of the technical provisions in Annexes I to VII in order to take account of developments in financial markets, risk measurement, accounting standards or requirements set out in Community legislation. ⇦

⇩ new

Article 43

1. The Commission shall be assisted by a Committee.

2. Where reference is made to this paragraph, the procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) and Article 8 thereof.

The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

🡻 93/6/EEC (adapted)

⌦ SECTION 3 ⌫

TRANSITIONAL PROVISIONS

🡻 93/6/EEC Art. 11

~~*Article 11*~~

~~1. Member States may authorize investment firms subject to Article 30 (1) of Directive 93/22/EEC the own funds of which are on the day of the application of this Directive lower than the levels specified in Article 3 (1) to (3) of this Directive. Thereafter, however, the own funds of such investment firms must fulfil the conditions laid down in Article 3 (5) to (8) of this Directive.~~

~~2. Notwithstanding paragraph 14 of Annex I, Member States may set a specific-risk requirement for any bonds assigned a weighting of 10 % under Article 11 (2) of Directive 89/647/EEC equal to half the specific-risk requirement for a qualifying item with the same residual maturity as such a bond.~~

🡻 98/31/EC Art. 1.6 (adapted)

~~*Article 1*~~

~~Until 31 December 2006, Member States may authorise their institutions to use the minimum spread, carry and outright rates set out in the following table instead of those indicated in paragraphs 13, 14, 17 and 18 of Annex VII provided that the institutions, in the opinion of their competent authorities:~~

~~(i) undertake significant commodities business,~~

~~(ii) have a diversified commodities portfolio, and~~

~~(iii) are not yet in a position to use internal models for the purpose of calculating the capital requirement on commodities risk in accordance with Annex VIII.~~

~~Table~~				
	~~Precious metals (except gold)~~	~~Base metals~~	~~Agricultural products (softs)~~	~~Other, including energy products~~
~~Spread rate (%)~~	~~1.0~~	~~1.2~~	~~1.5~~	~~1.5~~
~~Carry rate (%)~~	~~0.3~~	~~0.5~~	~~0.6~~	~~0.6~~
~~Outright rate (%)~~	~~8~~	~~10~~	~~12~~	~~15~~

~~Member States shall inform the Commission of the use they make of this Article.~~

⇩ new

Article 44

Article 152(1) to (6) of Directive [2000/12/EC] shall apply, in accordance with Article 2 and Chapter V, Sections 2 and 3 of this Directive, to investment firms calculating risk-weighted exposure amounts, for the purposes of Annex II of this Directive, in accordance with Articles 84 to 89 of Directive [2000/12/EC], or using the Advanced Measurement Approach as specified in Article 105 of that Directive for the calculation of their capital requirements for operational risk.

Article 45

Until 31 December 2012, for investment firms the relevant indicator for the trading and sales business line of which represents at least 50% of the total of relevant indicators for all of its business lines calculated in accordance with Article 20 of this Directive and Annex X, Part 2, paragraphs 1 to 8 of Directive [2000/12/EC], Member States may apply a percentage of 15% to the business line “trading and sales”.

↓ 93/6/EEC Art. 12 (adapted)
⇨ new

⌦ SECTION 4 ⌫

FINAL PROVISIONS

Article 46

~~1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive by the date fixed in the second paragraph of Article 31 of Directive 93/22/EEC. They shall forthwith inform the Commission thereof.~~

1. Member States shall adopt and publish, by 31 December 2006 at the latest, the laws, regulations and administrative provisions necessary to comply with Articles 2, 3, 11, 13, 17, 18, 19, 20, 22, 23, 24, 25, 29, 30, 33, 34, 35, 37, 39, 40, 42, 44, 45, 47 and the Annexes I, II, III, V, VII. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 31 December 2006.

When Member States adopt those provisions, they shall contain a reference to this Directive or ~~add such a reference~~ ⌦ be accompanied by such a reference⌫ on the occasion of their official publication. ⌦ They shall also include a statement that references in existing laws, regulations and administrative provisions to these directives repealed by this Directive shall be construed as references to this Directive. ⌫ ~~The manner in which such references are to be made shall be laid down by the Member State.~~

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

⇩ new

Article 47

1. Article 152(7) to (12) of Directive [2000/12/EC] shall apply mutatis mutandis for the purposes of this Directive subject to the following provisions which shall apply where the discretion referred to in Article 152(7) of Directive [2000/12/EC] is exercised:

(a) References in Annex II paragraph 6 of Directive [2000/12/EC] shall be read as references to Directive 2000/12/EC as that Directive stood prior to the date referred to in Article 46;

(b) Annex II, paragraph 4.1, shall apply as it stood prior to the date referred to in Article 46.

2. Article 157 (2) of Directive [2000/12/EC] shall apply mutatis mutandis for the purposes of Articles 18 and 20.

🡻 93/6/EEC Art. 13

~~Article 13~~

~~The Commission shall as soon as possible submit to the Council proposals for capital requirements in respect of commodities trading, commodity derivatives and units of collective-investment undertakings.~~

~~The Council shall decide on the Commission's proposals no later than six months before the date of application of this Directive.~~

⇩ new

Article 48

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

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex IX.

Article 49

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

🡻 93/6/EEC Art 14

~~REVIEW CLAUSE~~

~~Article 14~~

~~Within three years of the date referred to in Article 12, acting on a proposal from the Commission, the Council shall examine and, if necessary, revise this Directive in the light of the experience acquired in applying it, taking into account market innovation and, in particular, developments in international fora of regulatory authorities.~~

🡻 93/6/EEC Art. 15

Article 50

This Directive is addressed to the Member States.

Done at Brussels, […]

For the European Parliament
The President
[…]

For the Council
The President
[…]

🡻 93/6/EEC (adapted)
⇨ new

ANNEX I

⇨ CALCULATING CAPITAL REQUIREMENTS FOR ⇦ POSITION RISK

~~INTRODUCTION~~ ⌦ GENERAL PROVISIONS ⌫

Netting

1. The excess of an institution's long (short) positions over its short (long) positions in the same equity, debt and convertible issues and identical financial futures, options, warrants and covered warrants shall be its net position in each of those different instruments. In calculating the net position the competent authorities shall allow positions in derivative instruments to be treated, as laid down in paragraphs 4 to 7, as positions in the underlying (or notional) security or securities. Institutions' holdings of their own debt instruments shall be disregarded in calculating specific risk under paragraph ~~14~~ ⌦ 14 ⌫ .

2. No netting shall be allowed between a convertible and an offsetting position in the instrument underlying it, unless the competent authorities adopt an approach under which the likelihood of a particular convertible's being converted is taken into account or have a capital requirement to cover any loss which conversion might entail.

3. All net positions, irrespective of their signs, must be converted on a daily basis into the institution's reporting currency at the prevailing spot exchange rate before their aggregation.

Particular instruments

🡻 93/6/EC (adapted)
➔1 98/31/EC Art. 1.7 and Annex .1(a)

4. Interest-rate futures, forward-rate agreements (FRAs) and forward commitments to buy or sell debt instruments shall be treated as combinations of long and short positions. Thus a long

interest-rate futures position shall be treated as a combination of a borrowing maturing on the delivery date of the futures contract and a holding of an asset with maturity date equal to that of the instrument or notional position underlying the futures contract in question. Similarly a sold FRA will be treated as a long position with a maturity date equal to the settlement date plus the contract period, and a short position with maturity equal to the settlement date. Both the borrowing and the asset holding shall be included in the ~~central government column~~ ⌦ first category set out in ⌫ ~~of~~ Table 1 in paragraph ~~14~~ ⌦ 14 ⌫ in order to calculate the capital required against specific risk for interest-rate futures and FRAs. A forward commitment to buy a debt instrument shall be treated as a combination of a borrowing maturing on the delivery date and a long (spot) position in the debt instrument itself. The borrowing shall be included in the ~~central government column~~ ⌦ first category set out in ⌫ ~~of~~ Table 1 ⌦ in paragraph 14 ⌫for purposes of specific risk, and the debt instrument under whichever column is appropriate for it in the same table.➔1 --- ➔

🡻 98/31/EC Art. 1.7 and Annex .1(a) (adapted)

The competent authorities may allow the capital requirement for an exchange-traded future to be equal to the margin required by the exchange if they are fully satisfied that it provides an accurate measure of the risk associated with the future and that it is at least equal to the capital requirement for a future that would result from a calculation made using the method set out in this Annex or applying the internal models method described in Annex V~~III~~.

~~Until 31 December 2006 t~~The competent authorities may also allow the capital requirement for an OTC derivatives contract of the type referred to in this paragraph cleared by a clearing house recognised by them to be equal to the margin required by the clearing house if they are fully satisfied that it provides an accurate measure of the risk associated with the derivatives contract and that it is at least equal to the capital requirement for the contract in question that would result from a calculation made using the method set out in the this Annex or applying the internal models method described in Annex V~~III~~.

🡻 93/6/EEC Art. 2(22)

For the purposes of this paragraph, *long position* means a position in which an institution has fixed the interest rate it will receive at some time in the future, and *short position* means a position in which it has fixed the interest rate it will pay at some time in the future.

🡻 93/6/EEC

5. Options on interest rates, debt instruments, equities, equity indices, financial futures, swaps and foreign currencies shall be treated as if they were positions equal in value to the amount of the underlying instrument to which the option refers, multiplied by its delta for the purposes of this Annex. The latter positions may be netted off against any offsetting positions in the identical underlying securities or derivatives. The delta used shall be that of the exchange concerned, that calculated by the competent authorities or, where that is not available or for OTC-options, that, calculated by the institution itself, subject to the competent authorities' being satisfied that the model used by the institution is reasonable.

However, the competent authorities may also prescribe that institutions calculate their deltas using a methodology specified by the competent authorities.

↓ 98/31/EC Art. 1.7 and Annex .1(b) (adapted)

~~The competent authorities shall require that the~~ ~~o~~Other risks, apart from the delta risk, associated with options ~~are~~ ⌦ shall be ⌫ safeguarded against. The competent authorities may allow the requirement against a written exchange-traded option to be equal to the margin required by the exchange if they are fully satisfied that it provides an accurate measure of the risk associated with the option and that it is at least equal to the capital requirement against an option that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex V~~III~~. ~~Until 31 December 2006 t~~The competent authorities may also allow the capital requirement for an OTC option cleared by a clearing house recognised by them to be equal to the margin required by the clearing house if they are fully satisfied that it provides an accurate measure of the risk associated with the option and that it is at least equal to the capital requirement for an OTC option that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex V~~III~~. In addition they may allow the requirement on a bought exchange-traded or OTC option to be the same as that for the instrument underlying it, subject to the constraint that the resulting requirement does not exceed the market value of the option. The requirement against a written OTC option shall be set in relation to the instrument underlying it.

↓ 98/31/EC Art. 1.7 and Annex .1(c)

6. Warrants relating to debt instruments and equities shall be treated in the same way as options under paragraph 5.

↓ 93/6/EEC

7. Swaps shall be treated for interest-rate risk purposes on the same basis as on-balance-sheet instruments. Thus an interest-rate swap under which an institution receives floating-rate interest and pays fixed-rate interest shall be treated as equivalent to a long position in a floating-rate instrument of maturity equivalent to the period until the next interest fixing and a short position in a fixed-rate instrument with the same maturity as the swap itself.

⇩ new

8. For credit derivatives, unless specified differently, the notional amount of the credit derivative contract must be used. When calculating the capital requirement for the market risk of the party who assumes the credit risk (the “protection seller”), positions are determined as follows:

A total return swap creates a long position in the general market risk of the reference obligation and a short position in the general market risk of a government bond which is assigned a 0% risk weight under Annex VI of Directive [2000/12/EC]. It also creates a long position in the specific risk of the reference obligation.

A credit default swap does not create a position for general market risk. For the purposes of specific risk, the institution must record a synthetic long position in an obligation of the reference entity. If premium or interest payments are due under the product, these cash flows must be represented as notional positions in a government bond with the appropriate fixed or floating rate.

A credit linked note creates a long position in the general market risk of the note itself, as an interest product. For the purpose of specific risk, a synthetic long position is created in an obligation of the reference entity. In addition, a long position is created in the specific risk of the issuer of the note.

A first-asset-to-default basket creates a position for the notional amount in an obligation of each reference entity. If the size of the maximum credit event payment is lower than the capital requirement under the method in the first sentence of this sub-paragraph, the maximum payment amount may be taken as the capital requirement for specific risk.

A second-asset-to-default basked product creates a position for the notional amount in an obligation of each reference entity less one (that with the lowest specific risk capital requirement). If the size of the maximum credit event payment is lower than the capital requirement under the method in the first sentence of this sub-paragraph, this amount may be taken as the capital requirement for specific risk.

Where a credit linked note basket product has an external rating and meets the conditions for a qualifying debt item, a single long position with the specific risk of the note issuer may be recorded instead of the specific risk positions for all reference entities.

A basket product providing proportional protection creates a position in each reference entity for the purposes of specific risk, with the total notional amount of the contract assigned across the positions according to the proportion of the total notional amount that each exposure to a reference entity represents. Where more than one obligation of a reference entity can be selected, the obligation with the highest risk weighting determines the specific risk. The maturity of the credit derivative contract is applicable instead of the maturity of the obligation.

For the party who transfers credit risk (the "protection buyer"), the positions are determined as the mirror image of the protection seller, with the exception of a credit linked note (which entails no short position in the issuer). If at a given moment there is a call option in combination with a step-up, such moment is treated as the maturity of the protection. In the case of the *n*th to default credit derivatives, protection buyers are allowed to off-set specific risk for n-1 of the underlyings (i.e., the n-1 assets with the lowest specific risk charge).

🡻 93/6/EEC (adapted)

~~8~~9. ~~However,~~ ~~i~~Institutions which mark to market and manage the interest-rate risk on the derivative instruments covered in paragraphs 4 to 7 on a discounted-cash-flow basis may use sensitivity models to calculate the positions referred to above and may use them for any bond which is amorti~~z~~sed over its residual life rather than via one final repayment of principal. Both the model and its use by the institution must be approved by the competent authorities. These models should generate positions which have the same sensitivity to interest-rate changes as the underlying cash flows. This sensitivity must be assessed with reference to independent movements in sample rates across the yield curve, with at least one sensitivity point in each of the maturity bands set out in Table 2 of paragraph ~~18~~ ⌦ 20 ⌫ . The positions shall be included in the calculation of capital requirements according to the provisions laid down in paragraphs ~~15 to 30~~ ⌦ 17 to 32 ⌫ .

~~9~~10. Institutions which do not use models under paragraph ~~8~~ ⌦ 9 ⌫may ~~instead~~, with the approval of the competent authorities, treat as fully offsetting any positions in derivative instruments covered in paragraphs 4 to 7 which meet the following conditions at least:

(~~i~~a) the positions are of the same value and denominated in the same currency;

(~~ii~~b) the reference rate (for floating-rate positions) or coupon (for fixed-rate positions) is closely matched;

(~~iii~~c) the next interest-fixing date or, for fixed coupon positions, residual maturity corresponds with the following limits:

(i) less than one month hence: same day~~,~~;

(ii) between one month and one year hence: within seven days~~,~~;

(iii) over one year hence: within 30 days.

~~10~~11. The transferor of securities or guaranteed rights relating to title to securities in a repurchase agreement and the lender of securities in a securities lending shall include these securities in the calculation of its capital requirement under this Annex provided that such securities meet the criteria laid down in Article ~~2(6)(a)~~ ⌦ 11 ⌫ .

🡻 93/6/EEC (adapted)

~~11. Positions in units of collective-investment undertakings shall be subject to the capital requirements of Directive 89/647/EEC rather than to position-risk requirements under this Annex.~~

Specific and general risks

12. The position risk on a traded debt instrument or equity (or debt or equity derivative) shall be divided into two components in order to calculate the capital required against it. The first shall be its specific-risk component — this is the risk of a price change in the instrument concerned due to factors related to its issuer or, in the case of a derivative, the issuer of the underlying instrument. The second component shall cover its general risk — this is the risk of a price change in the instrument due (in the case of a traded debt instrument or debt derivative) to a change in the level of interest rates or (in the case of an equity or equity derivative) to a broad equity-market movement unrelated to any specific attributes of individual securities.

TRADED DEBT INSTRUMENTS

13. ~~The institution shall classify its n~~Net positions ⌦ shall be classified ⌫ according to the currency in which they are denominated and shall calculate the capital requirement for general and specific risk in each individual currency separately.

Specific risk

↓ 93/6/EC
⇨ new

14. The institution shall assign its net positions~~, as calculated in accordance with paragraph 1, to the appropriate categories in Table 1 on the basis of their residual maturities and then multiply them by the weightings shown. It shall sum its weighted positions (regardless of whether they are long or short) in order to calculate its capital requirement against specific risk.~~ ⇨ in the trading book, as calculated in accordance with paragraph 1 to the appropriate categories in Table 1 on the basis of their issuer/obligor, external or internal credit assessment, and residual maturity, and then multiply them by the weightings shown. It shall sum its weighted positions (regardless of whether they are long or short) in order to calculate its capital requirement against specific risk. ⇦

↓ 93/6/EEC

~~*Table 1*~~

~~Central government items~~	~~Qualifying items~~			~~Other items~~
	~~Up to 6 months~~	~~Over 6 and up to 24 months~~	~~Over 24 months~~	
~~0,00 %~~	~~0,25 %~~	~~1,00 %~~	~~1,60 %~~	~~8,00 %~~

⇩ new

Table 1

Items	Specific risk capital charge
Debt securities issued or guaranteed by central governments, issued by central banks, international organisations, multilateral development banks or Member States' regional government or local authorities which would receive a 0% risk weighting under the RSA or IRB approaches.	0%
Debt securities issued or guaranteed by central governments, issued by central banks, international organisations, multilateral development banks or Member States' regional governments or local authorities which would receive a 20% or 50% risk weighting under the RSA Other qualifying items as defined in	0.25% (residual term to final maturity six months or less) 1.00% (residual term to final maturity greater than six months and up to and including 24 months) 1.60% (residual term to maturity exceeding

paragraph 15 below	24 months)
All others	8.00%

15. For the purposes of paragraph 14 *qualifying items* shall include:

(a) long and short positions in assets qualifying for a credit quality step corresponding at least to investment grade in the mapping process described in Title V, Chapter 2, Section 3, Sub-section 1 of Directive [2000/12/EC];

(b) long and short positions in assets which, because of the solvency of the issuer, have a PD which is not higher than that of the assets referred to under a) above, under the approach described in Title V, Chapter 2, Section 3, Sub-section 2 of Directive [2000/12/EC];

(c) long and short positions in assets for which a credit assessment by a nominated external credit assessment institution is not available and which meet the following conditions:

(i) they are considered by the institutions concerned to be sufficiently liquid;

(ii) their investment quality is, according to the institution's own discretion, at least equivalent to that of the assets referred to under point a);

(iii) they are listed on at least one regulated market in a Member State or on a stock exchange in a third country provided that the exchange is recognised by the competent authorities of the relevant Member State;

(d) they are, subject to competent authorities discretion, long and short positions in assets issued by institutions subject to the capital adequacy requirements set forth in Directive [2000/12/EC]

The manner in which the debt instruments are assessed shall be subject to scrutiny by the competent authorities, which shall overturn the judgment of the institution if they consider that the instruments concerned are subject to too high a degree of specific risk to be qualifying items;

16. The competent authorities shall require the institution to apply the maximum weighting shown in Table 1 to instruments that show a particular risk because of the insufficient solvency of the issuer of liquidity.

🡻 93/6/EEC

General risk

(a) Maturity-based

🡻 93/6/EEC (adapted)

~~15~~17. The procedure for calculating capital requirements against general risk involves two basic steps. First, all positions shall be weighted according to maturity (as explained in paragraph ~~16~~ ⌦ 18 ⌫), in order to compute the amount of capital required against them. Second, allowance shall be made for this requirement to be reduced when a weighted position is held alongside an opposite weighted position within the same maturity band. A reduction in the requirement shall also be allowed when the opposite weighted positions fall into different maturity bands, with the size of this reduction depending both on whether the two positions fall into the same zone, or not, and on the particular zones they fall into. There are three zones (groups of maturity bands) altogether.

~~16~~18. The institution shall assign its net positions to the appropriate maturity bands in column 2 or 3, as appropriate, in Table 2 ~~appearing~~ in paragraph ~~18~~ ⌦ 20 ⌫ . It shall do so on the basis of residual maturity in the case of fixed-rate instruments and on the basis of the period until the interest rate is next set in the case of instruments on which the interest rate is variable before final maturity. It shall also distinguish between debt instruments with a coupon of 3 % or more and those with a coupon of less than 3 % and thus allocate them to column 2 or column 3 in Table 2. It shall then multiply each of them by the weighing for the maturity band in question in column 4 in Table 2.

↓ 93/6/EEC

~~17~~19. It shall then work out the sum of the weighted long positions and the sum of the weighted short positions in each maturity band. The amount of the former which are matched by the latter in a given maturity band shall be the matched weighted position in that band, while the residual long or short position shall be the unmatched weighted position for the same band. The total of the matched weighted positions in all bands then be calculated.

~~18~~20. The institution shall compute the totals of the unmatched weighted long positions for the bands included in each of the zones in Table 2 in order to derive the unmatched weighted long position for each zone. Similarly the sum of the unmatched weighted short positions for each band in a particular zone shall be summed to compute the unmatched weighted short position for that zone. That part of the unmatched weighted long position for a given zone that is matched by the unmatched weighted short position for the same zone shall be the matched weighted position for that zone. That part of the unmatched weighted long or unmatched weighted short position for a zone that cannot be thus matched shall be the unmatched weighted position for that zone.

Table 2

Zone	Maturity band		Weighting (in %)	Assumed interest rate change (in %)
	Coupon of 3 % or more	Coupon of less than 3 %		
One	0 ≤ 1 month	0 ≤ 1 month	0.00	—
	> 1 ≤ 3 months	> 1 ≤ 3 months	0.20	1.00
	> 3 ≤ 6 months	> 3 ≤ 6 months	0.40	1.00
	> 6 ≤ 12 months	> 6 ≤ 12 months	0.70	1.00
Two	> 1 ≤ 2 years	> 1,0 ≤ 1,9 years	1.25	0.90

	> 2 ≤ 3 years	> 1,9 ≤ 2,8 years	1.75	0.80
	> 3 ≤ 4 years	> 2,8 ≤ 3,6 years	2.25	0.75
Three	> 4 ≤ 5 years	> 3,6 ≤ 4,3 years	2.75	0.75
	> 5 ≤ 7 years	> 4,3 ≤ 5,7 years	3.25	0.70
	> 7 ≤ 10 years	> 5,7 ≤ 7,3 years	3.75	0.65
	> 10 ≤ 15 years	> 7,3 ≤ 9,3 years	4.50	0.60
	> 15 ≤ 20 years	> 9,3 ≤ 10,6 years	5.25	0.60
	> 20 years	> 10,6 ≤ 12,0 years	6.00	0.60
		> 12,0 ≤ 20,0 years	8.00	0.60
		> 20 years	12.50	0.60

🡻 93/6/EC (adapted)

~~19~~21. The amount of the unmatched weighted long (short) position in zone one which is matched by the unmatched weighted short (long) position in zone two shall then be computed. This shall be referred to in paragraph ~~23~~ ⌦ 25⌫ as the matched weighted position between zones one and two. The same calculation shall then be undertaken with regard to that part of the unmatched weighted position in zone two which is left over and the unmatched weighted position in zone three in order to calculate the matched weighted position between zones two and three.

~~20~~22. The institution may, if it wishes, reverse the order in paragraph ~~19~~ ⌦ 21 ⌫ so as to calculate the matched weighted position between zones two and three before working out that between zones one and two.

🡻 93/6/EEC (adapted)

~~21~~23. The remainder of the unmatched weighted position in zone one shall then be matched with what remains of that for zone three after the latter's matching with zone two in order to derive the matched weighted position between zones one and three.

~~22~~24. Residual positions, following the three separate matching calculations in paragraphs ~~19, 20 and 21~~ ⌦ 21, 22 and 23, ⌫ shall be summed.

~~23~~25. The institution's capital requirement shall be calculated as the sum of:

(a) 10 % of the sum of the matched weighted positions in all maturity bands;

(b) 40 % of the matched weighted position in zone one;

(c) 30 % of the matched weighted position in zone two;

(d) 30 % of the matched weighted position in zone three;

(e) 40 % of the matched weighted position between zones one and two and between zones two and three (see paragraph ~~19~~ ⌦ 21 ⌫);

(f) 150 % of the matched weighted position between zones one and three;

(g) 100 % of the residual unmatched weighted positions.

(b) Duration-based

~~24~~26. The competent authorities in a Member State may allow institutions in general or on an individual basis to use a system for calculating the capital requirement for the general risk on traded debt instruments which reflects duration instead of the system set out in paragraphs ~~15 to 23~~ ⌦ 17 to 25 ⌫ , provided that the institution does so on a consistent basis.

↓ 93/6/EC (adapted)

~~25~~27. Under ~~such~~ a system ⌦ referred to in paragraph 26 ⌫ the institution shall take the market value of each fixed-rate debt instrument and thence calculate its yield to maturity, which is implied discount rate for that instrument. In the case of floating-rate instruments, the institution shall take the market value of each instrument and thence calculate its yield on the assumption that the principal is due when the interest rate can next be changed.

↓ 93/6/EEC

~~26~~28. The institution shall then calculate the modified duration of each debt instrument on the basis of the following formula: modified duration = ((duration (D))/(1 + r)), where:

D	=	$((\sum_{t=1}^{m}((t\,C_t)/((1+r)^t)))/(\sum_{t=1}^{m}((C_t)/((1+r)^t))))$

where:		
R	=	yield to maturity (see paragraph 25),
C_t	=	cash payment in time t,
M	=	total maturity (see paragraph 25).

~~27~~29. The institution shall then allocate each debt instrument to the appropriate zone in Table 3. It shall do so on the basis of the modified duration of each instrument.

Table 3

Zone	Modified duration	Assumed interest

	(in years)	(change in %)
One	> 0 ≤ 1,0	1.0
Two	> 1,0 ≤ 3,6	0.85
Three	> 3,6	0.7

~~28~~30. The institution shall then calculate the duration-weighted position for each instrument by multiplying its market price by its modified duration and by the assumed interest-rate change for an instrument with that particular modified duration (see column 3 in Table 3).

~~29~~31. The institution shall work out its duration-weighted long and its duration-weighted short positions within each zone. The amount of the former which are matched by the latter within each zone shall be the matched duration-weighted position for that zone.

↓ 93/6/EEC (adapted)

The institution shall then calculate the unmatched duration-weighted positions for each zone. It shall then follow the procedures laid down for unmatched weighted positions in paragraphs ~~19 to 22~~ ⌦ 21 to 24 ⌫ .

↓ 93/6/EC

~~30~~32. The institution's capital requirement shall then be calculated as the sum of:

(a) 2 % of the matched duration-weighted position for each zone;

(b) 40 % of the matched duration-weighted positions between zones one and two and between zones two and three;

(c) 150 % of the matched duration-weighted position between zones one and three;

(d) 100 % of the residual unmatched duration-weighted positions.

EQUITIES

~~31~~33. The institution shall sum all its net long positions and all its net short positions in accordance with paragraph 1. The sum of the two figures shall be its overall gross position. The difference between them shall be its overall net position.

Specific risk

↓ 93/6/EEC
⇨ new

~~32.~~34⇨ The institution shall sum all its net long positions and all its net short positions in accordance with paragraph 1. ⇦ It shall multiply its overall gross position by 4 % in order to calculate its capital requirement against specific risk.

↓ 93/6/EC (adapted)

~~33~~35. ~~Notwithstanding paragraph 35~~ ⌦ By derogation to paragraph 34 ⌫, the competent authorities may allow the capital requirement against specific risk to be 2% rather than 4% for those portfolios of equities that an institution holds which meet the following conditions:

↓ 98/31/EC Art. 1.7 and Annex .1(d) (adapted)

(~~i~~a) the equities shall not be those of issuers which have issued only traded debt instruments that currently attract an 8 % requirement in Table 1 ~~appearing in paragraph 14~~ or that attract a lower requirement only because they are guaranteed or secured;

↓ 93/6/EEC

(~~ii~~b) the equities must be adjudged highly liquid by the competent authorities according to objective criteria;

↓ 93/6/EEC (adapted)

(~~iii~~c) no individual position shall comprise more than 5 % of the value of the institution's whole equity portfolio. ~~However~~

⌦ For the purpose of point (c) ⌫, the competent authorities may authori~~z~~se individual positions of up to 10 % provided that the total of such positions does not exceed 50 % of the portfolio.

↓ 93/6/EEC

General risk

~~34~~36. Its capital requirement against general risk shall be its overall net position multiplied by 8 %.

Stock-index futures

🡻 93/6/EEC (adapted)

~~35~~37. Stock-index futures, the delta-weighted equivalents of options in stock-index futures and stock indices collectively referred to hereafter as «stock-index futures», may be broken down into positions in each of their constituent equities. These positions may be treated as underlying positions in the equities in question, ~~;~~ ~~therefore~~ ⌦ and may ⌫, subject to the approval of the competent authorities, ~~they may~~ be netted against opposite positions in the underlying equities themselves.

🡻 93/6/EEC

~~36~~38. The competent authorities shall ensure that any institution which has netted off its positions in one or more of the equities constituting a stock-index future against one or more positions in the stock-index future itself has adequate capital to cover the risk of loss caused by the future's values not moving fully in line with that of its constituent equities; they shall also do this when an institution holds opposite positions in stock-index futures which are not identical in respect of either their maturity or their composition or both.

🡻 93/6/EEC (adapted)

~~37~~39. ~~Notwithstanding~~ ⌦ By derogation to ⌫ paragraphs ~~35 and 36~~ ⌦ 37 and 38 ⌫, stock-index futures which are exchange traded and — in the opinion of the competent authorities — represent broadly diversified indices shall attract a capital requirement against general risk of 8 %, but no capital requirement against specific risk. Such stock-index futures shall be included in the calculation of the overall net position in paragraph ~~31~~ ⌦ 33 ⌫, but disregarded in the calculation of the overall gross position in the same paragraph.

🡻 93/6/EEC

~~38~~40. If a stock-index future is not broken down into its underlying positions, it shall be treated as if it were an individual equity. However, the specific risk on this individual equity can be ignored if the stock-index future in question is exchange traded and, in the opinion of the competent authorities, represents a broadly diversified index.

UNDERWRITING

🡻 93/6/EEC (adapted)

~~39~~41. In the case of the underwriting of debt and equity instruments, the competent authorities may allow an institution to use the following procedure in calculating its capital requirements. Firstly, it shall calculate the net positions by deducting the underwriting positions which are subscribed or sub-underwritten by third parties on the basis of formal agreements~~; secondly~~. Secondly, it shall reduce the net positions by the ~~following~~ reduction factors~~:~~ ⌦ in Table 4 ⌫

Table 4

— working day 0:	100 %
— working day 1:	90 %
— working days 2 to 3:	75 %
— working day 4:	50 %
— working day 5:	25 %
— after working day 5:	0 %.

🡻 93/6/EEC

Working day zero shall be the working day on which the institution becomes unconditionally committed to accepting a known quantity of securities at an agreed price.

Thirdly, it shall calculate its capital requirements using the reduced underwriting positions.

The competent authorities shall ensure that the institution holds sufficient capital against the risk of loss which exists between the time of the initial commitment and working day 1.

⇩ new

SPECIFIC RISK CAPITAL CHARGES FOR TRADING BOOK POSITIONS HEDGED BY CREDIT DERIVATIVES

42. An allowance shall be given for protection provided by credit derivatives, in accordance with the principles set out in paragraphs 43 to 46.

43. Full allowance shall be given when the value of two legs always move in the opposite direction and broadly to the same extent. This will be the case in either of the following situations:

(a) the two legs consist of completely identical instruments;

(b) a long cash position is hedged by a total rate of return swap (or vice versa) and there is an exact match between the reference obligation and the underlying exposures (i.e., the cash position). The maturity of the swap itself may be different from that of the underlying exposure.

In these cases, a specific risk capital charge should not be applied to either side of the position.

44. An 80% offset will be applied when the value of two legs always move in the opposite direction and where there is an exact match in terms of the reference obligation, the maturity of both the reference obligation and the credit derivative, and the currency of the underlying exposure. In addition, key features of the credit derivative contract should not cause the price movement of the credit derivative to materially deviate from the price movements of the cash

position. To the extent that the transaction transfers risk, an 80% specific risk offset will be applied to the side of the transaction with the higher capital charge, while the specific risk requirements on the other side shall be zero.

45. Partial allowance shall be given when the value of two legs usually move in the opposite direction. This would be the case in the following situations:

(a) the position is captured in paragraph 43(b) but there is an asset mismatch between the reference obligation and the underlying exposure. However, the positions meet the following requirements:

  (i) the reference obligation ranks pari passu with or is junior to the underlying obligation;

  (ii) the underlying obligation and reference obligation share the same obligor and have legally enforceable cross-default or cross-acceleration clauses;

(b) the position is captured in paragraph 43(a) or paragraph 44 but there is a currency or maturity mismatch between the credit protection and the underlying asset (currency mismatches should be included in the normal reporting foreign exchange risk under Annex III;

(c) the position is captured in paragraph 44 but there is an asset mismatch between the cash position and the credit derivative. However, the underlying asset is included in the (deliverable) obligations in the credit derivative documentation.

In each of those cases, rather than adding the specific risk capital requirements for each side of the transaction, only the higher of the two capital requirements shall apply.

46. In all cases not falling under paragraph 45, a specific risk capital charge will be assessed against both sides of the position.

CAPITAL CHARGES FOR CIUS IN THE TRADING BOOK

47. The capital requirements for positions in collective investment undertakings (CIUs) which meet the conditions specified in Article 11 for a trading book capital treatment, shall be calculated in accordance with the methods set out in paragraphs 48 to 56.

48. Without prejudice to other provisions in this section, positions in CIUs shall be subject to a capital requirement for position risk (specific and general) of 32%. Without prejudice to provisions in Annex III (3)(i) or Annex V (13)(v), where the modified gold treatment set out in those paragraphs is used, positions in CIUs shall be subject to a capital requirement for position risk (specific and general) and foreign-exchange risk of no more than 40%.

49. Institutions may determine the capital requirement for positions in CIUs which meet the criteria set out in paragraph 51, by the methods set out in paragraphs 53 to 56.

50. Unless noted otherwise, no netting is permitted between the underlying investments of a CIU and other positions held by the institution.

GENERAL CRITERIA

51. The general eligibility criteria for using the methods in paragraphs 53 to 56, for CIUs issued by companies supervised or incorporated within the Community are that:

(a) the CIU's prospectus or equivalent document shall include:

(i) the categories of assets the CIU is authorised to invest in;

(ii) if investment limits apply, the relative limits and the methodologies to calculate them;

(iii) if leverage is allowed, the maximum level of leverage;

(iv) if investment in OTC financial derivatives or repo-style transactions are allowed, a policy to limit counterparty risk arising from these transactions;

(b) the business of the CIU shall be reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period;

(c) the units/shares of the CIU are redeemable in cash, out of the undertaking's assets, on a daily basis at the request of the unit holder;

(d) investments in the CIU shall be segregated from the assets of the CIU manager;

(e) there shall be adequate risk assessment, by the investing institution, of the CIU.

52. Third country CIUs may be eligible if the requirements in points (a) to (e) of paragraph 51 are met, subject to the approval of the institution's competent authority.

SPECIFIC METHODS

53. Where the institution is aware of the underlying investments of the CIU on a daily basis the institution may look through to those underlying investments in order to calculate the capital requirements for position risk (general and specific) for those positions in accordance with the methods set out in this Annex or, if permission has been granted, in accordance with the methods set out in Annex V. Under this approach, positions in CIUs shall be treated as positions in the underlying investments of the CIU. Netting is permitted between positions in the underlying investments of the CIU and other positions held by the institution, as long as the institution holds a sufficient quantity of units to allow for redemption/creation in exchange for the underlying investments.

54. Institutions may calculate the capital requirements for position risk (general and specific) for positions in CIUs in accordance with the methods set out in this Annex or, if permission has been granted, in accordance with the methods set out in Annex V, to assumed positions representing those necessary to replicate the composition and performance of the externally generated index or fixed basket of equities or debt securities referred to in (a), subject to the following conditions:

(a) the purpose of the CIU's mandate is to replicate the composition and performance of an externally generated index or fixed basket of equities or debt securities;

(b) a minimum correlation of 0.9 between daily price movements of the CIU and the index or basket of equities or debt securities it tracks can be clearly established over a minimum period of six months. Correlation in this context means the correlation coefficient between daily returns on the exchange traded fund and the index or basket of equities or debt securities it tracks.

55. Where the institution is not aware of the underlying investments of the CIU on a daily basis, the institution may calculate the capital requirements for position risk (general and specific) in accordance with the methods set out in this Annex, subject to the following conditions:

(a) it will be assumed that the CIU first invests to the maximum extent allowed under its mandate in the asset classes attracting the highest capital requirement for position risk (general and specific), and then continues making investments in descending order until the maximum total investment limit is reached. The position in the CIU will be treated as a direct holding in the assumed position;

(b) institutions shall take account of the maximum indirect exposure that they could achieve by taking leveraged positions through the CIU when calculating their capital requirement for position risk, by proportionally increasing the position in the CIU up to the maximum exposure to the underlying investment items resulting from the investment mandate;

(c) should the capital requirement for position risk (general and specific) under this approach exceed that set out in paragraph 48, the capital requirement shall be capped at that level.

56. Institutions may rely on a third party to calculate and report capital requirements for position risk (general and specific) for positions in CIUs falling within paragraphs 53 and 55, in accordance with the methods set out in this Annex, provided that the correctness of the calculation and the report is adequately ensured.

↓ 93/6/EEC (adapted)

ANNEX II

⌦ CALCULATING CAPITAL REQUIREMENTS FOR ⌫ SETTLEMENT AND COUNTER-PARTY RISK

SETTLEMENT/DELIVERY RISK

↓ 98/31/EC Art. 1.7 and Annex .2(a)

1. In the case of transactions in which debt instruments, equities and commodities (excluding repurchase and reverse repurchase agreements and securities or commodities lending and securities or commodities borrowing) are unsettled after their due delivery dates, an institution must calculate the price difference to which it is exposed. This is the difference between the agreed settlement price for the debt instrument, equity or commodity in question and its current market value, where the difference could involve a loss for the institution. It must multiply this difference by the appropriate factor in column A of the table appearing in paragraph 2 in order to calculate its capital requirement.

↓ 93/6/EEC (adapted)

2. ~~Notwithstanding~~ ⌦ By derogation to ⌫ paragraph 1, an institution may, at the discretion of its competent authorities, calculate its capital requirements by multiplying the agreed settlement price of every transaction which is unsettled between 5 and 45 working days after its due date by the appropriate factor in column B of ~~the~~ ~~t~~Table 1~~below~~. As from 46 working days after the due date it shall take the requirement to be 100 % of the price difference to which it is exposed as in column A ⌦ of Table 1⌫ .

⌦ Table 1 ⌫

Number of working days after due settlement date	Column A (%)	Column B (%)
5 — 15	8	0.5
16 — 30	50	4.0
31 — 45	75	9.0
46 or more	100	see paragraph 2

⇩ new

3. An institution shall be required to hold capital against the counterparty risk arising from exposures due to the following:

(a) free deliveries;

(b) OTC derivative instruments and credit derivatives;

(c) Repurchase agreements, reverse repurchase agreements, securities or commodities lending or borrowing transactions based on securities or commodities included in the trading book;

(d) exposures in the form of fees, commission, interest dividends and margin in exchange-traded derivative contracts which are neither covered in this Annex or Annex I, nor deducted from own funds under paragraph 2(d) of Article 13, and which are directly related to the items included in the trading book.

4. For these purposes a free-delivery will be deemed to have occurred if the institution has paid for securities or commodities before receiving them or it has delivered securities or commodities before receiving payment for them, and, in the case of cross-border transactions, one day or more has elapsed since it made that payment or delivery.

5. Subject to paragraphs 6 to 9, exposure values and risk-weighted exposure amounts for such exposures shall be calculated in accordance with the provisions of Title V, Chapter 2, Section 3 of Directive [2000/12/EC] with references to ‘credit institutions’ in that Section interpreted as references to ‘institutions’, references to ‘parent credit institutions’ interpreted as references to ‘parent institutions’, and with concomitant terms interpreted accordingly.

6. For the purposes of paragraph 5:

Annex IV to Directive [2000/12/EC] shall be considered to be amended to include after point 3(d) the words ‘and credit derivatives’;

Annex III to Directive [2000/12/EC] shall be considered to be amended to include after Table 1(a):

> To obtain a figure for potential future credit exposure in the case of total return swap credit derivatives and credit default swap credit derivatives, the nominal amount of the instrument is multiplied by the following percentages:
>
> Where the reference obligation is one that if it gave rise to a direct exposure of the institution would be a qualifying item for the purposes of Annex I - 5%;
>
> Where the reference obligation is one that if it gave rise to a direct exposure of the institution would not be a qualifying item for the purposes of Annex I - 10%.
>
> However, in the case of a credit default swap, an institution the exposure of which arising from the swap represents a long position in the underlying shall be permitted to use a figure of 0% for potential future credit exposure, unless the credit default

swap is subject to closeout upon the insolvency of the entity the exposure of which arising from the swap represents a short position in the underlying, even though the underlying has not defaulted."

Where the credit derivative provides protection in relation to 'n^{th} to default' amongst a number of underlying obligations, which of the percentage figures prescribed above is to be applied is determined by the obligation with the n^{th} lowest credit quality determined by whether it is one that if incurred by the institution would be a qualifying item for the purposes of Annex I.'

7. For the purposes of paragraph 5, in calculating risk-weighted exposure amounts institutions shall not be permitted to use the Financial Collateral Simple Method, set out in Annex VIII, Part 3, paragraphs 25 to 30 of Directive [2000/12/EC], for the recognition of the effects of financial collateral.

8. For the purposes of paragraph 5, in the case of repurchase transactions and securities or commodities lending or borrowing transactions, all financial instruments and commodities that are eligible to be included in the trading book may be recognised as eligible collateral. For exposures due to OTC derivative instruments booked in the trading book, commodities that are eligible to be included in the trading book may also be recognised as eligible collateral. For the purposes of calculating volatility adjustments where such financial instruments or commodities are lent, sold or provided, or borrowed, purchased or received by way of collateral or otherwise under such a transaction such instruments and commodities shall be treated in the same way as non-main index equities listed on a recognised exchange.

9. For the purposes of paragraph 5, in relation to the recognition of master netting agreements covering repurchase transactions and/or securities or commodities lending or borrowing transactions and/or other capital market-driven transactions netting across positions in the trading book and the non-trading book will only be recognised when the netted transactions fulfil the following conditions:

(a) all transactions are marked to market daily;

(b) any items lent, sold or provided, or borrowed, purchased or received under the transactions may be recognised as eligible financial collateral under Title V, Chapter 2, Section 3, Sub-section 3 of Directive [2000/12/EC] without the application of paragraph 8 of this Annex.

10. Where a credit derivative included in the trading book forms part of an internal hedge and the credit protection is recognised under Directive [2000/12/EC], there shall be deemed not to be counterparty risk arising from the position in the credit derivative.

11. The capital requirement shall be 8% of the total risk-weighted exposure amounts.

↓ 93/6/EEC

~~**Free deliveries**~~

↓ 98/31/EC Art. 1.7 and Annex .2(b)

~~3.1. An institution shall be required to hold capital against counterparty risk if:~~

~~(i) it has paid for securities or commodities before receiving them or it has delivered securities or commodities before receiving payment for them;~~

~~and~~

~~(ii) in the case of cross-border transactions, one day or more has elapsed since it made that payment or delivery.~~

~~3.2. The capital requirement shall be 8 % of the value of the securities or commodities or cash owed to the institution multiplied by the risk weighting applicable to the relevant counterparty.~~

↓ 98/31/EC Art. 1.7 and Annex .2(c)

~~**Repurchase and reverse repurchase agreements, securities or commodities lending and borrowing**~~

~~4.1. In the case of repurchase agreements and securities or commodities lending based on securities or commodities included in the trading book the institution shall calculate the difference between the market value of the securities or commodities and the amount borrowed by the institution or the market value of the collateral, where that difference is positive. In the case of reverse repurchase agreements and securities or commodities borrowing, the institution shall calculate the difference between the amount the institution has lent or the market value of the collateral and the market value of the securities or commodities it has received, where that difference is positive.~~

↓ 93/6/EEC

~~The competent authorities shall take measures to ensure that the excess collateral given is acceptable.~~

~~Furthermore, the competent authorities may allow institutions not to include the amount of excess collateral in the calculations described in the first two sentences of this paragraph if the amount of excess collateral is guaranteed in such a way that the transferor is always assured that the excess collateral will be returned to it in the event of defaults of its counter-party.~~

~~Accrued interest shall be included in calculating the market value of amounts lent or borrowed and collateral.~~

~~4.2. The capital requirement shall be 8 % of the figure produced in accordance with paragraph 4.1, multiplied by the risk weighting applicable to the relevant counter-party.~~

~~**OTC derivative instruments**~~

↓ 98/33/EC Art. 3.2

~~5. In order to calculate the capital requirement on their OTC derivative instruments, institutions shall apply Article II to Directive 89/647/EEC. The risk weightings to be applied to the relevant counterparties shall be determined in accordance with Article 2(9) of this Directive.~~

~~Until 31 December 2006, the competent authorities of Member States may exempt from the application of the methods set out in Annex II OTC contracts cleared by a clearing house where the latter acts as the legal counterparty and all participants fully collateralise on a daily basis the exposure they present to the clearing house, thereby providing a protection covering both the current exposure and the potential future exposure. The competent authorities must be satisfied that the posted collateral gives the same level of protection as collateral which complies with Article 6(1)(a)(7) of Directive 89/647/EEC and that the risk of a build-up of the clearing house's exposures beyond the market value of posted collateral is eliminated. Member States shall inform the Commission of the use they make of this option.~~

↓ 93/6/EEC

~~**OTHER**~~

~~6. The capital requirements of Directive 89/647/EEC shall apply to those exposures in the form of fees, commission, interest, dividends and margin in exchange-traded futures or options contracts which are neither covered in this Annex or Annex I nor deducted from own funds under paragraph 2 (d) of Annex V and which are directly related to the items included in the trading book~~

~~The risk weightings to be applied to the relevant counter-parties shall be determined in accordance with Article 2 (9) of this Directive.~~

🡻 93/6/EEC (adapted)

ANNEX III

⌦ CALCULATING CAPITAL REQUIREMENTS FOR ⌫ FOREIGN-EXCHANGE RISK

🡻 98/31/EC Art. 1.7 and Annex .3(a) (adapted)

1. If the sum of an institution's overall net foreign-exchange position and its net gold position, calculated in accordance with the procedure set out ~~below~~ ⌦ in paragraph 2 ⌫ , exceeds 2 % of its total own funds, it shall multiply the sum of its net foreign-exchange position and its net gold position by 8 % in order to calculate its own-funds requirement against foreign-exchange risk.

~~Until 31 December 2004, the competent authorities may allow institutions to calculate their own-funds requirement by multiplying by 8 % the amount by which the sum of the overall net foreign-exchange position and the net gold position exceeds 2 % of the total own funds.~~

🡻 93/6/EEC (adapted)

2. A two-stage calculation shall be used ⌦ for capital requirements for foreign-exchange risk ⌫.

🡻 98/31/EC Art. 1.7 and Annex .3(b) (adapted)

~~3~~2.1. Firstly, the institution's net open position in each currency (including the reporting currency) and in gold shall be calculated.

This ⌦ net open ⌫ position shall consist of the sum of the following elements (positive or negative):

~~-~~(a) the net spot position (i.e. all asset items less all liability items, including accrued interest, in the currency in question or, for gold, the net spot position in gold),

~~-~~(b) the net forward position (i.e. all amounts to be received less all amounts to be paid under forward exchange and gold transactions, including currency and gold futures and the principal on currency swaps not included in the spot position),

~~-~~(c) irrevocable guarantees (and similar instruments) that are certain to be called and likely to be irrecoverable,

~~-~~(d) net future income/expenses not yet accrued but already fully hedged (at the discretion of the reporting institution and with the prior consent of the competent authorities, net future income/expenses not yet entered in accounting records but already fully hedged by forward foreign-exchange transactions may be included here). Such discretion must be exercised on a consistent basis,

~~-~~(e) the net delta (or delta-based) equivalent of the total book of foreign-currency and gold options,

~~-~~(f) the market value of other (i.e. non-foreign-currency and non-gold) options~~,~~.

~~-~~ ~~a~~Any positions which an institution has deliberately taken in order to hedge against the adverse effect of the exchange rate on its capital ratio may be excluded from the calculation of net open currency positions. Such positions should be of a non-trading or structural nature and their exclusion, and any variation of the terms of their exclusion, shall require the consent of the competent authorities. The same treatment subject to the same conditions as above may be applied to positions which an institution has which relate to items that are already deducted in the calculation of own funds.

⇩ new

For the purposes of the calculation referred to in the first sub-paragraph, in respect of CIUs the actual foreign exchange positions of the CIU shall be taken into account. Institutions may rely on third party reporting of the foreign exchange positions in the CIU, where the correctness of this report is adequately ensured. If an institution is not aware of the foreign exchange positions in a CIU, it shall be assumed that the CIU is invested up to the maximum extent allowed under the CIU's mandate in foreign exchange and institutions shall, for trading book positions, take account of the maximum indirect exposure that they could achieve by taking leveraged positions through the CIU when calculating their capital requirement for foreign exchange risk. This shall be done by proportionally increasing the position in the CIU up to the maximum exposure to the underlying investment items resulting from the investment mandate. The assumed position of the CIU in foreign exchange shall be treated as a separate currency according to the treatment of investments in gold, subject to the modification that, if the direction of the CIU's investment is available, the total long position may be added to the total long open foreign exchange position and the total short position may be added to the total short open foreign exchange position. There would be no netting allowed between such positions prior to the calculation.

🡻 98/31/EC Art. 1.7 and Annex .3(b)

~~3.~~2 The competent authorities shall have the discretion to allow institutions to use the net present value when calculating the net open position in each currency and in gold.

🡻 93/6/EEC
➔1 98/31/EC Art. 1.7 and Annex .3(c)

➔1 ~~4~~2.2. Secondly, net short and long positions in each currency other than the reporting currency and the net long or short position in gold shall be converted at spot rates into the reporting currency. 🡸 They shall then be summed separately to form the total of the net short positions and the total of the net long positions respectively. The higher of these two totals shall be the institution's overall net foreign-exchange position.

↓ 93/6/EEC (adapted)

~~5~~3. ~~Notwithstanding~~ ⌦ By derogation to ⌫ paragraphs 1 ~~to 4~~ ⌦ and 2 ⌫ and pending further coordination, the competent authorities may prescribe or allow institutions to use ~~alternative~~ ⌦ the following ⌫ procedures for the purposes of this Annex.

↓ 93/6/EEC (adapted)

~~6~~3.1. ~~Firstly,~~ ~~t~~The competent authorities may allow institutions to provide lower capital requirements against positions in closely correlated currencies than those which would result from applying paragraphs 1 ~~to 4~~ ⌦ and 2 ⌫ to them. The competent authorities may deem a pair of currencies to be closely correlated only if the likelihood of a loss — calculated on the basis of daily exchange-rate data for the preceding three or five years — occurring on equal and opposite positions in such currencies over the following 10 working days, which is 4 % or less of the value of the matched position in question (valued in terms of the reporting currency) has a probability of at least 99 %, when an observation period of three years is used, or 95 %, when an observation period of five years is used. The own-funds requirement on the matched position in two closely correlated currencies shall be 4 % multiplied by the value of the matched position. The capital requirement on unmatched positions in closely correlated currencies, and all positions in other currencies, shall be 8 %, multiplied by the higher of the sum of the net short or the net long positions in those currencies after the removal of matched positions in closely correlated currencies.

↓ 98/31/EC Art. 1.7 and Annex .3(d) (adapted)

~~7. Secondly, until 31 December 2004, the competent authorities may allow institutions to apply an alternative method to those outlined in paragraphs 1 to 6 for the purposes of this Annex. The capital requirement produced by this method must be sufficient to exceed 2 % of the net open position as measured in paragraph 4 and, on the basis of an analysis of exchange-rate movements during all the rolling 10-working-day periods over the preceding three years, to exceed the likely loss 99 % or more of the time.~~

~~The alternative method described in the first subparagraph may only be used under the following conditions:~~

~~(i) the calculation formula and the correlation coefficients are set by the competent authorities, based on their analysis of exchange-rate movements;~~

~~(ii) the competent authorities review the correlation coefficients regularly in the light of developments in foreign-exchange markets.~~

↓ 93/6/EEC (adapted)

~~8~~3.2. ~~Thirdly,~~ ~~t~~The competent authorities may allow institutions to remove positions in any currency which is subject to a legally binding intergovernmental agreement to limit its variation relative to other currencies covered by the same agreement from whichever of the methods described in paragraphs 1 ~~to 7~~ ⌦, 2 and 3.1 ⌫ that they apply. Institutions shall calculate their matched positions in such currencies and subject them to a capital requirement no lower than half of the maximum permissible variation laid down in the intergovernmental agreement in question in respect of the currencies concerned. Unmatched positions in those currencies shall be treated in the same way as other currencies.

~~Notwithstanding~~ ⌦ By derogation to ⌫ the first ⌦ sub- ⌫ paragraph, the competent authorities may allow the capital requirement on the matched positions in currencies of Member States participating in the second stage of the European monetary union to be 1.6 %, multiplied by the value of such matched positions.

↓ 93/6/EEC (adapted)

~~9. The competent authorities shall notify the Council and Commission of the methods, if any, that they are prescribing or allowing in respect of paragraphs 6 to 8.~~

~~10. The Commission shall report to the Council on the methods referred to in paragraph 9 and, where necessary and with due regard to international developments, shall propose a more harmonized treatment of foreign-exchange risk.~~

↓ 93/6/EEC

~~11~~4. Net positions in composite currencies may be broken down into the component currencies according to the quotas in force.

↓ 98/31/EC Art. 1.7 and Annex .5 (adapted)

ANNEX ~~VIII~~ ⌦ IV ⌫

⌦ CALCULATING CAPITAL REQUIREMENTS FOR ⌫ COMMODITIES RISK

↓ 98/31/EC Art. 1.7 and Annex .5

1. Each position in commodities or commodity derivatives shall be expressed in terms of the standard unit of measurement. The spot price in each commodity shall be expressed in the reporting currency.

↓ 98/31/EC Art. 1.7 and Annex .5 (adapted)

2. Positions in gold or gold derivatives shall be considered as being subject to foreign-exchange risk and treated according to Annex III or Annex V~~III~~, as appropriate, for the purpose of calculating market risk.

3. For the purposes of this Annex, positions which are purely stock financing may be excluded from the commodities risk calculation only.

4. The interest-rate and foreign-exchange risks not covered by other provisions of this Annex shall be included in the calculation of general risk for traded debt instruments and in the calculation of foreign-exchange risk.

5. When the short position falls due before the long position, institutions shall also guard against the risk of a shortage of liquidity which may exist in some markets.

6. For the purpose of paragraph 19, the excess of an institution's long (short) positions over its short (long) positions in the same commodity and identical commodity futures, options and warrants shall be its net position in each commodity.

The competent authorities shall allow positions in derivative instruments to be treated, as laid down in paragraphs 8, 9 and 10, as positions in the underlying commodity.

↓ 98/31/EC Art. 1.7 and Annex .5

7. The competent authorities may regard the following positions as positions in the same commodity:

~~-~~(a) positions in different sub-categories of commodities in cases where the sub-categories are deliverable against each other;

~~and~~

~~-~~(b) positions in similar commodities if they are close substitutes and if a minimum correlation of ~~0,9~~ 0.9 between price movements can be clearly established over a minimum period of one year.

↓ 98/31/EC Art. 1.7 and Annex .5

PARTICULAR INSTRUMENTS

↓ 98/31/EC Art. 1.7 and Annex .5 (adapted)

8. Commodity futures and forward commitments to buy or sell individual commodities shall be incorporated in the measurement system as notional amounts in terms of the standard unit of measurement and assigned a maturity with reference to expiry date.

The competent authorities may allow the capital requirement for an exchange-traded future to be equal to the margin required by the exchange if they are fully satisfied that it provides an accurate measure of the risk associated with the future and that it is at least equal to the capital requirement for a future that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex V~~III~~.

~~Until 31 December 2006 t~~The competent authorities may also allow the capital requirement for an OTC commodity derivatives contract of the type referred to in this paragraph cleared by a clearing house recognised by them to be equal to the margin required by the clearing house if they are fully satisfied that it provides an accurate measure of the risk associated with the derivatives contract and that it is at least equal to the capital requirement for the contract in question that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex V~~III~~.

↓ 98/31/EC Art. 1.7 and Annex .5 (adapted)

9. Commodity swaps where one side of the transaction is a fixed price and the other the current market price shall be incorporated into the maturity ladder approach ⌦, as set out in paragraphs 13 to 18, ⌫ as a series of positions equal to the notional amount of the contract, with one position corresponding with each payment on the swap and slotted into the maturity ladder set out in ~~the t~~Table ~~appearing in paragraph 13~~ ⌦ 1 ⌫. The positions would be long positions if the institution is paying a fixed price and receiving a floating price and short positions if the institution is receiving a fixed price and paying a floating price.

Commodity swaps where the sides of the transaction are in different commodities are to be reported in the relevant reporting ladder for the maturity ladder approach.

↓ 98/31/EC Art. 1.7 and Annex .5 (adapted)

10. Options on commodities or on commodity derivatives shall be treated as if they were positions equal in value to the amount of the underlying to which the option refers, multiplied by its delta for the purposes of this Annex. The latter positions may be netted off against any offsetting positions in the identical underlying commodity or commodity derivative. The delta used shall be that of the exchange concerned, that calculated by the competent authorities or, where none of those is available~~,~~ or for OTC options, that calculated by the institution itself,

subject to the competent authorities being satisfied that the model used by the institution is reasonable.

However, the competent authorities may also prescribe that institutions calculate their deltas using a methodology specified by the competent authorities.

~~The competent authorities shall require that the o~~Other risks, apart from the delta risk, associated with commodity options ~~are~~ ⌦ shall be ⌫ safeguarded against.

The competent authorities may allow the requirement for a written exchange-traded commodity option to be equal to the margin required by the exchange if they are fully satisfied that it provides an accurate measure of the risk associated with the option and that it is at least equal to the capital requirement against an option that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex V~~III~~.

~~Until 31 December 2006 t~~The competent authorities may also allow the capital requirement for an OTC commodity option cleared by a clearing house recognised by them to be equal to the margin required by the clearing house if they are fully satisfied that it provides an accurate measure of the risk associated with the option and that it is at least equal to the capital requirement for an OTC option that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex V~~III~~.

In addition they may allow the requirement on a bought exchange-traded or OTC commodity option to be the same as that for the commodity underlying it, subject to the constraint that the resulting requirement does not exceed the market value of the option. The requirement for a written OTC option shall be set in relation to the commodity underlying it.

🡻 98/31/EC Art. 1.7 and Annex .5 (adapted)

11. Warrants relating to commodities shall be treated in the same way as commodity options ~~under~~ ⌦ referred to in ⌫ paragraph 10.

🡻 98/31/EC Art. 1.7 and Annex .5

12. The transferor of commodities or guaranteed rights relating to title to commodities in a repurchase agreement and the lender of commodities in a commodities lending agreement shall include such commodities in the calculation of its capital requirement under this Annex.

🡻 98/31/EC Art. 1.7 and Annex .5 (adapted)

(a) Maturity ladder approach

13. The institution shall use a separate maturity ladder in line with ~~the following t~~Table 1 for each commodity. All positions in that commodity and all positions which are regarded as positions in the same commodity pursuant to paragraph 7 shall be assigned to the appropriate maturity bands. Physical stocks shall be assigned to the first maturity band.

⌦ *Table 1* ⌫

Maturity band (1)	Spread rate (in %) (2)
0 ≤ 1 month	1.50
> 1 ≤ 3 months	1.50
> 3 ≤ 6 months	1.50
> 6 ≤ 12 months	1.50
> 1 ≤ 2 years	1.50
> 2 ≤ 3 years	1.50
> 3 years	1.50

14. Competent authorities may allow positions which are, or are regarded pursuant to paragraph 7 as, positions in the same commodity to be offset and assigned to the appropriate maturity bands on a net basis for ⌦ the following ⌫ :

~~-~~ (a) positions in contracts maturing on the same date;

~~and~~

~~-~~ (b) positions in contracts maturing within 10 days of each other if the contracts are traded on markets which have daily delivery dates.

🡻 98/31/EC Art. 1.7 and Annex .5

15. The institution shall then work out the sum of the long positions and the sum of the short positions in each maturity band. The amount of the former (latter) which are matched by the latter (former) in a given maturity band shall be the matched positions in that band, while the residual long or short position shall be the unmatched position for the same band.

16. That part of the unmatched long (short) position for a given maturity band that is matched by the unmatched short (long) position for a maturity band further out shall be the matched position between two maturity bands. That part of the unmatched long or unmatched short position that cannot be thus matched shall be the unmatched position.

17. The institution's capital requirement for each commodity shall be calculated on the basis of the relevant maturity ladder as the sum of the following:

(~~i~~a) the sum of the matched long and short positions, multiplied by the appropriate spread rate as indicated in the second column of the table appearing in paragraph 13 for each maturity band and by the spot price for the commodity;

(~~ii~~b) the matched position between two maturity bands for each maturity band into which an unmatched position is carried forward, multiplied by 0,6 % (carry rate) and by the spot price for the commodity;

(~~iii~~c) the residual unmatched positions, multiplied by 15 % (outright rate) and by the spot price for the commodity.

18. The institution's overall capital requirement for commodities risk shall be calculated as the sum of the capital requirements calculated for each commodity according to paragraph 17.

(b) Simplified approach

19. The institution's capital requirement for each commodity shall be calculated as the sum of:

(~~i~~a) 15% of the net position, long or short, multiplied by the spot price for the commodity;

(~~ii~~b) 3% of the gross position, long plus short, multiplied by the spot price for the commodity.

20. The institution's overall capital requirement for commodities risk shall be calculated as the sum of the capital requirements calculated for each commodity according to paragraph 19.

🡻 93/6/EEC Art 11a (adapted)

⌦ **(c) Extended Maturity ladder approach** ⌫

~~Until 31 December 2006, Member States~~ ⌦ Competent authorities ⌫ may authorise ~~their~~ institutions to use the minimum spread, carry and outright rates set out in the following table instead of those indicated in paragraphs 13, 14, 17 and 18 ~~of Annex VII~~ provided that the institutions, in the opinion of their competent authorities:

(a) undertake significant commodities business,

(b) have a diversified commodities portfolio, ~~and~~

(c) are not yet in a position to use internal models for the purpose of calculating the capital requirement on commodities risk in accordance with Annex ⌦ V ⌫ ~~VIII~~.

Table 2

	Precious metals (except gold)	Base metals	Agricultural products (softs)	Other, including energy products
Spread rate (%)	1.0	1.2	1.5	1.5
Carry rate (%)	0.3	0.5	0.6	0.6
Outright	8	10	12	15

rate (%)				

↓ 98/31/EC Art. 1.7 and Annex .5 (adapted)
➔1 98/31/EC Art. 1.7 and Annex .5 amended by Corrigendum, OJ L 248, 8.9.1998, p. 20

ANNEX V~~III~~

⌦ USE OF ⌫ INTERNAL MODELS ⌦ TO CALCULATE CAPITAL REQUIREMENTS ⌫

1. The competent authorities may, subject to the conditions laid down in this Annex, allow institutions to calculate their capital requirements for position risk, foreign-exchange risk and/or commodities risk using their own internal risk-management models instead of or in combination with the methods described in Annexes I, III and ~~VII~~ ⌦ IV ⌫. Explicit recognition by the competent authorities of the use of models for supervisory capital purposes shall be required in each case.

2. Recognition shall only be given if the competent authority is satisfied that the institution's risk-management system is conceptually sound and implemented with integrity and that, in particular, the following qualitative standards are met:

(~~i~~a) the internal risk-measurement model is closely integrated into the daily risk-management process of the institution and serves as the basis for reporting risk exposures to senior management of the institution;

(~~ii~~b) the institution has a risk control unit that is independent from business trading units and reports directly to senior management. The unit must be responsible for designing and implementing the institution's risk-management system. It shall produce and analyse daily reports on the output of the risk-measurement model and on the appropriate measures to be taken in terms of trading limits;

(~~iii~~c) the institution's board of directors and senior management are actively involved in the risk-control process and the daily reports produced by the risk-control unit are reviewed by a level of management with sufficient authority to enforce both reductions of positions taken by individual traders as well as in the institution's overall risk exposure;

(~~iv~~d) the institution has sufficient numbers of staff skilled in the use of sophisticated models in the trading, risk-control, audit and back-office areas;

(~~v~~e) the institution has established procedures for monitoring and ensuring compliance with a documented set of internal policies and controls concerning the overall operation of the risk-measurement system;

(~~vi~~f) the institution's models have a proven track record of reasonable accuracy in measuring risks;

(~~vii~~g) the institution frequently conduct a rigorous programme of stress testing and the results of these tests are reviewed by senior management and reflected in the policies and limits it sets;

(~~viii~~h) the institution must conduct, as part of its regular internal auditing process, an independent review of its risk-measurement system.

~~This~~ ⌦ The ⌫ review ⌦ referred to in point (h) of the first subparagraph ⌫ ~~must~~ ⌦ shall ⌫ include both the activities of the business trading units and of the independent risk-control unit. At least once a year, the institution must conduct a review of its overall risk-management process.

The review ~~must~~ ⌦ shall ⌫ consider ⌦ the following ⌫ :

~~-~~ (a) the adequacy of the documentation of the risk-management system and process and the organisation of the risk-control unit;

~~-~~ (b) the integration of market risk measures into daily risk management and the integrity of the management information system;

~~-~~ (c) the process the institution employs for approving risk-pricing models and valuation systems that are used by front and back-office personnel;

~~-~~ (d) the scope of market risks captured by the risk-measurement model and the validation of any significant changes in the risk-measurement process;

~~-~~ (e) the accuracy and completeness of position data, the accuracy and appropriateness of volatility and correlation assumptions, and the accuracy of valuation and risk sensitivity calculations;

~~-~~ (f) the verification process the institution employs to evaluate the consistency, timeliness and reliability of data sources used to run internal models, including the independence of such data sources;

~~and~~

~~-~~ (g) the verification process the institution uses to evaluate back-testing that is conducted to assess the model's accuracy.

3. The institution shall monitor the accuracy and performance of its model by conducting a back-testing programme. The back-testing has to provide for each business day a comparison of the one-day value-at-risk measure generated ➔1 by the institution's model for the portfolio's end-of-day positions to the one-day change of the portfolio's value ⇐ by the end of the subsequent business day.

Competent authorities shall examine the institution's capability to perform back-testing on both actual and hypothetical changes in the portfolio's value. Back-testing on hypothetical changes in the portfolio's value is based on a comparison between the portfolio's end-of-day value and, assuming unchanged positions, its value at the end of the subsequent day. Competent authorities shall require institutions to take appropriate measures to improve their back-testing programme if deemed deficient.

4. For the purpose of calculating capital requirements for specific risk associated with traded debt and equity positions, the competent authorities may recognise the use of an institution's internal model if, in addition to compliance with the conditions in the remainder of this Annex, the model ⌦ meets the following conditions ⌫ :

(a) it explains the historical price variation in the portfolio;

(b) it captures concentration in terms of magnitude and changes of composition of the portfolio;

(c) it is robust to an adverse environment;

(d) it is validated through back-testing aimed at assessing whether specific risk is being accurately captured. If competent authorities allow this back-testing to be performed on the basis of relevant sub-portfolios, these must be chosen in a consistent manner.

↓ 98/31/EC Art. 1.7 and Annex .5

5. Institutions using internal models which are not recognised in accordance with paragraph 4 shall be subject to a separate capital charge for specific risk as calculated according to Annex I.

6. For the purpose of paragraph 10(ii) the results of the institution's own calculation shall be scaled up by a multiplication factor of at least 3.

↓ 98/31/EC Art. 1.7 and Annex .5 (adapted)

7. The multiplication factor shall be increased by a plus-factor of between 0 and 1 in accordance with ~~the following t~~Table ⌦ 1 ⌫, depending on the number of overshootings for the most recent 250 business days as evidenced by the institution's back-testing. Competent authorities shall require the institutions to calculate overshootings consistently on the basis of back-testing either on actual or on hypothetical changes in the portfolio's value. An overshooting is a one-day change in the portfolio's value that exceeds the related one-day value-at-risk measure generated by the institution's model. For the purpose of determining the plus-factor the number of overshootings shall be assessed at least quarterly.

⌦ *Table 1* ⌫

Number of overshootings	Plus-factor
Fewer than 5	0.00
5	0.40
6	0.50
7	0.65
8	0.75
9	0,85
10 or more	1.00

The competent authorities ~~can~~ ⌦ may ⌫, in individual cases and owing to an exceptional situation, waive the requirement to increase the multiplication factor by the plus-factor according to ~~the above t~~Table ⌦ 1 ⌫, if the institution has demonstrated to the satisfaction of the competent authorities that such an increase is unjustified and that the model is basically sound.

If numerous overshootings indicate that the model is not sufficiently accurate, the competent authorities shall revoke the model's recognition or impose appropriate measures to ensure that the model is improved promptly.

In order to allow competent authorities to monitor the appropriateness of the plus-factor on an ongoing basis, institutions shall notify promptly, and in any case no later than within five working days, the competent authorities of overshootings that result form their back-testing programme and that would according to the above table imply an increase of a plus-factor.

8. If the institution's model is recognised by the competent authorities in accordance with paragraph 4 for the purpose of calculating capital requirements for specific risk, the institution shall increase its capital requirement calculated pursuant to paragraphs 6, 7 and 10 by a surcharge in the amount of either ⌦ of the following ⌫:

(~~i~~a) the specific risk portion of the value-at-risk measure which should be isolated according to supervisory guidelines; or, at the institution's option,

(~~ii~~b) the value-at-risk measures of sub-portfolios of debt and equity positions that contain specific risk.

Institutions using option (~~ii~~ ⌦ b ⌫) are required to identify their sub-portfolio structure beforehand and should not change it without the consent of the competent authorities.

↓ 98/31/EC Art. 1.7 and Annex .5

9. The competent authorities may waive the requirement pursuant to paragraph 8 for a surcharge if the institution demonstrates that in line with agreed international standards its model accurately captures also the event risk and default risk for its traded debt and equity positions.

↓ 98/31/EC Art. 1.7 and Annex .5 (adapted)

10. Each institution must meet a capital requirement expressed as the higher of:

(~~i~~a) its previous day's value-at-risk number measured according to the parameters specified in this Annex;

(~~ii~~b) an average of the daily value-at-risk measures on each of the preceding 60 business days, multiplied by the factor mentioned in paragraph 6, adjusted by the factor ~~mentioned~~ ⌦ referred to ⌫ in paragraph 7.

↓ 98/31/EC Art. 1.7 and Annex .5

11. The calculation of value-at-risk shall be subject to the following minimum standards:

(~~i~~a) at least daily calculation of value-at-risk;

(~~ii~~b) a 99th percentile, one-tailed confidence interval;

(~~iii~~c) a 10-day equivalent holding period;

(~~iv~~d) an effective historical observation period of at least one year except where a shorter observation period is justified by a significant upsurge in price volatility;

(~~v~~e) three-monthly data set updates.

12. The competent authorities shall require that the model captures accurately all the material price risks of options or option-like positions and that any other risks not captured by the model are covered adequately by own funds.

⬇ 98/31/EC Art. 1.7 and Annex .5 (adapted)

13. The ~~competent authorities shall require that the~~ risk-measurement model ⌦ shall ⌫ capture~~s~~ a sufficient number of risk factors, depending on the level of activity of the institution in the respective markets ⌦ and in particular the following ⌫ .

~~As a minimum, the following provisions shall be respected:~~

⌦ Interest rate risk ⌫

~~(i) for interest rate risk, t~~The risk-measurement system shall incorporate a set of risk factors corresponding to the interest rates in each currency in which the institution has interest rate sensitive on- or off-balance sheet positions. The institution shall model the yield curves using one of the generally accepted approaches. For material exposures to interest-rate risk in the major currencies and markets, the yield curve shall be divided into a minimum of six maturity segments, to capture the variations of volatility of rates along the yield curve. The risk-measurement system must also capture the risk of less than perfectly correlated movements between different yield curves~~;~~.

⌦ Foreign-exchange risk ⌫

~~(ii) for foreign-exchange risk, t~~The risk-measurement system shall incorporate risk factors corresponding to gold and to the individual foreign currencies in which the institution's positions are denominated~~;~~.

⇩ new

For CIUs the actual foreign exchange positions of the CIU shall be taken into account. Institutions may rely on third party reporting of the foreign exchange position in the CIU, where the correctness of this report is adequately ensured. If an institution is not aware of the foreign exchange positions in a CIU, it shall be assumed that the CIU is invested up to the maximum extent allowed under the CIU's mandate in foreign exchange and institutions shall, for trading book positions, take account of the maximum indirect exposure that they could achieve by taking leveraged positions through the CIU when calculating their capital requirement for foreign exchange risk. This shall be done by proportionally increasing the position in the CIU up to the maximum exposure to the underlying investment items resulting from the investment mandate. The assumed position of the CIU in foreign exchange shall be treated as a separate currency according to the treatment of investments in gold. If, however, the direction of the CIU's investment is available, the total long position may be added to that the total long open foreign exchange position and the total short position may be added to the total short open foreign exchange position. There would be no netting allowed between such positions prior to the calculation.

🡻 98/31/EC Art. 1.7 and Annex .5 (adapted)

⌦ Equity risk ⌫

~~(iii) for equity risk, t~~The risk-measurement system shall use a separate risk factor at least for each of the equity markets in which the institution holds significant positions~~;~~.

⌦ Commodity risk ⌫

~~(iv) for commodity risk, t~~The risk-measurement system shall use a separate risk factor at least for each commodity in which the institution holds significant positions. The risk-measurement system must also capture the risk of less than perfectly correlated movements between similar, but not identical, commodities and the exposure to changes in forward prices arising from maturity mismatches. It shall also take account of market characteristics, notably delivery dates and the scope provided to traders to close out positions~~;~~.

🡻 98/31/EC Art. 1.7 and Annex .5

14. The competent authorities may allow institutions to use empirical correlations within risk categories and across risk categories if they are satisfied that the institution's system for measuring correlations is sound and implemented with integrity.

↓ 93/6/EEC Annex VI (8) (2) second sentence (adapted)

ANNEX VI

⌦ CALCULATING CAPITAL REQUIREMENTS FOR ⌫ LARGE EXPOSURES

1. The excess referred to in Article ~~29~~ ⌦ 31 ⌫ (b) shall be calculated by selecting those components of the total trading exposure to the client or group of clients in question which attract the highest specific-risk requirements in Annex I and/or requirements in Annex II, the sum of which equals the amount of the excess referred to in Article ~~29~~ ⌦ 31 ⌫ (a).

2. Where the excess has not persisted for more than 10 days, the additional capital requirement shall be 200 % of the requirements referred to in paragraph 1, on these components.

3. As from 10 days after the excess has occurred, the components of the excess, selected in accordance with paragraph 1, shall be allocated to the appropriate line in column 1 of Table I in ascending order of specific-risk requirements in Annex I and/or requirements in Annex II. The additional capital requirement shall be equal to the sum of the specific-risk requirements in Annex I and/or the Annex II requirements on these components multiplied by the corresponding factor in column 2 of Table I.

⌦ *Table 1* ⌫

Excess over the limits (on the basis of a percentage of own funds)	Factors
Up to 40 %	200 %
From 40 % to 60 %	300 %
From 60 % to 80 %	400 %
From 80 % to 100 %	500 %
From 100 % to 250 %	600 %
Over 250 %	900 %

↑

⇩ new

ANNEX VII

TRADING

PART A - TRADING INTENT

1. Positions/portfolios held with trading intent shall comply with the following requirements:

(a) there must be a clearly documented trading strategy for the position/instrument or portfolios, approved by senior management, which shall include expected holding horizon;

(b) there must be clearly defined policies and procedures for the active management of the position, which shall include the following:

(i) positions entered into on a trading desk;

(ii) position limits are set and monitored for appropriateness;

(iii) dealers have the autonomy to enter into/manage the position within agreed limits and according to the agreed strategy;

(iv) positions are reported to senior management as an integral part of the institution's risk management process;

(v) positions are actively monitored with reference to market information sources and an assessment made of the marketability or hedge-ability of the position or its component risks, including the assessment of, in particular, the quality and availability of market inputs to the valuation process, level of market turnover, sizes of positions traded in the market;

(c) there must be clearly defined policy and procedures to monitor the position against the institution's trading strategy including the monitoring of turnover and sale positions in the institution's trading book.

PART B - SYSTEMS AND CONTROLS

1. Institutions shall establish and maintain systems and controls sufficient to provide prudent and reliable valuation estimates.

2. Systems and controls shall include at least the following elements:

(a) documented policies and procedures for the process of valuation. This includes clearly defined responsibilities of the various areas involved in the determination of the valuation, sources of market information and review of their appropriateness, frequency of independent valuation, timing of closing prices, procedures for adjusting valuations, month end and ad-hoc verification procedures;

(b) clear and independent (i.e. independent of front office) reporting lines for the department accountable for the valuation process.

The reporting line shall ultimately be to a main board executive director.

Prudent Valuation Methods

3. Marking to market is the at least daily valuation of positions at readily available close out prices that are sourced independently. Examples include exchange prices, screen prices, or quotes from several independent reputable brokers.

4. When marking to market, the more prudent side of bid/offer shall be used unless the institution is a significant market maker in the particular type of financial instrument or commodity in question and it can close out at mid market.

5. Where marking to market is not possible, institutions must mark to model their positions/portfolios before applying trading book capital treatment. Marking to model is defined as any valuation which has to be benchmarked, extrapolated or otherwise calculated from a market input.

6. The following requirements must be complied with when marking to model:

(a) senior management shall be aware of the elements of the trading book which are subject to mark to model and shall understand the materiality of the uncertainty this creates in the reporting of the risk/performance of the business;

(b) market inputs shall be sourced, where possible, in line with market prices, and the appropriateness of the market inputs of the particular position being valued and the parameters of the model shall be assessed on a daily basis;

(c) where available, valuation methodologies which are accepted market practice for particular financial instruments or commodities shall be used;

(d) where the model is developed by the institution itself, it shall be based on appropriate assumptions, which have been assessed and challenged by suitably qualified parties independent of the development process;

(e) there shall be formal change control procedures in place and a secure copy of the model shall be held and periodically used to check valuations;

(f) risk management shall be aware of the weaknesses of the models used and how best to reflect those in the valuation output;

(g) the model shall be subject to periodic review to determine the accuracy of its performance (e.g. assessing the continued appropriateness of assumptions, analysis of P&L versus risk factors, comparison of actual close out values to model outputs).

For the purposes of point (d), the model shall be developed or approved independently of the front office. If shall be independently tested. This includes validating the mathematics, the assumptions and the software implementation

7. Independent price verification should be performed in addition to daily marking to market or marking to model. This is the process by which market prices or model inputs are regularly verified for accuracy and independence. While daily marking to market may be performed by dealers, verification of market prices and model inputs should be performed by a unit independent of the dealing room, at least monthly (or, depending on the nature of the market/trading activity, more frequently). Where independent pricing sources are not available or pricing sources are more subjective, prudent measures such as valuation adjustments may be appropriate.

Valuation adjustments or reserves

8. Institutions shall establish and maintain procedures for considering valuation adjustments/reserves.

General standards

9. The competent authorities shall require the following valuation adjustments/reserves to be formally considered: unearned credit spreads, close-out costs, operational risks, early termination, investing and funding costs, future administrative costs and, where relevant, model risk.

Standards for less liquid items

10. Less liquid positions could arise from both market events and institution-related situations e.g. concentrated positions and/or stale positions.

11. Institutions shall consider several factors when determining whether a valuation reserve is necessary for less liquid items. These factors include the amount of time it would take to hedge out the position/risks within the position, the volatility and average of bid/offer spreads, the availability of market quotes (number and identity of market makers) and the volatility and average of trading volumes.

12. When using third party valuations or marking to model, institutions shall consider whether to apply a valuation adjustment. In addition, institutions shall consider the need for establishing reserves for less liquid position and on an ongoing basis review their continued suitability.

13. When valuation adjustments/reserves give rise to material losses of the current financial year, these shall be deducted from an institution's original own funds according to point (k) of Article 57 of Directive [2000/12/EC].

14. Other profits/losses originating from valuation adjustments/reserves shall be included in the calculation of "net trading book profits" mentioned in point (2)(b) of Article 13 and be added to/deducted from the additional own funds eligible to cover market risk requirements according to such provisions.

PART C – INTERNAL HEDGES

1. An internal hedge is a position that materially or completely offsets the component risk element of a non-trading book position or a set of positions. Positions arising from internal hedges are eligible for trading book capital treatment, provided that they are held with trading intent and that the general criteria on trading intent and prudent valuation specified in Parts A and B are met. In particular:

(a) internal hedges shall not be primarily intended to avoid or reduce capital requirements;

(b) internal hedges shall be properly documented and subject to particular internal approval and audit procedures;

(c) the internal transaction shall be dealt with at market conditions;

(d) the bulk of the market risk that is generated by the internal hedge shall be dynamically managed in the trading book within the authorised limits;

(e) internal transactions shall be carefully monitored.

Monitoring must be ensured by adequate procedures.

2. The treatment referred to in paragraph 1 applies without prejudice to the capital requirements applicable to the "non-trading book leg" of the internal hedge.

ANNEX VIII

REPEALED DIRECTIVES

PART A

REPEALED DIRECTIVES TOGETHER WITH THEIR SUCCESSIVE AMENDMENTS

(referred to in Article 48)

Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investments firms and credit institutions

Directive 98/31/EC of the European Parliament and of the Council of 22 June 1998 amending Council Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions

Directive 98/33/EC of the European Parliament and of the Council of 22 June 1998 amending Article 12 of Council Directive 77/780/EEC on the taking up and pursuit of the business of credit institutions, Articles 2, 5, 6, 7, 8 of and Annexes II and III to Council Directive 89/647/EEC on a solvency ratio for credit institutions and Article 2 of and Annex II to Council Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions

Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council,

Only Art. 26

Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC

Only Art. 67

PART B

DEADLINES FOR IMPLEMENTATION

(referred to in Article 48)

Directive		Deadline for implementation
Council Directive 93/6/EEC		1.7.1995

Directive 98/31/EC		21.7.2000
Directive 98/33/EC		21.7.2000
Directive 2002/87/EC		11.8.2004
Directive 2004/39/EC		Not yet available
Directive 2004/xx/EC		Not yet available

⇩ new

ANNEX IX

CORRESPONDANCE TABLE

This Directive	Directive 93/6/EEC	Directive 98/31/EC	Directive 98/33/EC	Directive 2002/87/EC	Directive 2004/39/EC
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Article 3(3)(c)	Article 7(3)				

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