EUROPEAN COMMISSION
Internal Market and Services DG

FINANCIAL INSTITUTIONS
Banking and financial conglomerates

CRD POTENTIAL CHANGES
Co-decision
Comitology

This document is a working document of the Commission services for discussion and consultation purposes. It does not purport to represent or pre-judge the formal proposal of the Commission.

Public consultation on possible changes to the Capital Requirements Directive (CRD, consisting of Directives 2006/48/EC and 2006/49/EC)

I. Introduction

The purpose of this working document is to consult the industry and other interested parties on potential changes to the "Capital Requirements Directive"[1] with regard to large exposures, hybrid capital instruments, supervisory arrangements, the waivers for cooperative banks organised in networks and adjustments to certain technical provisions.

The changes on which views of stakeholders are being sought, in part, reflect a response to the credit market turmoil that emerged mid-2007 and the "Roadmap" of responses agreed by the ECOFIN Council in October 2007[2], and confirmed by the European Council on 14 March 2008, while other changes reflect work that has already been underway for a number of years.

II. Procedure

The amendments would be made using two different legislative instruments:

1. An amending directive proposed by the Commission and adopted by the Council and European Parliament under the "co-decision procedure" in accordance with the EC Treaty. This directive should include amendments on: large exposures, hybrids, cooperation between supervisors and 'home/host' issues, the extension of the waivers for co-operative bank networks and some of the technical changes to the CRD annexes (those in Annex III of Directive 2006/48/EC to which the "comitology" procedure does not apply). This directive would be a "Level 1" measure under the Lamfalussy approach;

2. An implementing directive to be adopted by the Commission with the approval of the European Banking Committee ("comitology" procedure), which would incorporate certain technical changes to the annexes of the CRD. This directive would be a "Level 2" measure under the Lamfalussy approach. The adoption of this directive will comply with the inter-institutional agreement that applies to this procedure.

III. Consultation procedure

3. There are six different sections covering the following issues:

   A. Large exposures

   B. Hybrid capital instruments

   C. Supervisory arrangements

   D. Waivers for cooperative bank networks and other technical amendments

[1] also referred to as the CRD; this collectively denotes Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions.

[2] http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ecofin/96375.pdf

E. Technical amendments to Directive 2006/48/EC

F. Technical amendments to Directive 2006/49/EC

4. The main target group for this consultation consists of credit institutions and investment firms and their professional associations. However, any interested stakeholder is invited to comment.

5. Responses should only be sent to the following e-mail address: markt-crd2008-survey@ec.europa.eu

6. The deadline for contributions is 16 June 2008.

7. All contributions will be published on the web site http://circa.europa.eu/Public/irc/markt/markt_consultations/library?l=/financial_services/cross-sector_issues&vm=detailed&sb=Title unless the respondent indicates that the contribution shall be treated confidentially. General confidentiality disclaimers that often appear at the bottom of emails will be disregarded unless an explicit request for confidentiality is made in the body of the response. A summary of responses will be published on the same web site at the end of June 2008.

8. The responses to this consultation will provide guidance to the Commission services for the next step i.e. the preparation of a Commission proposal that is scheduled to be adopted in September 2008.

This document is a working document of the Commission services for discussion and consultation purposes. It does not purport to represent or pre-judge the formal proposal of the Commission.

This working document includes:
Text in 'strikethrough' - this represents the current provisions in the CRD, for which amendments are being proposed;
'Underlined' text - this constitutes the proposed new text;
'Unmarked' text – text related to the above, which remains unchanged.

AMENDMENTS SUBJECT TO THE CO-DECISION PROCEDURE

A. LARGE EXPOSURES

The current CRD provisions are based on the general assumption that banks spread their exposures. However despite this, banks could still be exposed to the same client or a group of connected clients; such a concentration of risk could, in extreme situations, lead to the loss of the full exposure or of its part. To prevent against this, prudential rules currently limit such "large exposures" to a percentage of the own funds of a bank.

The existing large exposures regime in the CRD has broadly remained unchanged for 16 years and needs to be updated to take account of market developments as well as the evolution of risk management practices within institutions.

In response to the Commission services' request to the Committee of European Banking Supervisors (CEBS) for advice on the review of the large exposures, the latter consulted the industry. The final advice was published on 3 April 2008 [http://www.c-ebs.org/press/20080403_LE.htm].

Changes to Directive 2006/48/EC

Article 4, paragraphs 6 and 45

(6) 'institutions', for the purposes of Sections 2~~, and~~ 3 and 5 of Title V, Chapter 2, means institutions as defined in Article 3(1)(c) of Directive 2006/49/EC;

(45) 'group of connected clients' means:

(a) two or more natural or legal persons who, unless it is shown otherwise, constitute a single risk because one of them, directly or indirectly, has control over the other or others; or
(b) two or more natural or legal persons between whom there is no relationship of control as set out in point (a) but who are to be regarded as constituting a single risk because they

are so interconnected that, if one of them were to experience financial problems, in particular funding or repayment difficulties, the other or all of the others would be likely to encounter funding or repayment difficulties.

Article 106

1. 'Exposures', for the purposes of this Section, shall mean any asset or off-balance-sheet item referred to in Section 3, Subsection 1, without application of the risk weights or degrees of risk there provided for.

Exposures arising from the items referred to in Annex IV shall be calculated in accordance with one of the methods set out in Annex III. For the purposes of this Section, Annex III, Part 2, point 2 shall also apply.

All elements entirely covered by own funds may, with the agreement of the competent authorities, be excluded from the determination of exposures, provided that such own funds are not included in the credit institution's own funds for the purposes of Article 75 or in the calculation of other monitoring ratios provided for in this Directive and in other Community acts.

For the purpose of this Section own funds shall mean own funds as referred to in Article 57 without deducting items referred to in Article 57(q) and accepting items referred to in Article 63(3).

2. Exposures shall not include either of the following:

(a) in the case of foreign exchange transactions, exposures incurred in the ordinary course of settlement during the 48 hours following payment; or

(b) in the case of transactions for the purchase or sale of securities, exposures incurred in the ordinary course of settlement during the five working days following payment or delivery of the securities, whichever is the earlier.

3. In respect of exposures referred to in Article 79, paragraph 1, points m, o and p, where there is an exposure to underlying assets, a credit institution shall look through to the underlying exposures where it is aware of them in order to determine the existence of a group of connected clients.

Article 107

Notwithstanding Article 4 paragraph (1), ~~F~~for the purposes of calculating the value of exposures in accordance with~~applying~~ this Section, the term 'credit institution' shall also cover ~~the following:~~

~~(a) a credit institution, including its branches in third countries; and~~

~~(b)~~ any private or public undertaking, including its branches, which meets the definition of 'credit institution' and has been authorised in a third country.

Article 108

A credit institution's exposure to a client or group of connected clients shall be considered a large exposure where its value is equal to or exceeds 10 % of its own funds.

Article 109

The competent authorities shall require that every credit institution have sound administrative and accounting procedures and adequate internal control mechanisms for the purposes of identifying and recording all large exposures and subsequent changes to them, in accordance with this Directive, and for that of monitoring those exposures in the light of each credit institution's own exposure policies.

Article 110

1. A credit institution shall report the following information about every large exposure to the competent authorities, including those exempted from the application of Article 111(1):~~.~~

a) the identification of the client or the group of connected clients to which a credit institution has a large exposure;

b) the exposure value before taking into account the effect of the credit risk mitigation, to the extent possible;

c) where used, the type of funded or unfunded credit protection;

d) the exposure value after taking into account the effect of the credit risk mitigation calculated for the purpose of Article 111(1).

If a credit institution is subject to Articles 84 to 89, its 20 largest exposures on a consolidated basis, excluding those exempted from the application of Article 111(1), shall be made available to the competent authorities.

2. Member States shall provide that reporting is to be carried out not less than twice each year.~~, at their discretion, in accordance with one of the following two methods:~~

~~(a) reporting of all large exposures at least once a year, combined with reporting during the year of all new large exposures and any increases in existing large exposures of at least 20 % with respect to the previous communication; or~~

~~(b) reporting of all large exposures at least four times a year.~~

~~2. Except in the case of credit institutions relying on Article 114 for the recognition of collateral in calculating the value of exposures for the purposes of paragraphs 1, 2 and 3 of Article 111, exposures exempted under Article 113(3)(a) to (d) and (f) to (h) need not be reported as laid down in paragraph 1 and the reporting frequency laid down in point (b) of paragraph 1 of this Article may be reduced to twice a year for the exposures referred to in Article 113(3)(e) and (i), and in Articles 115 and 116.~~

~~Where a credit institution invokes this paragraph, it shall keep a record of the grounds advanced for at least one year after the event giving rise to the dispensation, so that the competent authorities may establish whether it is justified~~.

3. Member States shall~~may~~ require credit institutions to analyse, to the extent possible, their exposures to collateral issuers and providers of unfunded credit protection for possible concentrations and where appropriate take action and~~or~~ report any significant findings to their competent authority.

Article 111

1. A credit institution may not incur an exposure, after taking into account the effect of the credit risk mitigation in accordance with Articles 112 to 117, to a client or group of connected clients the value of which exceeds 25 % of its own funds.

(i) Where that client is an institution, this value may not exceed 25% of its own funds or the amount of EUR [X] million, whichever is higher.

(ii) Where a group of connected clients includes one or more institutions, a credit institution may not incur an exposure, after taking into account the effect of the credit risk mitigation in accordance with Articles 112 to 117, to all connected institutions the value of which exceeds the difference between 25% of its own funds or the amount of EUR [X] million, whichever is higher, and the sum of exposure values to the other connected clients that are not institutions. The sum of exposure values, after taking into account the effect of the credit risk mitigation in accordance with Articles 112 to 117, to other connected clients that are not institutions may not exceed 25% of a credit institution's own funds.

Member States may impose a lower amount than EUR [X] million.

~~2. Where that client or group of connected clients is the parent undertaking or subsidiary of the credit institution and/or one or more subsidiaries of that parent undertaking, the percentage laid down in paragraph 1 shall be reduced to 20 %. Member States may, however, exempt the exposures incurred to such clients from the 20 % limit if they provide for specific monitoring of such exposures by other measures or procedures. They shall inform the Commission and the European Banking Committee of the content of such measures or procedures.~~

~~3. A credit institution may not incur large exposures which in total exceed 800 % of its own funds.~~

2~~4~~. A credit institution shall at all times comply with the limit~~s~~ laid down in paragraph~~s~~ 1~~,~~ ~~2 and 3 in respect of its exposures~~. If in an exceptional case exposures exceed thi~~s~~~~ose~~ limit~~s~~, the~~at fact~~ value of the exposure shall be reported without delay to the competent authorities which may, where the circumstances warrant it, allow the credit institution a limited period of time in which to comply with the limit~~s~~.

Article 112

1. For the purposes of Articles 113 to 117, the term 'guarantee' shall include credit derivatives recognised under Articles 90 to 93 other than credit linked notes.

2. Subject to paragraph 3, where, under Articles 113 to 117, the recognition of funded or unfunded credit protection is~~may be~~ permitted, this shall be subject to compliance with the eligibility requirements and other minimum requirements, set out under Articles 90 to 93 ~~for the purposes of calculating risk-weighted exposure amounts under Articles 78 to 83~~.

3. Where a credit institution relies upon Article 114(2), the recognition of funded credit protection shall be subject to the relevant requirements under Articles 84 to 89.

4. For the purpose of this Section, a credit institution shall not take account of the collateral referred to in Annex VIII, Part 1, points 20-22, unless permitted under Article 115.

Article 113

~~1. Member States may impose limits more stringent than those laid down in Article 111.~~

~~2. Member States may fully or partially exempt from the application of Article 111(1), (2) and (3) exposures incurred by a credit institution to its parent undertaking, to other subsidiaries of that parent undertaking or to its own subsidiaries, in so far as those undertakings are covered by the supervision on a consolidated basis to which the credit institution itself is subject, in accordance with this Directive or with equivalent standards in force in a third country.~~

1~~3~~. ~~Member States may fully or partially exempt t~~The following exposures shall be exempted from the application of Article 111(1):

(a) asset items constituting claims on central governments or central banks which, unsecured, would be assigned a 0 % risk weight under Articles 78 to 83;

(b) asset items constituting claims on international organisations or multilateral development banks which, unsecured, would be assigned a 0 % risk weight under Articles 78 to 83;

(c) asset items constituting claims carrying the explicit guarantees of central governments, central banks, international organisations, multilateral development banks or public sector entities, where unsecured claims on the entity providing the guarantee would be assigned a 0 % risk weight under Articles 78 to 83;

(d) other exposures attributable to, or guaranteed by, central governments, central banks, international organisations, multilateral development banks or public sector entities, where unsecured claims on the entity to which the exposure is attributable or by which it is guaranteed would be assigned a 0 % risk weight under Articles 78 to 83;

(e)~~ asset items constituting claims on and other exposures to central governments or central banks not mentioned in point (a) which are denominated and, where applicable, funded in the national currencies of the borrowers;~~ asset items constituting claims on Member States' regional governments and local authorities where those claims would be assigned a 0 % risk weight under Article 78 to 83 and to other exposures to or guaranteed by such governments and authorities claims on which would be assigned a 0 % risk weight under Articles 78 to 83;

(f)~~ asset items and other exposures secured, to the satisfaction of the competent authorities, by collateral in the form of debt securities issued by central governments or central banks, international organisations, multilateral development banks, Member States' regional governments, local authorities or public sector entities, which securities constitute claims on their issuer which would be assigned a 0 % risk weighting under Articles 78 to 83~~ exposures to counterparties referred to in Article 80(7) or 80(8). For this purpose, point (d) of Article 80(7) shall not be applied. Exposures that do not meet these criteria, whether exempted from Article 111(1) or not, shall be treated as exposures to a third party;

(g) asset items and other exposures secured, to the satisfaction of the competent authorities, by collateral in the form of cash deposits placed with the lending credit institution or with a credit institution which is the parent undertaking or a subsidiary of the lending institution; and

(h) asset items and other exposures secured, to the satisfaction of the competent authorities, by collateral in the form of certificates of deposit issued by the lending credit institution or by a credit institution which is the parent undertaking or a subsidiary of the lending credit institution and lodged with either of them~~;~~.

(i) asset items constituting claims on and other exposures to institutions, with a maturity of one year or less, but not constituting such institutions" own funds;

(j) asset items constituting claims on and other exposures to those institutions which are not credit institutions but which fulfil the conditions referred to in Annex VI, Part 1, point 85, with a maturity of one year or less, and secured in accordance with the same point;

(k) bills of trade and other similar bills, with a maturity of one year or less, bearing the signatures of other credit institutions;

(l) covered bonds falling within the terms of Annex VI, Part 1, points 68 to 70;

(m) pending subsequent coordination, holdings in the insurance companies referred to in Article 122(1) up to 40 % of the own funds of the credit institution acquiring such a holding;

(n) asset items constituting claims on regional or central credit institutions with which the lending credit institution is associated in a network in accordance with legal or statutory provisions and which are responsible, under those provisions, for cash-clearing operations within the network;

(o) exposures secured, to the satisfaction of the competent authorities, by collateral in the form of securities other than those referred to in point (f);

(p) loans secured, to the satisfaction of the competent authorities, by mortgages on residential property or by shares in Finnish residential housing companies, operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation and leasing transactions under which the lessor retains full ownership of the residential property leased for as long as the lessee has not exercised his option to purchase, in all cases up to 50 % of the value of the residential property concerned;

(q) the following, where they would receive a 50 % risk weight under Articles 78 to 83, and only up to 50 % of the value of the property concerned:

(i) exposures secured by mortgages on offices or other commercial premises, or by shares in Finnish housing companies, operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation, in respect of offices or other commercial premises; and

(ii) exposures related to property leasing transactions concerning offices or other commercial premises;

for the purposes of point (ii), until 31 December 2011, the competent authorities of each Member State may allow credit institutions to recognise 100 % of the value of the property concerned. At the end of this period, this treatment shall be reviewed. Member States shall inform the Commission of the use they make of this preferential treatment;

(r) 50 % of the medium/low-risk off-balance-sheet items referred to in Annex II;

(s) subject to the competent authorities' agreement, guarantees other than loan guarantees which have a legal or regulatory basis and are given for their members by mutual guarantee schemes possessing the status of credit institutions, subject to a weighting of 20 % of their amount; and

(t) the low-risk off-balance-sheet items referred to in Annex II, to the extent that an agreement has been concluded with the client or group of connected clients under which

~~the exposure may be incurred only if it has been ascertained that it will not cause the limits applicable under Article 111(1) to (3) to be exceeded.~~

Cash received under a credit linked note issued by the credit institution and loans and deposits of a counterparty to or with the credit institution which are subject to an on-balance sheet netting agreement recognised under Articles 90 to 93 shall be deemed to fall under point (g).

~~For the purposes of point (o), the securities used as collateral shall be valued at market price, have a value that exceeds the exposures guaranteed and be either traded on a stock exchange or effectively negotiable and regularly quoted on a market operated under the auspices of recognised professional operators and allowing, to the satisfaction of the competent authorities of the Member State of origin of the credit institution, for the establishment of an objective price such that the excess value of the securities may be verified at any time. The excess value required shall be 100 %. It shall, however, be 150 % in the case of shares and 50 % in the case of debt securities issued by institutions, Member State regional governments or local authorities other than those referred to in sub-point (f), and in the case of debt securities issued by multilateral development banks other than those assigned a 0 % risk weight under Articles 78 to 83. Where there is a mismatch between the maturity of the exposure and the maturity of the credit protection, the collateral shall not be recognised. Securities used as collateral may not constitute credit institutions' own funds.~~

~~For the purposes of point (p), the value of the property shall be calculated, to the satisfaction of the competent authorities, on the basis of strict valuation standards laid down by law, regulation or administrative provisions. Valuation shall be carried out at least once a year. For the purposes of point (p), residential property shall mean a residence to be occupied or let by the borrower.~~

~~Member States shall inform the Commission of any exemption granted under point (s) in order to ensure that it does not result in a distortion of competition.~~

2. Member States may fully or partially exempt covered bonds falling within the terms of Annex VI, Part 1, points 68 to 70 from the application of Article 111(1).

Article 114

1. Subject to paragraph 3, for the purposes of calculating the value of exposures for the purposes of Article 111(1) ~~to (3) Member States may, in respect of credit institutions using the Financial Collateral Comprehensive Method under Articles 90 to 93, in the alternative to availing of the full or partial exemptions permitted under points (f), (g), (h), and (o) of Article 113(3), permit such credit institutions to use a value lower than the value of the exposure, but no lower than the total of the fully-adjusted exposure values of their exposures to the client or group of connected clients. For these purposes,~~ a credit institution may use the 'fully adjusted exposure value' ~~means that~~ as calculated under Articles 90 to 93 taking into account the credit risk mitigation, volatility adjustments, and any maturity mismatch (E*).

~~Where this paragraph is applied to a credit institution, points (f), (g), (h), and (o) of Article 113(3) shall not apply to the credit institution in question.~~

2. Subject to paragraph 3, a credit institution permitted to use own estimates of LGDs and conversion factors for an exposure class under Articles 84 to 89 shall~~may~~ be

permitted, where it is able to the satisfaction of the competent authorities to estimate the effects of financial collateral on their exposures separately from other LGD-relevant aspects, to recognise such effects in calculating the value of exposures for the purposes of Article 111(1) ~~to (3)~~.

Competent authorities shall be satisfied as to the suitability of the estimates produced by the credit institution for use for the reduction of the exposure value for the purposes of compliance with the provisions of Article 111.

Where a credit institution is permitted to use its own estimates of the effects of financial collateral, it shall do so on a basis consistent with the approach adopted in the calculation of capital requirements.

Credit institutions permitted to use own estimates of LGDs and conversion factors for an exposure class under Articles 84 to 89 which do not calculate the value of their exposures using the method referred to in the first subparagraph shall~~may~~ be permitted to use the Financial Collateral Comprehensive Method or the approach set out in ~~paragraph 1 or the exemption set out in~~ Article 117(b)~~3(3)(o)~~ for calculating the value of exposures. ~~A credit institution shall use only one of these two methods.~~

3. A credit institution that makes use of the Financial Collateral Comprehensive Method or is permitted to use the method~~s~~ described in paragraph~~s 1 and~~ 2 in calculating the value of exposures for the purposes of Article 111(1) ~~to (3)~~, shall conduct periodic stress tests of their credit-risk concentrations, including in relation to the realisable value of any collateral taken.

These periodic stress tests shall address risks arising from potential changes in market conditions that could adversely impact the credit institutions' adequacy of own funds and risks arising from the realisation of collateral in stressed situations.

The credit institution shall satisfy the competent authorities that the stress tests carried out are adequate and appropriate for the assessment of such risks.

In the event that such a stress test indicates a lower realisable value of collateral taken than would be permitted to be taken into account while making use of the Financial Collateral Comprehensive Method or the method described in ~~under~~ paragraph~~s 1 and~~ 2 as appropriate, the value of collateral permitted to be recognised in calculating the value of exposures for the purposes of Article 111(1) ~~to (3)~~ shall be reduced accordingly.

Such credit institutions shall include the following in their strategies to address concentration risk:

(a) policies and procedures to address risks arising from maturity mismatches between exposures and any credit protection on those exposures;

(b) policies and procedures in the event that a stress test indicates a lower realisable value of collateral than taken into account while making use of the Financial Collateral Comprehensive Method or the method described in ~~under~~ paragraph~~s 1 and~~ 2; and

(c) policies and procedures relating to concentration risk arising from the application of credit risk mitigation techniques, and in particular large indirect credit exposures, for example to a single issuer of securities taken as collateral.

~~4. Where the effects of collateral are recognised under the terms of paragraphs 1 or 2, Member States may treat any covered Part of the exposure as having been incurred to the collateral issuer rather than to the client.~~

Article 115

1. ~~For the purposes of Article 111(1) to (3), Member States may assign a weighting of 20 % to asset items constituting claims on Member States' regional governments and local authorities where those claims would be assigned a 20 % risk weight under Articles 78 to 83 and to other exposures to or guaranteed by such governments and authorities claims on which are assigned a 20 % risk weight under Articles 78 to 83. However, Member States may reduce that rate to 0 % in respect of asset items constituting claims on Member States' regional governments and local authorities where those claims would be assigned a 0 % risk weight under Article 78 to 83 and to other exposures to or guaranteed by such governments and authorities claims on which are assigned a 0 % risk weight under Articles 78 to 83.~~

For the purpose of this section, a credit institution may reduce the exposure value by up to [50%] of the value of the residential property concerned, either:

- if the exposure is secured, to the satisfaction of the competent authorities, by mortgages on residential property or by shares in Finnish residential housing companies, operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation, or

- if the exposure relates to a leasing transaction under which the lessor retains full ownership of the residential property leased for as long as the lessee has not exercised his option to purchase.

For the purposes of the above, the value of the property shall be calculated, to the satisfaction of the competent authorities, on the basis of strict valuation standards laid down by law, regulation or administrative provisions. Valuation shall be carried out at least once a year. For the purposes of this paragraph, residential property shall mean a residence to be occupied or let by the borrower.

2. ~~For the purposes of Article 111(1) to (3), Member States may assign a weighting of 20 % to asset items constituting claims on and other exposures to institutions with a maturity of more than one but not more than three years and a weighting of 50 % to asset items constituting claims on institutions with a maturity of more than three years, provided that the latter are represented by debt instruments that were issued by a institution and that those debt instruments are, in the opinion of the competent authorities, effectively negotiable on a market made up of professional operators and are subject to daily quotation on that market, or the issue of which was authorised by the competent authorities of the Member State of origin of the issuing institutions. In no case may any of these items constitute own funds.~~

For the purpose of this section, a credit institution may reduce the exposure value by up to [50%] of the value of the commercial property concerned, only if the following exposures would receive a 50% risk weight under Articles 78 to 83:

(i) exposures secured by mortgages on offices or other commercial premises, or by shares in Finnish housing companies, operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation, in respect of offices or other commercial premises or

(ii) exposures related to property leasing transactions concerning offices or other commercial premises.

For the purpose of the above, commercial property shall be fully constructed.

Article 116

~~By way of derogation from Article 113(3)(i) and Article 115(2), Member States may assign a weighting of 20 % to asset items constituting claims on and other exposures to institutions, regardless of their maturity.~~

Article 117

1. Where an exposure to a client is guaranteed by a third party, or secured by collateral ~~in the form of securities~~ issued by a third party ~~under the conditions laid down in Article 113(3)(o)~~, a credit institution~~Member States~~ may:

(a) treat the portions of the exposure which is guaranteed as having been incurred to the guarantor rather than to the client provided that the unsecured exposure to the guarantor would be assigned an equal or lower risk weight than a risk weight of the unsecured exposure to the client under Articles 78 to 83; or

(b) treat the portions of the exposure collateralised by the market value of recognised collateral as having been incurred to the third party rather than to the client, if the exposure ~~defined in Article 113(3)(o)~~ is secured~~guaranteed~~ by collateral and provided that the collateralised portion of the exposure would be assigned an equal or lower risk weight than a risk weight of the unsecured exposure to the client under Articles 78 to 83 ~~under the conditions there laid down~~. This approach shall not be used by a credit institution where there is a mismatch between the maturity of the exposure and the maturity of the protection.

For the purpose of this Section, a credit institution may use both the Financial Collateral Comprehensive Method and the treatment provided for in point (b) of paragraph 1 only where it is permitted to use both the Financial Collateral Comprehensive Method and the Financial Collateral Simple Method for the purposes of Article 75(a).

2. Where a credit institution~~Member States~~ applies~~y~~ the treatment provided for in point (a) of paragraph 1:

(a) where the guarantee is denominated in a currency different from that in which the exposure is denominated the amount of the exposure deemed to be covered will be calculated in accordance with the provisions on the treatment of currency mismatch for unfunded credit protection in Annex VIII;

(b) a mismatch between the maturity of the exposure and the maturity of the protection will be treated in accordance with the provisions on the treatment of maturity mismatch in Annex VIII; and

(c) partial coverage may be recognised in accordance with the treatment set out in Annex VIII.

Article 118

Where compliance by a credit institution on an individual or sub-consolidated basis with the obligations imposed in this Section is disapplied under Article 69(1), or the provisions of Article 70 are applied in the case of parent credit institutions in a Member State, measures must be taken to ensure the satisfactory allocation of risks within the group.

Article 119

~~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.~~

Changes to Directive 2006/49/EC

Article 28

1. Institutions, except investment firms that fulfil the criteria set out in Article 20(2) and 20(3), shall monitor and control their large exposures in accordance with Articles 106 to 118 of Directive 2006/48/EC.

2. By way of derogation from paragraph 1, institutions which calculate the capital requirements for their trading-book business in accordance with Annexes I and II, and, as appropriate, Annex V to this Directive, shall monitor and control their large exposures in accordance with Articles 106 to 118 of Directive 2006/48/EC subject to the amendments laid down in Articles 29 to 32 of this Directive.

~~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.~~

Article 29

1. The exposures to individual clients which arise on the trading book shall be calculated by summing the following items:

(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, the net position in each of the different instruments being calculated according to the methods laid down in Annex I;

(b) the net exposure, in the case of the underwriting of a debt or an equity instrument; and

(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.

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 point 41 of Annex I.

For the purposes of point (b), 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 2006/48/EC shall be excluded from the reference in point 6 of Annex II to this Directive.

2. 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.

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 112 to 117 of Directive 2006/48/EC.

In order to calculate the exposure which arises 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 the second subparagraph of Article 13(2) to be zero.

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 110 of Directive 2006/48/EC.

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

3. The sum of the exposures to an individual client or group of connected clients in paragraph 1 shall be limited in accordance with Articles 111 to 117 of Directive 2006/48/EC.

4. By derogation from paragraph 3 competent authorities may allow assets constituting claims and other exposures on recognised third-country investment firms and recognised clearing houses and exchanges in financial instruments to be subject to the same treatment accorded to those on institutions laid out in Article~~s~~ 111~~3~~(1~~3~~)~~(i), 115(2) and 116~~ of Directive 2006/48/EC.

Article 31

The competent authorities may authorise the limits laid down in Articles 111 to 117 of Directive 2006/48/EC to be exceeded if the following conditions are met:

(a) the exposure on the non-trading book to the client or group of clients in question does not exceed the limit~~s~~ laid down in Article~~s~~ 111(1) ~~and (2) to 117~~ of Directive 2006/48/EC, ~~those limits~~ this limit being calculated with reference to own funds as specified in that Directive, so that the excess arises entirely on the trading book;

(b) the institution meets an additional capital requirement on the excess in respect of the limit~~s~~ laid down in Article 111(1) ~~and (2)~~ of Directive 2006/48/EC, that additional capital requirement being calculated in accordance with Annex VI to ~~that~~ Directive 2006/49/EC;

(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 shall not exceed 500 % of the institution's own funds;

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

(e) institutions shall report to the competent authorities every three months all cases where the limit~~s~~ laid down in Article 111(1) ~~and (2)~~ of Directive 2006/48/EC ~~have~~has been exceeded during the preceding three months.

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

Article 32

1. The competent authorities shall establish procedures to prevent institutions from deliberately avoiding the additional capital requirements that they would otherwise incur, on exposures exceeding the limit~~s~~ laid down in Article 111(1) ~~and (2)~~ of Directive 2006/48/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.

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 institutions which are allowed to use the alternative determination of own funds under Article 13(2) to use that determination for the purposes of Articles 30(2), 30(3) and 31 provided that the institutions concerned are required to meet all of the obligations set out in Articles 110 to 117 of Directive 2006/48/EC, in respect of the exposures which arise outside their trading books by using own funds as defined in that Directive.

The Commission services are interested in learning stakeholders' views on the impact, if any, of the approach suggested above.

With regard to interbank exposures, a limit is suggested that represents the higher of 25% of a bank's own funds or Euro"X" million (the Committee of European Banking Supervisors has suggested that 'X' should be set at Euro 150 million). Stakeholders' views are sought on the appropriateness of a Euro 150 million limit for exposures to institutions, and on the impact of this suggestion for banks' funding requirements on a day-to-day basis as well as during a contingency.

B. HYBRID CAPITAL INSTRUMENTS

The Commission intends to transpose the 1998 Basel agreement on hybrid capital instruments (the so-called "Sydney Press Release"- ttp://www.bis.org/press/p981027.htm) into EU legislation.

The lack of rules at EU level has resulted in wide dispersion in the treatment of hybrid capital instruments at national level. This divergence relates to both:

- the eligibility criteria which hybrid instruments should comply with in order to qualify as own funds for prudential purposes and
- the quantitative limits for acceptance as firms' original own funds.

The Commission's proposal aims at addressing this divergence by:

(i) providing a common interpretation of the three main eligibility criteria: permanence, loss absorption and flexibility in payments;

(ii) establishing harmonised quantitative limits for the extent to which hybrids may be accepted as firms' original own funds;

(iii) allowing a grandfathering clause to avoid disruption in the financial markets with regard to instruments already issued and provide for an adequate transitional period for both firms and competent authorities.

In response to the Commission services' request to the Committee of European Banking Supervisors (CEBS) for advice on Tier 1 Hybrids, the latter consulted the industry. The final advice was published on 3 April 2008 [http://www.c-ebs.org/press/20080403.hybrids.htm].

Changes to Directive 2006/48/EC

Article 57, points (a) to (d)

Subject to the limits imposed in Article 66, the unconsolidated own funds of credit institutions shall consist of the following items:

(a) capital within the meaning of Article 22 of Directive 86/635/EEC, in so far as it has been paid up, plus the related share premium accounts, it fully absorbs losses in going concern situations, and in the event of the bankruptcy or liquidation of the credit institution, it ranks after all other claims but excluding cumulative preferential shares;

(b) reserves within the meaning of Article 23 of Directive 86/635/EEC and profits and losses brought forward as a result of the application of the final profit or loss;

(c) funds for general banking risks within the meaning of Article 38 of Directive 86/635/EEC;

(ca) "instruments other than those referred to in point (a), which meet the requirements set out in Articles 63a and in points (a) and (c) to (e) of 63 paragraph (2)";

(d) revaluation reserves within the meaning of Article 33 of Directive 78/660/EEC;

Article 61

The concept of own funds as defined in points (a) to (h) of Article 57 embodies a maximum number of items and amounts. The use of those items, ~~and the fixing of lower ceilings,~~ and the deduction of items other than those listed in points (i) to (r) of Article 57 shall be left to the discretion of the Member States.

The items listed in points (a) to (e) of Article 57 shall be available to a credit institution for unrestricted and immediate use to cover risks or losses as soon as these occur. The amount shall be net of any foreseeable tax charge at the moment of its calculation or be suitably adjusted in so far as such tax charges reduce the amount up to which these items may be applied to cover risks or losses.

Article 63a

Instruments referred to in point (ca) of Article 57 shall comply with the following criteria in addition to the criteria set out in points (a) and (c) to (e) of Article 63(2):

(a) The instrument shall be undated [or have a maturity of at least [30] years]. It may include a call option at the sole discretion of the issuer, but it shall not be redeemed before five years after the issue date.

If the statutory or contractual provisions governing undated instruments provide for a moderate incentive for the credit institution to redeem as determined by the competent authorities, such incentive shall not occur before ten years after the issue date.

[Dated and undated] instruments may be called or redeemed only with the prior consent of the competent authorities. The competent authorities may grant permission provided the request is made at the initiative of the credit institution and either financial or solvency conditions of the credit institution are not affected. The competent authorities may require institutions to replace the instrument by items referred to in points (a) or items of the same or better quality referred to in point (ca) of Article 57."

[The competent authorities shall require the suspension of the redemption for dated instruments if the credit institution does not comply with the capital requirements set out in Article 75].

The competent authority may grant permission for an early redemption of dated and undated instruments in the event that there is a change in national tax treatment or regulatory classification which was unforeseen at the issuance date."

(b) The statutory or contractual provisions governing the instrument shall allow the credit institution to cancel, when necessary, the payment of interest and dividends for an unlimited period of time, on a non-cumulative basis. Notwithstanding the above, the credit institution shall be obliged to cancel such payments if it does not comply with the capital requirements set out in Article 75. The competent authorities may require the cancellation of such payments based on the financial and solvency situation of the credit institution. Such cancellation shall not prejudice the right of the credit institution to substitute the payment of interest or dividend by a payment in the form of an instrument referred to in Article 57 point (a), provided that any such mechanism allows the credit

institution to preserve financial resources. Such substitution may be subject to specific conditions required by the competent authorities.

(c) The statutory or contractual provisions governing the instrument shall provide for principal, unpaid interest and dividend to be such as to absorb losses and to not hinder the recapitalisation of the credit institution.

(d) In the event of the bankruptcy or liquidation of the credit institution, the instrument shall rank after the items referred to in Article 63 (2)."

Article 65, paragraph 1

1. Where the calculation is to be made on a consolidated basis, the consolidated amounts relating to the items listed under Article 57 shall be used in accordance with the rules laid down in Chapter 4, Section 1. Moreover, the following may, when they are credit ('negative') items, be regarded as consolidated reserves for the calculation of own funds:

(a) Any minority interests within the meaning of Article 21 of Directive 83/349/EEC, where the global integration method is used~~;~~. Any instruments referred to in point (ca) of Article 57, which give rise to minority interests shall meet the requirements under Articles 63a, 66, and points (a) and (c) to (e) of Article 63(2);

(b) the first consolidation difference within the meaning of Articles 19, 30 and 31 of Directive 83/349/EEC;

(c) the translation differences included in consolidated reserves in accordance with Article 39(6) of Directive 86/635/EEC;

(d) any difference resulting from the inclusion of certain participating interests in accordance with the method prescribed in Article 33 of Directive 83/349/EEC.

Article 66

1. The items referred to in points (d) to (h) of Article 57 shall be subject to the following limits:

(a) the total of the items in points (d) to (h) may not exceed a maximum of 100 % of the items in points (a) ~~plus (b) and (c)~~ to (ca) minus (i) to (k); and

(b) the total of the items in points (g) to (h) may not exceed a maximum of 50 % of the items in points (a) ~~plus (b) and (c)~~ to (ca) minus (i) to (k).

1a. Without prejudice to the first paragraph, the total of the items in point (ca) of Article 57 shall be subject to the following limits:

(a) Instruments that will be converted during emergency situations into a pre-determined fixed number of items referred to in point (a) of Article 57 shall not exceed a maximum of 50% of the items in points (a) to (ca) minus (i) to (k) of Article 57;

(b) Within the limit referred to in point (a) above, all other instruments shall not exceed a maximum of 35% of the items in points (a) to (ca) minus (i) to (k) of Article 57;

(c) Within the limit referred to in points (a) and (b) above, dated instruments and any instrument, whose statutory or contractual provisions provide for an incentive for the credit institution to redeem shall not exceed a maximum of 15% of the items in points (a) to (ca) minus (i) to (k) of Article 57.

(d) The amount of items exceeding the limits set out in points (a) to (c) is subject to the limit set out in paragraph 1.

2. The total of the items in points (l) to (r) of Article 57 shall be deducted half from the total of the items (a) to ~~(c)~~(ca) minus (i) to (k), and half from the total of the items (d) to (h) of Article 57, after application of the limits laid down in paragraph 1 of this Article. To the extent that half of the total of the items (l) to (r) exceeds the total of the items (d) to (h) of Article 57, the excess shall be deducted from the total of the items (a) to ~~(c)~~(ca) minus (i) to (k) of Article 57. Items in point (r) of Article 57 shall not be deducted if they have been included in the calculation of risk-weighted exposure amounts for the purposes of Article 75 as specified in Annex IX, Part 4.

3. For the purposes of Sections 5 and 6, the provisions laid down in this Section shall be read without taking into account the items referred to in points (q) and (r) of Article 57 and Article 63(3).

4. The competent authorities may authorise credit institutions to exceed the limits laid down in paragraphs 1 and 1a temporarily during emergency situations ~~in temporary and exceptional circumstances~~."

Article 154, paragraphs 7-9

7. Until 31 December 2011, for corporate exposures, the competent authorities of each Member State may set the number of days past due that all credit institutions in its jurisdiction shall abide by under the definition of 'default' set out in Annex VII, Part 4, point 44 for exposures to such counterparts situated within this Member State. The specific number shall fall within 90- up to a figure of 180 days if local conditions make it appropriate. For exposures to such counterparts situated in the territories of other Member States, the competent authorities shall set a number of days past due which is not higher than the number set by the competent authority of the respective Member State.

8. credit institutions which do not comply [at the date of entry into force] with the limits set out in Article 66 paragraph 1a will agree with their competent authorities on the necessary measures to resolve this situation before the dates indicated in point 9 below.

9. Instruments that, as of [the date of entry into force], according to national law were deemed equivalent to the items referred to in points (a) to (c) of Article 57 but do not fall within point (a) of Article 57 or do not comply with the criteria set out in Article 63a, shall be deemed to fall within point (ca) of Article 57 until [the date of entry into force+30years], if they do not represent an amount higher than:

(a) 20% of the sum of points (a) to (ca) of Article 57, less the sum of points (i) to (k) of Article 57 between [the date of entry into force +10 years] and [the date of entry into force+20years];

(b) 10% of the sum of points (a) to (ca) of Article 57, less the sum of points (i) to (k) of Article 57 between [the date of entry into force+20years] and [the date of entry into force+30years].

Technical criteria on disclosure
Annex XII, part 2, points 3 (a) and (b)

(a) summary information on the terms and conditions of the main features of all own funds items and components thereof, including instruments referred to in point (ca) of Article 57, instruments the statutory or contractual provisions of which provide an incentive for the credit institution to redeem them, and instruments subject to Article 154 paragraphs (8);

(b) the amount of the original own funds, with separate disclosure of all positive items and deductions. The overall amount of instruments referred to in point (ca) of Article 57 and instruments the statutory or contractual provisions of which provide an incentive for the credit institution to redeem them, shall also be disclosed separately. These disclosures shall each specify instruments subject to Article 154 paragraphs (8);"

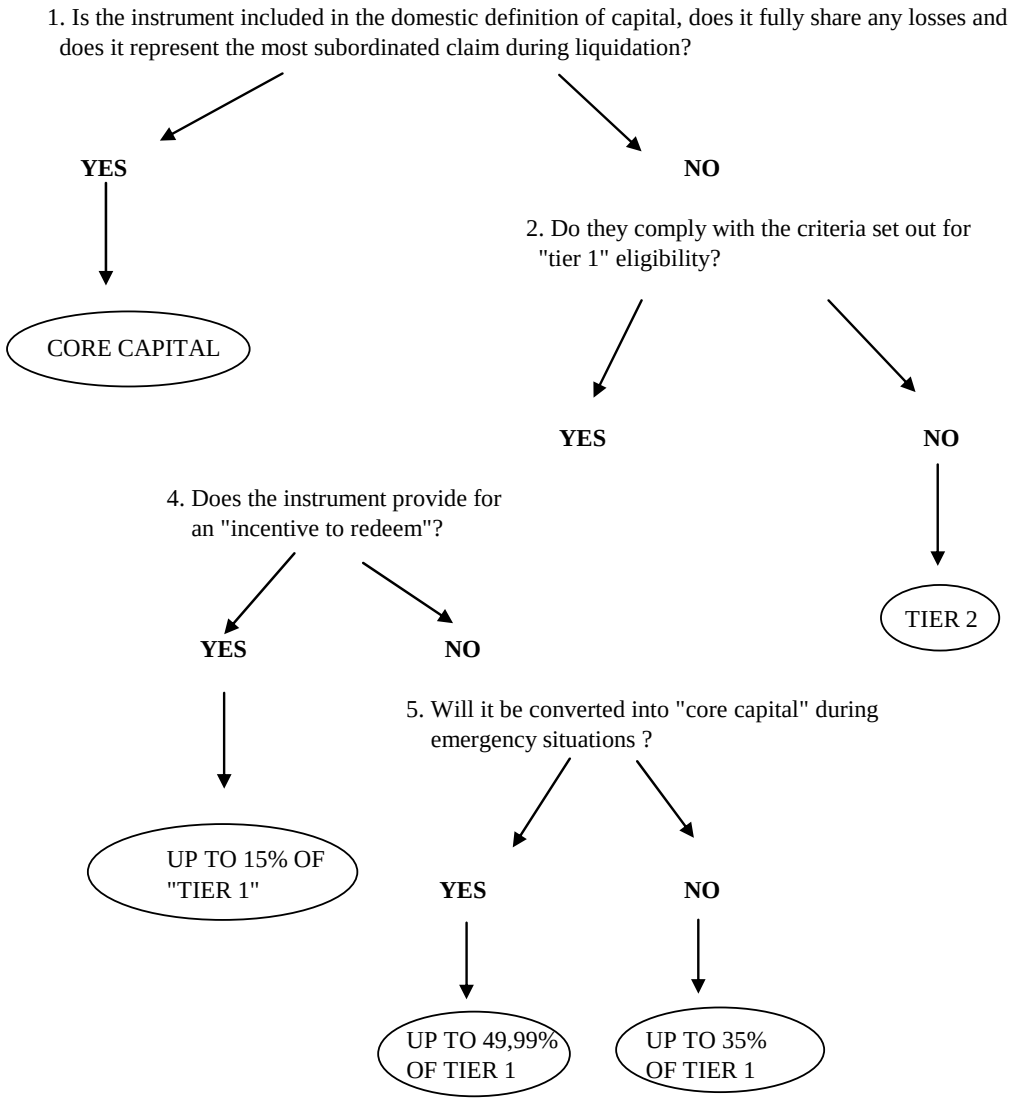
Changes to Directive 2006/49

Article 12, subparagraph 1

'Original own funds' means the sum of points (a) to ~~(c)~~(ca), less the sum of points (i) to (k) of Article 57 of Directive 2006/48/EC, provided that they comply with limits set out in Article 66 of the same Directive.

The following chart depicts the assessment process by which an instrument may be assessed to determine its eligibility as well as to establish the quantitative limits to its recognition as Tier 1 capital.

DECISION CHART



Do stakeholders agree with:

(i) the Commission services' suggested eligibility criteria and the principle-based approach suggested above?

(ii) the recognition of dated instruments - with a predetermined minimum original maturity - in firms' original own funds?

(iii) the quantitative limits suggested? In this respect, the Commission services are also interested in views whether an additional limit would be useful to improve even further the quality of capital e.g. by requiring firms' core capital (equity, reserves and retained earnings) to be higher than a pre-determined proportion (e.g. 50%) of minimum capital requirements?

C. SUPERVISORY ARRANGEMENTS

It is the Commission's intent to improve cooperation and information exchange in the field of crisis management and home/host issues. As a consequence of the work of the European Financial Committee's Working Group on Crisis Management and the endorsement of its recommendations by ECOFIN on 9th October, the potential amendments relate to:

- improving information rights of host supervisors of systemically relevant branches;
- reinforcing supervisory cooperation and clarifying supervisors' tasks and responsibilities;
- requiring supervisors to have regard to financial stability concerns in all Member States concerned and
- clarifying the legal framework for transmitting information to ministries of finance and central banks.

While not modifying the allocation of responsibilities between the home and the host supervisors, the suggested amendments will reinforce the efficiency and effectiveness of supervision of cross-border banking groups by requiring i) the establishment of colleges of supervisors, ii) agreement within colleges on key home/host issues e.g. capital add-on on subsidiaries, reporting requirements and iii) referrals to CEBS in case of disagreement within colleges. Colleges will also be required for supervisors overseeing cross-border structures that do not have subsidiaries in other Member States but that do have systemically important branches.

Changes to Directive 2006/48/EC

Article 4, paragraphs 48 and 49

(48) 'Systemically relevant branch" means a branch of a credit institution that has been designated as such by the competent authorities under Article 42(2).

(49) 'consolidating supervisor' means the competent authority responsible for the exercise of supervision on a consolidated basis of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies.

Article 40

1. The prudential supervision of a credit institution, including that of the activities it carries on accordance with Articles 23 and 24, shall be the responsibility of the competent authorities of the home Member State, without prejudice to those provisions of this Directive which give responsibility to the competent authorities of the host Member State.

2. Paragraph 1 shall not prevent supervision on a consolidated basis pursuant to this Directive.

3. The competent authorities in one Member State shall have regard to the potential impact of their decisions on the stability of the financial system in all other Member States concerned and, in particular, in emergency situations."

Article 42

1. The competent authorities of the Member States concerned shall collaborate closely in order to supervise the activities of credit institutions operating, in particular through a branch, in one or more Member States other than that in which their head offices are situated. They shall supply one another with all information concerning the management and ownership of such credit institutions that is likely to facilitate their supervision and the examination of the conditions for their authorisation, and all information likely to facilitate the monitoring of such institutions, in particular with regard to liquidity, solvency, deposit guarantees, the limiting of large exposures, administrative and accounting procedures and internal control mechanisms.

2. The competent authorities of the home and the host Member State, and the consolidating supervisor where Article 129(1) applies, shall do everything within their power to reach a joint decision on the designation of branches as being systemically relevant.

The branch is deemed systemically relevant in view of its market share in the host Member State, the likely impact of a suspension or closure of the credit institution's operations on the payment and clearing and settlement system in the host Member State, or any other considerations pertaining to the size and importance of the branch in relation to the host Member State's banking or financial system. If the market share of a branch of a credit institution in terms of deposits exceeds [X%] in the host Member State, its systemic relevance must be assessed.

In the absence of a joint decision, the competent authority of the host Member State may make its own decision. In making its decision, it shall duly take into account any views and reservations of the competent authorities concerned.

The decisions referred to in the first and third subparagraph shall be set out in a document containing the fully reasoned decision, transmitted to the competent authorities concerned, recognised as determinative and applied by the competent authorities in the Member States concerned.

The designation of a branch as being systemically relevant shall not affect the rights and responsibilities of the competent authorities under this Directive with the exception of Article 42(3).

3. The competent authorities of the home Member State shall communicate to the competent authorities of a host Member State where a systemically relevant branch is established the information referred to in Article 132(1)(c) and (d) and carry out the tasks referred to in Article 129(1)(c) in cooperation with the competent authorities of the host Member State.

If a competent authority of a home Member State becomes aware of an emergency situation within a credit institution as referred to in Article 130(1), it shall alert and communicate as soon as is practicable with the authorities referred to in the last subparagraph of Article 49 and in Article 50 as set out in Article 130(1).

4. Where Article 129(3) does not apply, the competent authority of the home Member State supervising a credit institution with systemically relevant branches in other Member States shall establish and chair a college of supervisors to facilitate the cooperation under Articles 42(1) and 42(3). The competent authorities of the home and the host Member States shall have written coordination and cooperation arrangements in place. The

establishment of colleges shall not affect the rights and responsibilities of the competent authorities under this Directive.

Article 49

This Section shall not prevent a competent authority from transmitting information to the following for the purposes of their tasks:

(a) central banks and other bodies with a similar function in their capacity as monetary authorities; and
(b) where appropriate, to other public authorities responsible for overseeing payment systems.

This Section shall not prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of Article 45.

Information received in this context shall be subject to the conditions of professional secrecy specified in Article 44(1).

In an emergency situation as referred to in Article 130(1), Member States shall allow competent authorities to communicate information to central banks in the EU when this information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy, the oversight of payments and securities settlement systems, and the safeguarding of financial stability.

Article 50

Notwithstanding Articles 44(1) and 45, the Member States may, by virtue of provisions laid down by law, authorise the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment services and insurance companies and to inspectors acting on behalf of those departments.

However such disclosures may be made only where necessary for reasons of prudential control.

In an emergency situation as referred to in Article 130(1), Member States shall allow competent authorities to disclose information to the departments referred to in the first subparagraph in all Member States concerned.

Article 129

1. In addition to the obligations imposed by the provisions of this Directive, the competent authority responsible for the exercise of supervision on a consolidated basis of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies shall carry out the following tasks:

(a) coordination of the gathering and dissemination of relevant or essential information in going concern and emergency situations;

(b) planning and coordination of supervisory activities in going concern ~~as well as in emergency~~ situations~~–~~, including in relation to the activities referred to in Articles 123, 124 and points 14 and 15 of Annex V, part 10, in cooperation with the competent authorities involved; and

(c) planning and coordination of supervisory activities in cooperation with the competent authorities involved, and if necessary with central banks, in preparation of and during emergency situations, including adverse developments in credit institutions or in financial markets. This includes exceptional measures referred to in Article 132(3)(b), the preparation of joint assessments, the implementation of contingency plans and communication to the public.

2. In the case of applications for the permissions referred to in Articles 84(1), 87(9) and 105 and in Annex III, Part 6, respectively, submitted by an EU parent credit institution and its subsidiaries, or jointly by the subsidiaries of an EU parent financial holding company, the competent authorities shall work together, in full consultation, to decide whether or not to grant the permission sought and to determine the terms and conditions, if any, to which such permission should be subject.

An application as referred to in the first subparagraph shall be submitted only to the competent authority referred to in paragraph 1.

The competent authorities shall do everything within their power to reach a joint decision on the application within six months. This joint decision shall be set out in a document containing the fully reasoned decision which shall be provided to the applicant by the competent authority referred to in paragraph 1.

The period referred to in subparagraph 3 shall begin on the date of receipt of the complete application by the competent authority referred to in paragraph 1. The competent authority referred to in paragraph 1 shall forward the complete application to the other competent authorities without delay.

During the period referred to in subparagraph 3, the consolidating supervisor shall, at the request of the applicant, or of any of the other competent authorities concerned, consult the Committee of European Banking Supervisors. The consolidating supervisor may consult the Committee on its own initiative. When the Committee is consulted, the period referred to in the third subparagraph shall be extended by two months. Where the Committee has been consulted, the competent authorities concerned shall duly consider such advice before taking their joint decision.

In the absence of a joint decision between the competent authorities ~~within 6 months~~ within the periods referred to in the third and fifth subparagraphs, the competent authority referred to in paragraph 1 shall make its own decision on the application. The decision shall be set out in a document containing the fully reasoned decision and shall take into account the views and reservations of the other competent authorities expressed during the periods referred to in the third and fifth subparagraphs. The decision shall be provided to the applicant and the other competent authorities by the competent authority referred to in paragraph 1.

The decisions referred to in the third and sixth ~~fifth~~ subparagraphs shall be recognised as determinative and applied by the competent authorities in the Member States concerned.

3. The consolidating supervisor shall establish colleges of supervisors to facilitate the exercise of its tasks referred to in the first and second paragraph and in Article 130. The establishment and functioning of colleges shall be based on the written arrangements referred to in Article 131. The Committee of European Banking Supervisors shall elaborate guidelines for the operational functioning of colleges.

The competent authorities responsible for the supervision of subsidiaries of an EU parent credit institution or an EU parent financial holding company and the competent authorities of a host country where systemically relevant branches are established may participate in colleges of supervisors. The consolidating supervisor shall chair the meetings of the college and shall decide which competent authority participates in a meeting or in an activity of the college. This decision shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, and the obligations referred to in Articles 40(3) and 42(3). The competent authorities participating in the college shall apply Article 129(1)(c) having full regard to the work of other forums that may be established in this area.

The competent authorities participating in the colleges shall agree on the entrustment of tasks and delegation of responsibilities and cooperate closely, having regard to the obligations in Articles 40(3), 42 and 132.

The consolidating supervisor and the competent authority responsible for the supervision of subsidiaries of an EU parent credit institution or an EU parent financial holding company in a certain Member State, shall, within a reasonable period of time, do everything within their power to reach an agreement on the application of Articles 72(2) *(Disclosure requirements for 'significant' subsidiaries)*, 74(2) *(reporting for the calculation of minimum capital requirements)*, 113(1)(f) *(treatment of intra-group exposures for large exposures purposes)* and 136(2) *(own funds requirements in excess of the minimum level)* to these subsidiaries. Where these competent authorities disagree, the matter shall be referred for consultation to the Committee of European Banking Supervisors, which shall give its advice within two months. The competent authorities shall duly consider such advice before taking its final decision in accordance with their responsibilities under this Directive. This shall not affect the rights and responsibilities of the competent authorities under this Directive.

The consolidating supervisor shall inform the Committee of European Banking Supervisors of the activities of the college of supervisors, including in emergency situations.

Article 130

1. Where an emergency situation, including adverse developments in financial markets, arises ~~within a banking group~~, which potentially jeopardises the stability of the financial system in any of the Member States where entities of a group have been authorised or where systemically relevant branches are established, the competent authority responsible for the exercise of supervision on a consolidated basis shall, ~~as soon as is practicable~~ subject to Chapter 1, Section 2**,** alert as soon as is practicable, the authorities referred to in the last subparagraph of Article 49~~(a)~~ and in Article 50, and shall communicate all information that is essential for the pursuance of their tasks.

These obligations shall apply to all competent authorities under Articles 125 and 126 in relation to a particular group,–and to the competent authority identified under Article 129(1).

If the authority referred to in the last subparagraph of Article 49 becomes aware of a situation described in the first subparagraph, it shall alert as soon as is practicable the competent authorities identified in Articles 125 and 126.

Where possible, the competent authority and the authority referred to in the last subparagraph of Article 49 shall use existing defined channels of communication."

Changes to Directive 2006/49/EC

Article 38, paragraph 3

3. Articles 42(2), with the exception of its third subparagraph, and Article 42(3) of Directive 2006/48/EC shall apply mutatis mutandis to the supervision of investment firms that do not fulfil the criteria set out in Article 20(2) or 20(3) or the first subparagraph of Article 46.

The Commission services seek views on the proposed amendments relating to crisis management and home/host issues. In particular, views are sought on the definition of a systemically relevant branch and an appropriate level for the threshold in Article 42(2).

D. WAIVERS FOR COOPERATIVE BANK NETWORKS AND OTHER TECHNICAL AMENDMENTS

Co-operative Bank Networks

The CRD exempts banks organised in networks from certain requirements of the Capital Requirement Directives. For these exemptions to be allowed, the following criteria are to be fulfilled: i) the central institution of the network is jointly and severally liable for the commitments of its affiliates, ii) the solvency and liquidity of the central institution and of all the affiliates are monitored and supervised on a consolidated basis and iii) the central institution also has powers to instruct its affiliates. However, the central institution and its affiliates are required to meet these prudential requirements on a consolidated basis. The requirements in question are the following: submission of a programme of operations, the obligation to have at least two directors, minimum level of capital, provisions against risks, large exposure regime, etc.

This exemption applies only to bank networks set up before 1977 and for which provisions in national law were adopted by 1979. Because of these time limits, bank networks set up later cannot currently make use of this exemption. This problem especially affects banks in countries which acceded to the EU later than 1979. The Commission proposes the removal of these time limits in order to allow the same treatment to be applied to all bank networks meeting the eligibility criteria irrespective of when they were set up.

Technical changes

Since 2005, the Directorate General Internal Market and Services, Member States and the industry have worked together to reach agreement on the interpretation and practical implementation of the technical details of the CRD. As a result of the work carried out, instances have been identified where the CRD is unclear or does not achieve its objective in practice. Rectifying these instances does not introduce new obligations on institutions but only clarifies or ensures the workability of existing treatments.

Further technical adjustments relate to lessons learned during the current market turmoil. These concern the way that institutions should manage credit risk and liquidity risk in the context of securitisation transactions and the capital treatment of liquidity facilities for securitisations.

Changes to Directive 2006/48/EC

Co-operative Bank Networks

Article 3

1. One or more credit institutions situated in the same Member State and which are permanently affiliated~~, on 15 December 1977,~~ to a central body which supervises them and which is established in the same Member State, may be exempted from the requirements of Articles 7 and 11(1) if ~~no later than 15 December 1979~~, national law provides that:

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

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

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

~~Credit institutions operating locally which are permanently affiliated, subsequent to 15 December 1977, to a central body within the meaning of the first subparagraph, may benefit from the conditions laid down therein if they constitute normal additions to the network belonging to that central body.~~

~~In the case of credit institutions other than those which are set up in areas newly reclaimed from the sea or have resulted from scission or mergers of existing institutions dependent or answerable to the central body, the Commission, pursuant to the procedure referred to in Article 151(2) may lay down additional rules for the application of the second subparagraph including the repeal of exemptions provided for in the first subparagraph, where it is of the opinion that the affiliation of new institutions benefiting from the arrangements laid down in the second subparagraph might have an adverse effect on competition.~~

2. A credit institution referred to in the first subparagraph of paragraph 1, may also be exempted from the provisions of Articles 9 and 10, and also Title V, Chapter 2, Sections 2, 3, 4, 5 and 6 and Chapter 3 provided that, without prejudice to the application of those provisions to the central body, the whole as constituted by the central body together with its affiliated institutions is subject to those provisions on a consolidated basis.

In case of exemption, Articles 16, 23, 24, 25, 26(1) to (3) and 28 to 37 shall apply to the whole as constituted by the central body together with its affiliated institutions.

Technical changes

Article 87, paragraphs 11 and 12

(11) Where exposures in the form of a collective investment undertaking (CIU) meet the criteria set out in Annex VI, Part 1, points 77 and 78 and the credit institution is aware of all <u>or parts</u> of the underlying exposures of the CIU, the credit institution shall look through to those underlying exposures in order to calculate risk-weighted exposure amounts and expected loss amounts in accordance with the methods set out in this Subsection. <u>For the part of the underlying exposures of the CIU the credit institution is not aware of Art. 87(12) shall apply.</u>

Where the credit institution does not meet the conditions for using the methods set out in this Subsection <u>for all or parts of the underlying exposures of the CIU</u>, risk weighted exposure amounts and expected loss amounts shall be calculated in accordance with the following approaches:

(a) for exposures belonging to the exposure class referred to in point (e) of Article 86(1), the approach set out in Annex VII, Part 1, points 19 to 21. If, for those purposes, the credit institution is unable to differentiate between private equity, exchange-traded and other equity exposures, it shall treat the exposures concerned as other equity exposures. Where these exposures, taken together with the credit institution's direct exposures in this exposure class, are not material within the meaning of Article 89(2), Paragraph 1 of that Article may be applied subject to the approval of the competent authorities;

(b) for all other underlying exposures, the approach set out in Subsection 1, subject to the following modifications:

(i) for exposures subject to a specific risk weight for unrated exposures or subject to the highest [two] credit quality step[s] for a given exposure class, the risk weight is multiplied by a factor of 2 subject to a cap of 1250%;

~~(i) the exposures are assigned to the appropriate exposure class and attributed the risk weight of the credit quality step immediately above the credit quality step that would normally be assigned to the exposure, and~~

(ii) for all other exposures, the risk weight is multiplied by a factor of [1,1] and subject to a minimum of [5%].

~~(ii) exposures assigned to the higher credit quality steps, to which a risk weight of 150 % would normally be attributed, are assigned a risk weight of 200 %.~~"

(12) Where exposures in the form of a CIU do not meet the criteria set out in Annex VI, Part 1, points 77 and 78, or the credit institution is not aware of all of the underlying exposures of the CIU, the credit institution shall look through to the underlying exposures and calculate risk-weighted exposure amounts and expected loss amounts in accordance with the approach set out in Annex VII, Part 1, points 19 to 21. If, for those purposes, the credit institution is unable to differentiate between private equity, exchange-traded and other equity exposures, it shall treat the exposures concerned as other equity exposures. For these purposes, non equity exposures are assigned to one of the classes (private equity, exchange traded equity or other equity) set out in Annex VII, Part 1, point 19 and unknown exposures are assigned to other equity class. Alternatively to the method described above, credit institutions may calculate themselves or may rely on a third party to calculate and report the average risk weighted exposure amounts based on the CIU's underlying exposures in accordance with the following approaches, provided that the correctness of the calculation and the report is adequately ensured:

(a) for exposures belonging to the exposure class referred to in point (e) of Article 86(1), the approach set out in Annex VII, Part 1, points 19 to 21. If, for those purposes, the credit institution is unable to differentiate between private equity, exchange-traded and other equity exposures, it shall treat the exposures concerned as other equity exposures. Where these exposures, taken together with the credit institution's direct exposures in this exposure class, are not material within the meaning of Article 89(2), paragraph 1 of that Article may be applied subject to the approval of the competent authorities; or

(b) for all other underlying exposures, the approach set out in Subsection 1, subject to the following modifications:

(i) for exposures subject to a specific risk weight for unrated exposures or subject to the highest [two] credit quality step[s] for a given exposure class, the risk weight is multiplied by a factor of 2 subject to a cap of 1250%;

~~(i) the exposures are assigned to the appropriate exposure class and attributed the risk weight of the credit quality step immediately above the credit quality step that would normally be assigned to the exposure, and~~

(ii) for all other exposures, the risk weight is multiplied by a factor of [1,1] and subject to a minimum of [5%].

~~(ii) exposures assigned to the higher credit quality steps, to which a risk weight of 150 % would normally be attributed, are assigned a risk weight of 200 %."~~

Article 89, paragraph 1, poin t(d)

~~(d) exposures to central governments of the home Member State and to their regional governments, local authorities and administrative bodies, provided that:~~

(d) exposures to central governments of the Member States and their regional governments, local authorities and administrative bodies provided that:

Article 95

1. Where significant credit risk associated with securitised exposures has been transferred from the originator credit institution in accordance with the terms of Annex IX, Part 2, that credit institution may:

(a) in the case of a traditional securitisation, exclude from its calculation of risk-weighted exposure amounts, and, as relevant, expected loss amounts, the exposures which it has securitised; and

(b) in the case of a synthetic securitisation, calculate risk-weighted exposure amounts, and, as relevant, expected loss amounts, in respect of the securitised exposures in accordance with Annex IX, Part 2.

2. Where paragraph 1 applies, the originator credit institution shall calculate the risk-weighted exposure amounts prescribed in Annex IX for the positions that it may hold in the securitisation. <u>The risk-weighted exposure amounts for the originator credit institution shall not be less than [15%] of the risk-weighted exposure amounts of the securitised exposures had they not been securitised.</u>

Where the originator credit institution fails to transfer significant credit risk in accordance with paragraph 1, it need not calculate risk-weighted exposure amounts for any positions it may have in the securitisation in question.

Article 150, paragraphs 1 and 2

1. Without prejudice, as regards own funds, to the proposal that the Commission is to submit pursuant to Article 62, the technical adjustments designed to amend non-essential elements of this Directive in the following areas shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 151(2):

(a) clarification of the definitions in order to take account, in the application of this Directive, of developments on financial markets;

(b) clarification of the definitions to ensure uniform application of this Directive;

(c) the alignment of terminology on, and the framing of definitions in accordance with, subsequent acts on credit institutions and related matters;

(d) technical adjustments to the list in Article 2;

(e) alteration of the amount of initial capital prescribed in Article 9 to take account of developments in the economic and monetary field;

(f) expansion of the content of the list referred to in Articles 23 and 24 and set out in Annex I or adaptation of the terminology used in that list to take account of developments on financial markets;

(g) the areas in which the competent authorities shall exchange information as listed in Article 42;

(h) technical adjustments in Articles 56 to 67 and in Article 74 as a result of developments in accounting standards or requirements which take account of Community legislation or with regard to convergence of supervisory practices;

(i) amendment of the list of exposure classes in Articles 79 and 86 in order to take account of developments on financial markets;

(j) the amount specified in Article 79(2)(c), Article 86(4)(a), Annex VII, Part 1, point 5 and Annex VII, Part 2, point 15 to take into account the effects of inflation;

(k) the list and classification of off-balance sheet items in Annexes II and IV ~~and their treatment in the determination of exposure values for the purposes of Title V, Chapter 2, Section 3~~; or

(l) adjustment of the provisions in Annexes III and V to XII in order to take account of developments on financial markets (in particular new financial products) or in accounting standards or requirements which take account of Community legislation, or with regard to convergence of supervisory practice. ;

(m) alteration of the amounts and the percentages specified in Article 111(1) to take account of developments on financial markets.

2. The Commission may adopt the following implementing measures:

(a) specification of the size of sudden and unexpected changes in the interest rates referred to in Article 124(5);

(b) a temporary reduction in the minimum level of own funds laid down in Article 75 and/or the risk weights laid down in Title V, Chapter 2, Section 3 in order to take account of specific circumstances;

(c) ~~without prejudice to the report referred to in Article 119,~~ clarifications of exemptions provided for in Article 111 (4)~~,~~ and 113 ~~113, 115 and 116~~;

(d) specification of the key aspects on which aggregate statistical data are to be disclosed under Article 144(1)(d);

(e) specification of the format, structure, contents list and annual publication date of the disclosures provided for in Article 144; or

(f) adjustments of the criteria set out in Article 19a(1), in order to take account of future developments and to ensure the uniform application of this Directive.

The measures referred to in points (a), (b), (c) and (f), designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 151(2). The measures referred to in points (d) and (e) shall be adopted in accordance with the regulatory procedure referred to in Article 151(2a).

The treatment of counterparty credit risk of derivative instruments, repurchase transactions, securities or commodities lending or borrowing transactions, long settlement transactions and margin lending transactions

Annex III, part 1, point 5

5. 'Netting Set' means a group of transactions with a single counterparty that are subject to a legally enforceable bilateral netting arrangement and for which netting is recognised under Part 7 of this Annex and Articles 90 to 93. Each transaction that is not subject to a legally enforceable bilateral netting arrangement, which is recognised under Part 7 of this Annex, should be interpreted as its own netting set for the purpose of this Annex. Under the method set out in Part 6 of this Annex (IMM), all netting sets with a single counterparty may be treated as single netting set if negative simulated market values of the individual netting sets are set to 0 in the estimation of expected exposure (EE).

Annex III, part 2, point 3

3. When a credit institution purchases credit derivative protection against a non-trading book exposure, or against a CCR exposure, it may compute its capital requirement for the hedged asset in accordance with Annex VIII, Part 3, points 83 to 92, or subject to the approval of the competent authorities, in accordance with Annex VII, Part 1, point 4 or Annex VII, Part 4, points 96 to 104. In these cases, and where the option in the second sentence of point 11 in Annex II of Directive 2006/49/EC is not applied, the exposure value for CCR for these credit derivatives is set to zero.

Notwithstanding the above, an institution may choose to consistently include for the purposes of calculating capital requirements for counterparty credit risk all credit derivatives not included in the trading book and purchased as protection against a non-trading book exposure or against a CCR exposure where the credit protection is recognised under this Directive.

Annex III, part 5, point 15

15. There is one hedging set for each issuer of a reference debt instrument that underlies a credit default swap. Nth to default' basket credit default swaps are treated as follows:

a) The size of a risk position in a reference debt instrument in a basket underlying an 'nth to default' credit default swap is the effective notional value of the reference debt instrument, multiplied by the modified duration of the 'nth to default' derivative with respect to a change in the credit spread of the reference debt instrument.

b) There is one hedging set for each reference debt instrument in a basket underlying a given 'nth to default' credit default swap. Risk positions from different 'nth to default' credit default swaps shall not be included in the same hedging set.

c) The CCR multiplier applicable to each hedging set created for one of the reference debt instruments of an 'nth to default' derivative is 0.3% for reference debt instruments that have a credit assessment from a recognised ECAI equivalent to credit quality step 1 to 3 and 0.6% for other debt instruments.

Changes to Directive 2006/49/EC

Article 45

1. Competent authorities may permit investment firms to exceed the limits concerning large exposures set out in Article 111 of Directive 2006/48/EC. Investment firms need not include any excesses in their calculation of capital requirements exceeding such limits, as set out in Article 75(b) of that Directive. This discretion is available until 31 December ~~2010~~ 2012 or the date of entry into force of any modifications consequent to the treatment of large exposures pursuant to Article 119 of Directive 2006/48/EC, whichever is the earlier. For this discretion to be exercised, the following conditions shall be met:

(a) the investment firm provides investment services or investment activities related to the financial instruments listed in points 5, 6, 7, 9 and 10 of Section C of Annex I to Directive 2004/39/EC;

(b) the investment firm does not provide such investment services or undertake such investment activities for, or on behalf of, retail clients;

c) breaches of the limits referred to in the introductory part of this paragraph arise in connection with exposures resulting from contracts that are financial instruments as listed in point (a) and relate to commodities or underlyings within the meaning of point 10 of Section C of Annex I to Directive 2004/39/EC (MiFID) and are calculated in accordance with Annexes III and IV of Directive 2006/48/EC, or in connection

with exposures resulting from contracts concerning the delivery of commodities or emission allowances; and

(d) the investment firm has a documented strategy for managing and, in particular, for controlling and limiting risks arising from the concentration of exposures.

Article 48

1. The provisions on capital requirements as laid down in this Directive and Directive 2006/48/EC shall not apply to investment firms whose main business consists exclusively of the provision of investment services or activities in relation to the financial instruments set out in points 5, 6, 7, 9 and 10 of Section C of Annex I to Directive 2004/39/EC and to whom Directive 93/22/EEC (1) did not apply on 31 December 2006. This exemption is available until 31 December ~~2010~~ 2012 or the date of entry into force of any modifications pursuant to paragraphs 2 and 3, whichever is the earlier.

2. As part of the review required by Article 65(3) of Directive 2004/39/EC, the Commission shall, on the basis of public consultations and in the light of discussions with the competent authorities, report to the Parliament and the Council on:

(a) an appropriate regime for the prudential supervision of investment firms whose main business consists exclusively of the provision of investment services or activities in relation to the commodity derivatives or derivatives contracts set out in points 5, 6, 7, 9 and 10 of Section C of Annex I to Directive 2004/39/EC; and

(b) the desirability of amending Directive 2004/39/EC to create a further category of investment firm whose main business consists exclusively of the provision of investment services or activities in relation to the financial instruments set out in points 5, 6, 7, 9 and 10 of Section C of Annex I to Directive 2004/39/EC relating to energy supplies (including electricity, coal, gas and oil).

3. On the basis of the report referred to in paragraph 2, the Commission may submit proposals for amendments to this Directive and to Directive 2006/48/EC.

Co-operative Bank Networks

In your view should affiliates to networks meeting the eligibility criteria laid out in the CRD but set up after 15 December 1977 be allowed to make use of the same exemptions as the affiliates to networks set up before that date?

Technical Changes

Do you agree with the proposed changes?

AMENDMENTS SUBJECT TO THE COMITOLOGY PROCEDURE

E. TECHNICAL AMENDMENTS TO DIRECTIVE 2006/48/EC

Annexes V, VI, VII, VIII, IX, X and XII of Directive 2006/48/EC are amended as follows:

(1) Annex V is amended as follows:

(a) Point 3 is replaced by the following:

(i) Credit-granting shall be based on sound and well-defined criteria. This shall also be the case where the credit institution's exposure to the resulting credit risk is limited or eliminated because the credit risk has been transferred to or hedged by third parties.

(ii) Where credit risk is transferred to or hedged by third parties by a securitisation, internal policies and economic incentives shall be in place to ensure that the credit institution bases credit granting on sound and well-defined criteria for all exposures that are being originated in order to be securitised in full or in part. In particular, a credit institution shall consider on a case by case basis as appropriate in a given securitisation

- to select exposures to be securitised randomly from the set of contractually eligible exposures; or
- to retain securitisation positions in securitisations for which it originates exposures.

The policies applied to this end by the originator credit institution shall be publicly disclosed.

(iii) The process for approving, amending, renewing, and re-financing credits shall be clearly established.

(b) Point 8 is replaced by the following:

"The risks arising from securitisation transactions in relation to which the credit institutions are investor, originator or sponsor shall be evaluated and addressed through appropriate policies and procedures, to ensure in particular that the economic substance of the transaction is fully reflected in the risk assessment and management decisions."

(c) Point 14 is replaced by the following:

"Policies and processes for the measurement and management of their net funding position and requirements on an ongoing and forward-looking basis shall exist. Alternative scenarios shall be considered and the assumptions underpinning decisions concerning the net funding position shall be reviewed regularly. Alternative scenarios shall for these purposes in particular address off-balance sheet items and other contingent liabilities. The measurement and management of a credit institution's net funding position and alternative scenarios to be considered shall also take into account the assets and liabilities, including contingent liabilities, of SSPEs or other special purpose entities and in relation to which the credit institution acts as sponsor or provides material liquidity support."

(2) Annex VI, Part 1, is amended as follows:

(a) Point 6.4.29 is replaced by the following:

"6.4.29. Exposures to institutions with a ~~original effective~~ residual maturity of more than three months for which a credit assessment by a nominated ECAI is available shall be assigned a risk weight according to Table 4 in accordance with the assignment by the competent authorities of the credit assessments of eligible ECAIs to six steps in a credit quality assessment scale.

(b) In point 6.4.31, the introductory part is replaced by the following:

"6.4.31. Exposures to an institution ~~with an original effective maturity of three months or less~~ of up to three months residual maturity for which a credit assessment by a nominated ECAI is available shall be assigned a risk-weight according to Table 5 in accordance with the assignment by the competent authorities of the credit assessments of eligible ECAIs to six steps in a credit quality assessment scale:"

(c) Point 14 is replaced by the following:

"14. ~~SHORT-TERM~~ EXPOSURES TO INSTITUTIONS AND CORPORATES WITH A SHORT-TERM CREDIT ASSESSMENT".

(d) In point 14.73, the introductory part is replaced by the following:

"14.73. Exposures to institutions where points 29 to 32 apply, and exposures to corporates ~~Short-term exposures to an institution or corporate~~ for which a short-term credit assessment by a nominated ECAI is available shall be assigned a risk weight according to Table 7 as follows, in accordance with the mapping by the competent authorities of the credit assessments of eligible ECAIs to six steps in a credit quality assessment scale:

(e) The following point 16.1.90 shall be inserted:

"16.1.90. The exposure value for leases shall be the discounted minimum lease payments. Minimum lease payments are the payments over the lease term that the lessee is or can be required to make and any bargain option (i.e. option the exercise of which is reasonably certain). Any guaranteed residual value fulfilling the set of conditions in Annex VIII, Part 1, points 26 to 28 regarding the eligibility of protection providers as well as the minimum requirements for recognising other types of guarantees provided in Annex VIII, Part 2, points 14 to 19 should also be included in the minimum lease payments. Those exposures shall be assigned to the relevant exposure class in accordance with Article 79. When the exposure is a residual value of leased properties, the risk weighted exposure amounts shall be calculated as follows: 1/t x 100% x exposure value, where t is the greater of 1 and the nearest number of whole years of the lease remaining."

(3) Annex VI, Part 2, is amended as follows:

(a) Point 1.4.7 is replaced by the following:

"Competent authorities shall take the necessary measures to assure that the principles of the methodology employed by the ECAI for the formulation

of its credit assessments are publicly available as to allow all potential users to decide whether they are derived in a reasonable way. Competent authorities shall furthermore take the necessary measures to assure that for credit assessments relating to securitisation positions, the ECAI is committed to make, on an ongoing basis, summary information on the structure of the transaction, the performance of pool assets and how this affects its credit assessment available to all credit institutions using the credit assessments for purposes of Article 96."

(4) Annex VII, Part 1, is amended as follows:

(a) Point 1.3.3.25 is replaced by the following:

"1.3.3.25. The risk weighted exposure amount shall be the potential loss on the credit institution's equity exposures as derived using internal value-at-risk models subject to the 99th percentile, one-tailed confidence interval of the difference between quarterly returns and an appropriate risk-free rate computed over a long-term sample period, multiplied by 12,5. The risk weighted exposure amounts at the ~~individual exposure~~ equity portfolio level shall not be less than the total of the sums of minimum risk weighted exposure amounts required under the PD/LGD Approach and the corresponding expected loss amounts multiplied by 12,5 and calculated on the basis of the PD values set out in Part 2, point 24~~(a)~~ and the corresponding LGD values set out in Part 2, points 25 and 26."

(b) Point 1.4.27 is replaced by the following:

"1.4.27. The risk weighted exposure amounts shall be calculated according to the formula:

Risk-weighted exposure amount=100% x exposure value,

except for when the exposure is a residual value of leased properties in which case it ~~should be provisioned for each year and~~ will be calculated as follows:

1/t x 100% x exposure value,

Where t is the greater of 1 and the nearest number of whole years of the lease remaining."

(5) Annex VII, Part 2, is amended as follows:

(a) Point 1.3.13 (c) is replaced by the following:

"1.3.13. (c) For exposures arising from fully or nearly-fully collateralised derivative instruments (listed in Annex IV) transactions and fully or nearly-fully collateralised margin lending transactions which are subject to a master netting agreement, M shall be the weighted average remaining maturity of the transactions where M shall be at least 10 days. For repurchase transactions or securities or commodities lending or borrowing transactions which are subject to a master netting agreement, M shall be the weighted average remaining maturity of the transactions where M shall be at

least 5 days. The notional amount of each transaction shall be used for weighting the maturity."

(b) In point 1.3.14, the introductory part is replaced by the following:

"Notwithstanding point 13(a), (b), (c), (d) and (e), M shall be at least one-day for:"

(6) Annex VII is amended as follows:

(a) In Part 4, Point 2.2.4.96 is replaced by the following:

"2.2.4.96. The requirements in points 97 to 104 shall not apply for guarantees provided by institutions, ~~and~~ central governments and central banks, and corporate entities which meet the requirements laid down in Annex VIII, part 1, point 26 (g) if the credit institution has received approval to apply the rules of Articles 78 to 83 for exposures to such entities. In this case the requirements of Articles 90 to 93 shall apply."

(7) Annex VIII, Part 1 is amended as follows:

(a) Point 1.3.1.9 is amended as follows:

(i) The following paragraph is added at the end:

"If the collective investment undertaking is not limited to investing in instruments that are eligible for recognition under point 7 and 8, units may be recognised with the value of the eligible assets as collateral under the assumption that the CIU has invested to the maximum extent allowed under its mandate in assets that are not eligible. In cases where non-eligible assets can have a negative value due to liabilities or contingent liabilities resulting from ownership, the credit institution shall calculate the total value of the non-eligible assets and shall reduce the value of the eligible assets by that of the non-eligible in case the latter is negative in total."

(b) Point 1.3.2.11 is amended as follows:

(i) The following paragraph is added at the end:

"If the collective investment undertaking is not limited to investing in instruments that are eligible for recognition under point 7 and 8 and the items mentioned in point (a) of this point, units may be recognised with the value of the eligible assets as collateral under the assumption that the CIU has invested to the maximum extent allowed under its mandate in assets that are not eligible. In cases where non-eligible assets can have a negative value due to liabilities or contingent liabilities resulting from ownership, the credit institution shall calculate the total value of the non-eligible assets and shall reduce the value of the eligible assets by that of the non-eligible in case the latter is negative in total."

(8) Annex VIII, Part 2, is amended as follows:

(a) Point 1.8.2.13 is replaced by the following:

"13. For life insurance policies pledged to the lending credit institution to be recognised the following conditions shall be met:

~~(a) the company providing the life insurance may be recognised as an eligible unfunded credit protection provider under Part 1, point 26;~~
(a) the life insurance policy is openly pledged or assigned to the lending credit institution;
(b) the company providing the life insurance is notified of the pledge or assignment and as a result may not pay amounts payable under the contract without the consent of the lending credit institution;
~~(d) the declared surrender value of the policy is non-reducible;~~
(c) the lending credit institution must have the right to cancel the policy and receive the surrender value ~~in a timely way~~ in the event of the default of the borrower;
(d) the lending credit institution is informed of any non-payments under the policy by the policy-holder;
(e) the credit protection must be provided for the maturity of the loan. Where this is not possible because the insurance relationship ends before the loan relationship expires, the credit institution must ensure that the amount deriving from the insurance contract serves the credit institution as security until the end of the duration of the credit agreement; and
(f) the pledge or assignment must be legally effective and enforceable in all jurisdictions which are relevant at the time of the conclusion of the credit agreement.
(g) the surrender value is declared by the company providing the life insurance and is non-reducible,
(h) the surrender value is to be paid in a timely manner upon request,
(i) the surrender value cannot be requested without the consent of the credit institution,
(j) the company providing the life insurance is subject to the Directives 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance and 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings or is subject to supervision by a competent authority of a third country which applies supervisory and regulatory arrangements at least equivalent to those applied in the Community, and
~~(k) the company providing the life insurance holds assets over which the beneficiaries have a claim that is prior to any other claims when the company defaults on liabilities that are due and whose time value is at least as high as the sum of the declared surrender values of the outstanding policies.~~"

(b) In point 2.2.16, the introductory part is replaced by the following:

"2.2.16. Where an exposure is protected by a guarantee which is counter-guaranteed by a central government or central bank, a regional government or local authority, a public sector entity, claims on which are treated as claims on the central government in whose jurisdiction they are established under Articles 78 to 83, a multi-lateral development bank or an international organisation, to which a 0 % risk weight is assigned under or by virtue of Articles 78 to 83, or a public sector entity, claims on which are treated as claims on credit institutions under Articles 78 to 83, the exposure

may be treated as protected by a guarantee provided by the entity in question, provided the following conditions are satisfied:"

(9) Annex VIII, Part 3, is amended as follows:

(a) Point 1.4.1.24 is replaced by the following:

"1.4.1.24. The Financial Collateral Simple Method shall be available only where risk-weighted exposure amounts are calculated under Articles 78 to 83. A credit institution shall not use both the Financial Collateral Simple Method and the Financial Collateral Comprehensive Method, unless for the purposes of Article 85(1) and 89(1). Credit institutions shall demonstrate to the competent authorities that this exceptional treatment is not used selectively with the purpose of achieving reduced minimum capital requirements and does not lead to regulatory arbitrage."

(b) Point 1.4.1.26 is replaced by the following:

"1.4.1.26. The risk weight that would be assigned under Articles 78 to 83 if the lender had a direct exposure to the collateral instrument shall be assigned to those portions of ~~claims~~ exposure values collateralised by the market value of recognised collateral. For this purpose, the exposure value of an off-balance sheet item listed in Annex II shall be 100 % of its value rather than the exposure value indicated in Article 78(1). The risk weight of the collateralised portion shall be a minimum of 20 % except as specified in points 27 to 29. The remainder of the exposure value shall receive the risk weight that would be assigned to an unsecured exposure to the counterparty under Articles 78 to 83."

(c) In point 1.4.2.33 the second sentence is replaced by the following:

"Where:

E is the exposure value as would be determined under Articles 78 to 83 or Articles 84 to 89 as appropriate if the exposure was not collateralised. For this purpose, for credit institutions calculating risk-weighted exposure amounts under Articles 78 to 83, the exposure value of an off-balance sheet item listed in Annex II shall be 100 % of its value rather than the exposure value ~~percentage~~ indicated in Article 78(1), and for credit institutions calculating risk-weighted exposure amounts under Articles 84 to 89, the exposure value of the items listed in Annex VII, Part 3, points 9 to 11 shall be calculated using a conversion factor of 100 % rather than the conversion factors or percentages indicated in those points."

(d) In point 1.5.2.69, the following sentence is added:

"For this purpose, the exposure value of the items listed in Annex VII, Part 3, points 9 to 11 shall be calculated using a conversion factor or percentage of 100 % rather than the conversion factors or percentages indicated in those points".

(e) Point 1.5.2.75 is replaced by the following:

"1.5.2.75. When the discretion provided for in point 73 is exercised by the competent authorities of a Member State, ~~The competent authorities, which do not authorise the treatment in point 73,~~ the competent authorities of another Member State may authorise their credit institutions to assign the risk weights permitted under the treatment of point 73 in respect of exposures collateralised by residential real estate property or commercial real estate property located in the territory of the former ~~those~~ Member State~~s the competent authorities of which authorise this treatment~~ subject to the same conditions as apply in ~~that~~ the former Member State."

(f) Point 1.7.2.80 is replaced by the following:

"Where the conditions set out in Part 2, point 13 are satisfied, ~~credit protection falling within the terms of Part 1, point 24 may be treated as a guarantee by the company providing the life insurance. The value of the credit protection recognised shall be the current surrender value of the life insurance policy.~~ the portion of the exposure collateralised by the current surrender value of credit protection falling within the terms of Part 1, point 24 shall be

- subject to the risk weights specified in point 80 bis where the exposure is subject to Articles 78 to 83; or
- assigned an LGD of 40% where the exposure is subject to Articles 84 to 89 but not subject to the credit institution's own estimates of LGD."

(g) A new point 1.7.2.80 bis is added:

"80 bis. For purposes of the first indent in point 80, the following risk weights shall be assigned on the basis of the risk weight assigned to a senior unsecured exposure to the company providing the life insurance:
(a) if the senior unsecured exposure to the company providing the life insurance is assigned a risk weight of 20%, a risk weight of 20%;
(b) if the senior unsecured exposure to the company providing the life insurance is assigned a risk weight or 50%, a risk weight of 35%;
(c) if the senior unsecured exposure to the company providing the life insurance is assigned a risk weight of 100%, a risk weight of 70%;
(d) if the senior unsecured exposure to the company providing the life insurance is assigned a risk weight of 150%, a risk weight of 150%."
In case of a currency mismatch, the above risk weights shall be subject to an adjustment as set out in points 84 and 85.

(h) Point 2.2.2.87 is replaced by the following:

"2.2.2.87. For the purposes of Article 80, g shall be the risk weight to be assigned to an exposure, the exposure value (E) of which is fully protected by unfunded protection (G_A), where:

E is the exposure value according to Article 78; for this purpose, the exposure value of an off-balance sheet item listed in Annex II shall be 100 % of its value rather than the exposure value indicated in Article 78(1);

g is the risk weight of exposures to the protection provider as specified under Articles 78 to 83; and

G_A is the value of G* as calculated under point 84 further adjusted for any maturity mismatch as laid down in Part 4."

(i) In point 2.2.2.88, the second sentence is replaced by the following:

"where:

E is the exposure value <u>according to Article 78. For this purpose, the exposure value of an off-balance sheet item listed in Annex II shall be 100 % of its value rather than the exposure value indicated in Article 78(1);</u> "

(j) Point 2.2.3.90 is replaced by the following:

"2.2.3.90. For the covered portion of the exposure <u>value (E)</u> (based on the adjusted value of the credit protection G_A), the PD for the purposes of Annex VII, Part 2 may be the PD of the protection provider, or a PD between that of the borrower and that of the guarantor if a full substitution is deemed not to be warranted. In the case of subordinated exposures and non-subordinated unfunded protection, the LGD to be applied for the purposes of Annex VII, Part 2 may be that associated with senior claims. "

(k) Point 2.2.3.91 is replaced by the following:

"2.2.3.91. For any uncovered portion of the exposure <u>value (E)</u> the PD shall be that of the borrower and the LGD shall be that of the underlying exposure."

(l) Point 2.2.3.92 is replaced by the following:

"2.2.3.92. G_A is the value of G* as calculated under point 84 further adjusted for any maturity mismatch as laid down in Part 4. E is the exposure value according to Annex VII, Part 3. <u>For this purpose, the exposure value of the items listed in Annex VII, Part 3, points 9 to 11 shall be calculated using a conversion factor or percentage of 100 % rather than the conversion factors or percentages indicated in those points."</u>

(10) Annex IX, Part 2 is amended as follows:

(a) The introductory sentence of point 1.1 is replaced by the following:

"1.1. The originator credit institution of a traditional securitisation may exclude securitised exposures from the calculation of risk-weighted exposure amounts and expected loss amounts if
<u>(i)</u> significant credit risk associated with the securitised exposures ~~has~~ <u>is considered to have</u> been transferred to third parties; <u>or</u>
<u>(ii) if the originator credit institution applies a 1250% risk weight to all securitisation positions he holds in this securitisation or deducts these securitisation positions from own funds according to Article 57(r).</u>

<u>Unless the competent authority decides on a case- by-case basis that a possible reduction in risk weighted exposure amounts that the originator credit institution would achieve by this securitisation is not justified by a commensurate and</u>

material transfer of credit risk to third parties, significant credit risk shall be considered to have been transferred if

(i) the risk-weighted exposure amounts of the mezzanine securitisation positions that are held by the originator credit institution in this securitisation do not exceed 50% of the risk weighted exposure amounts of all mezzanine securitisation positions that exist in this securitisation.; or if,

(ii) where there are no mezzanine securitisation positions in a given securitisation and the originator can demonstrate that the exposure value of the securitisation positions that would be subject to deduction from own funds or a 1250 % risk weight exceeds a conservative estimate of the expected loss on the securitised exposures by a substantial margin, the originator credit institution does not hold more than 20 % of the exposure values of the securitisation positions that would be subject to deduction from own funds or a 1250 % risk weight.

For these purposes, mezzanine securitisation positions shall mean securitisation positions to which a risk weight lower than 1 250 % applies and that are more junior than the most senior position in this securitisation and more junior than any securitisation positions in this securitisation to which

- in the case of a securitisation position subject to paragraph 6 to 36 of part 4 of this annex a credit quality step 1 or
- in the case of a securitisation position subject to paragraph 37 to 76 of part 4 of this annex a credit quality step 1 or 2 is assigned under Part 3 of this annex applies.

Notwithstanding the above, the competent authority may decide on a case-by-case basis that significant credit risk may be considered to have been transferred if the competent authority is satisfied that a possible reduction of capital requirements that the originator achieves by the securitisation is justified by a commensurate and material transfer of credit risk to third parties. The competent authorities shall only be satisfied if the originator credit institution can demonstrate that such transfer of credit risk to third parties is also assumed for purposes of the credit institutions internal risk management and its internal capital allocation. The compliance with this condition shall be periodically reviewed.

~~and the transfer complies with~~In addition, all of the following conditions shall be met:"

[here all the existing criteria (a) to (g) follow]

(b) The introductory sentence of point 2.2 is replaced by the following:

"**2.**2. An originator credit institution of a synthetic securitisation may calculate risk-weighted exposure amounts, and, as relevant, expected loss amounts, for the securitised exposures in accordance with points 3 and 4 below, if

(i) significant credit risk ~~has~~ is considered to have been transferred to third parties either through funded or unfunded credit protection; or

(ii) the originator credit institution applies a 1250% risk weight to all securitisation positions he holds in this securitisation or deducts these securitisation positions from own funds according to Article 57(r).

Unless the competent authority decides on a case- by-case basis that a possible reduction in risk weighted exposure amounts that the originator credit institution would achieve by this securitisation is not justified by a commensurate and material transfer of credit risk to third parties, significant credit risk shall be considered to have been transferred if
(i) the risk-weighted exposure amounts of the mezzanine securitisation positions that are held by the originator credit institution in this securitisation do not exceed 50% of the risk weighted exposure amounts of all mezzanine securitisation positions that exist in this securitisation.; or if,
(ii) where there are no mezzanine securitisation positions in a given securitisation and the originator can demonstrate that the exposure value of the securitisation positions that would be subject to deduction from own funds or a 1250 % risk weight exceeds a conservative estimate of the expected loss on the securitised exposures by a substantial margin, the originator credit institution does not hold more than 20 % of the exposure values of the securitisation positions that would be subject to deduction from own funds or a 1250 % risk weight.

For these purposes, mezzanine securitisation positions shall mean securitisation positions to which a risk weight lower than 1 250 % applies and that are more junior than the most senior position in this securitisation and more junior than any securitisation positions in this securitisation to which

- in the case of a securitisation position subject to paragraph 6 to 36 of part 4 of this annex a credit quality step 1 or
- in the case of a securitisation position subject to paragraph 37 to 76 of part 4 of this annex a credit quality step 1 or 2 is assigned under Part 3 of this annex applies.

Notwithstanding the above, the competent authority may decide on a case-by-case basis that significant credit risk may be considered to have been transferred if the competent authority is satisfied that a possible reduction of capital requirements that the originator achieves by the securitisation is justified by a commensurate and material transfer of credit risk to third parties. The competent authorities shall only be satisfied if the originator credit institution can demonstrate that such transfer of credit risk to third parties is also assumed for purposes of the credit institutions internal risk management and its internal capital allocation. The compliance with this condition shall be periodically reviewed.

In addition, the transfer shall comply~~ies~~ with the following conditions:"

[here all the existing criteria (a) to (d) follow]

(11) Annex IX, Part 4, is amended as follows:

(a) Point 2.4.2, point 2.4.2.14, point 3.5.1 and point 3.5.1.56 are deleted.

~~2.4.2. **Liquidity facilities that may be drawn only in the event of a general market disruption**~~

~~14. To determine its exposure value, a conversion figure of 0 % may be applied to the nominal amount of a liquidity facility that may be drawn only in the event of a general market disruption (i.e. where more than one SPE across different transactions are unable to roll over maturing commercial paper and that inability is not the result of an impairment of the SPE's credit quality or of the credit quality of the securitised exposures), provided that the conditions set out in point 13 are satisfied.~~

~~3.5.1. **Liquidity Facilities Only Available in the Event of General Market Disruption**~~

~~56. A conversion figure of 20 % may be applied to the nominal amount of a liquidity facility that may only be drawn in the event of a general market disruption and that meets the conditions to be an 'eligible liquidity facility' set out in point 13.~~

(b) In point 2.4.1.13 the introductory sentence is replaced by the following:

> "When the following conditions are met, to determine its exposure value a conversion figure 50% ~~20%~~ may be applied to the nominal amount of a liquidity facility ~~with an original maturity of one year or less and a conversion figure of 50 % may be applied to the nominal amount of a liquidity facility with an original maturity of more than one yea:~~"

(c) Point 3.3.48 is deleted.

> ~~48. A risk weight of 6 % may be applied to a position in the most senior tranche of a securitisation where that tranche is senior in all respects to another tranche of the securitisation positions which would receive a risk weight of 7 % under point 46, provided that:~~
>
> ~~(a) the competent authority is satisfied that this is justified due to the loss absorption qualities of subordinate tranches in the securitisation; and~~
>
> ~~(b) either the position has an external credit assessment which has been determined to be associated with credit quality step 1 in Table 4 or 5 or, if it is unrated, requirements (a) to (c) in point 42 are satisfied where 'reference positions' are taken to mean positions in the subordinate tranche which would receive a risk weight of 7 % under point 46.~~

(12) Annex X, Part 2, is amended as follows:

(a) Point 1.1 is replaced by the following:

> "1.1. ~~Under the Standardised Approach, the capital requirement for operational risk is the average over three years of the risk-weighted relevant indicators calculated each year across the business lines referred to in Table 2. In each year, a negative capital requirement in one business line, resulting from a negative relevant indicator may be imputed to the whole.~~ The total capital charge is calculated as the three-year average of the yearly summations of the regulatory capital charges across business lines referred to in Table 2. In any given year, negative capital charges

(resulting from negative gross income) in any business line may offset positive capital charges in other business lines without limit. However, where the aggregate capital charge across all business lines within a given year is negative, the input to the numerator for that year will be zero."

(13) Annex X, Part 3, is amended as follows:

(a) Point 1.2.2.14 is replaced by the following:

"1.2.2.14. "Credit institutions must be able to map their historical internal loss data into the business lines defined in Part 2 and into the event types defined in Part 5, and to provide these data to competent authorities upon request. Loss events which affect the entire institution may be allocated to an additional business line 'corporate items' due to exceptional circumstances. There must be documented, objective criteria for allocating losses to the specified business lines and event types. The operational risk losses that are related to credit risk and have historically been included in the internal credit risk databases must be recorded in the operational risk databases and be separately identified. Such losses will not be subject to the operational risk charge, as long as they continue to be treated as credit risk for the purposes of calculating minimum capital requirements. Operational risk losses that are related to market risks shall be included in the scope of the capital requirement for operational risk."

(14) In Annex XII, part 2, point 10 is replaced by the following:

"10. The following information shall be disclosed by each credit institution which calculates its capital requirements in accordance with Annex V to Directive 2006/49/EC:

(a) for each sub-portfolio covered:

(i) the characteristics of the models used;

(ii) a description of stress testing applied to the sub-portfolio;

(iii) a description of the approaches used for back-testing and validating the accuracy and consistency of the internal models and modelling processes;

(b) the scope of acceptance by the competent authority;

(c) a description of the extent and methodologies for compliance with the requirements set out in Annex VII, Part B to Directive 2006/49/EC;

(d) the highest, the lowest and the mean of the daily value-at-risk measures over the reporting period and the value-at-risk measure as per the period end;

(e) a comparison of the daily end-of-day value-at-risk measures to the one-day changes of the portfolio's value by the end of the subsequent business day together with an analysis of any important overshootings during the reporting period."

(15) Annex XII, Part 3, is amended as follows:

(c) Point 3 is replaced by the following:

"3. The credit institutions using the approach set out in Article 105 for the calculation of their own funds requirements for operational risk shall disclose a description of the use of insurances and other risk transfer mechanisms for the purpose of mitigation the risk."

F. TECHNICAL AMENDMENTS TO DIRECTIVE 2006/49/EC

Annexes I, II,V and VII of Directive 2006/49/EC are amended as follows:

(1) Annex I, is amended as follows:

(a) Point 8. B is replaced by the following:

"B. TREATMENT OF THE PROTECTION BUYER

For the party who transfers credit risk (the 'protection buyer'), the positions are determined as the mirror principle 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 first to default credit derivatives and nth 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)~~ the following treatment applies.

FIRST-TO-DEFAULT CREDIT DERIVATIVES

Where an institution obtains credit protection for a number of reference entities underlying a credit derivative under terms that the first default among the assets shall trigger payment and that this credit event shall terminate the contract, the institution may off-set specific risk for the reference entities to which the lowest specific risk percentage charge among the underlying reference entities would apply according to Table 1 of this Annex.

NTH-TO-DEFAULT CREDIT DERIVATIVES

Where the nth default among the exposures triggers payment under the credit protection, the protection buyer may only off-set specific risk if protection has also been obtained for defaults 1 to n-1 or when n-1 defaults have already occurred. In such cases, the methodology shall follow that set out above for first-to-default credit derivatives appropriately modified for nth-to-default products."

(b) In point 14, Table 1 is replaced by the following:

Table 1

Categories	Specific risk capital charge
Debt securities issued or guaranteed by central governments, issued by central	0%

banks, international organisations, multilateral development banks or Member States' regional government or local authorities which would qualify for credit quality step 1 or which would receive a 0 % risk weight under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC.	
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 qualify for credit quality step 2 or 3 under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC, and debt securities issued or guaranteed by institutions which would qualify for credit quality step 1 or 2 under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC, and debt securities issued or guaranteed by institutions which would qualify for credit quality step 3 under the rules for the risk weighting of exposures under point 28, Part 1 of Annex VI to Directive 2006/48/EC, and debt securities issued or guaranteed by corporates which would qualify for credit quality step 1, 2 or 3 under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC. Other qualifying items as defined in point 15.	0.25% (residual term to final maturity 6 months or less) 1.00% (residual term to final maturity greater than 6 months and up to and including 24 months) 1.60% (residual term to maturity exceeding 24 months)
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 or institutions which would qualify for credit quality step 4 or 5 under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC, and debt securities issued or guaranteed by institutions which would qualify for credit quality step 3 under the rules for the risk weighting of exposures under point 26 of Part 1 of Annex VI to Directive 2006/48/EC, and debt securities issued or guaranteed by corporates which would qualify for credit quality step ~~3 or~~ 4	8.00%

under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC. Exposures for which a credit assessment by a nominated ECAI is not available	
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 or institutions which would qualify for credit quality step 6 under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC, and debt securities issued or guaranteed by corporates which would qualify for credit quality step 5 or 6 under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC.	12.00%

(2) Annex II, is amended as follows:

(a) Point 11 is replaced by the following:

"11. Where a credit derivative included in the trading book forms part of an internal hedge and the credit protection is recognised under Directive 2006/48/EC, there shall be deemed not to be counterparty risk arising from the position in the credit derivative. Alternatively, an institution may consistently include for the purposes of calculating capital requirements for counterparty credit risk all credit derivatives included in the trading book forming part of internal hedges where the credit protection is recognised under Directive 2006/48/EC."

(4) Annex VII, Part C is amended as follows:

(a) Point 3 is replaced by the following:

"3. Notwithstanding points 1 and 2, when an institution hedges a non-trading book credit risk exposure using a credit derivative booked in its trading book (using an internal hedge), the non-trading book exposure is not deemed to be hedged for the purposes of calculating capital requirements unless the institution purchases from an eligible third party protection provider a credit derivative meeting the requirements set out in point 19 of Part 2 of Annex VIII to Directive 2006/48/EC with regard to the non trading book exposure. Without prejudice to the second sentence of point 11 in Annex II, where such third party protection is purchased and recognised as a hedge of a non-trading book exposure for the purposes of calculating capital requirements, neither the internal nor external credit derivative hedge shall be included in the trading book for the purposes of calculating capital requirements."

The Commission Services seek views on the above technical changes and if they achieve the aim of clarifying or correcting the respective provisions of the directive. In particular, views are sought on the adjusted treatments for:

CIUs under the IRB in Article 87(11) and (12) and in particular on the calibration of the factors in square brackets;

Life insurance as collateral and whether the risk weights and supervisory LGD are commensurate with the additional protection due to the preferential status of a life insurance claim compared to a "normal" claim on the insurance provider.

In the context of securitisation, views are sought on the effectiveness of the proposed changes in improving risk management and making appropriate adjustments to certain capital treatments.