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and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) (repealed)

CHAPTER I

Subject matter, scope and definitions

Section 2

Definitions

Article 3

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

a ‘credit institutions’ means credit institutions as defined in Article 4(1) of Directive 2006/48/EC;

b ‘investment firms’ means institutions as defined in Article 4(1)(1) of Directive 2004/39/EC, which are subject to the requirements imposed by that Directive, excluding:

(i) credit institutions;

(ii) local firms as defined in point (p); and

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

c ‘institutions’ means credit institutions and investment firms;

d ‘recognised third-country investment firms’ means firms meeting the following conditions:

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

(ii) firms which are authorised in a third country; and

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

e ‘financial instruments’ means any contract that gives rise to both a financial asset of one party and a financial liability or equity instrument of another party;

f ‘parent investment firm in a Member State’ means an investment firm which has an institution or financial institution as a subsidiary or which holds a participation in one or both such entities, and which is not itself a subsidiary of another institution authorised in the same Member State or of a financial holding company set up in the same Member State;

g ‘EU parent investment firm’ means a parent investment firm in a Member State which is not a subsidiary of another institution authorised in any Member State or of a financial holding company set up in any Member State;

h ‘over-the-counter (OTC) derivative instruments’ means the items falling within the list in Annex IV to Directive 2006/48/EC other than those items to which an exposure value of zero is attributed under point 6 of Part 2 of Annex III to that Directive;

i ‘regulated market’ means a market as defined in Article 4(1)(14) of Directive 2004/39/EC;

j ‘convertible’ means a security which, at the option of the holder, may be exchanged for another security;

k ‘warrant’ means a security which gives the holder the right to purchase an underlying asset at a stipulated price until or at the expiry date of the warrant and which may be settled by the delivery of the underlying itself or by cash settlement;

l ‘stock financing’ means positions where physical stock has been sold forward and the cost of funding has been locked in until the date of the forward sale;

m ‘repurchase agreement’ and ‘reverse repurchase agreement’ mean any agreement in which an institution or its counterparty transfers securities or commodities or guaranteed rights relating to title — to securities or commodities where that guarantee is issued by a recognised exchange which holds the rights to the securities or commodities and the agreement does not allow an institution to transfer or pledge a particular security or commodity to more than one counterparty at one time, subject to a commitment to repurchase them — or substituted securities or commodities of the same description — at a specified price on a future date specified, or to be specified, by the transferor, being a repurchase agreement for the institution selling the securities or commodities and a reverse repurchase agreement for the institution buying them;

n ‘securities or commodities lending’ and ‘securities or commodities borrowing’ mean any transaction in which an institution or its counterparty transfers securities or commodities against appropriate collateral, subject to a commitment that the borrower will return equivalent securities or commodities at some future date or when requested to do so by the transferor, that transaction being securities or commodities lending for the institution transferring the securities or commodities and being securities or commodities borrowing for the institution to which they are transferred;

o ‘clearing member’ means a member of the exchange or the clearing house which has a direct contractual relationship with the central counterparty (market guarantor);

p ‘local firm’ means a firm dealing for its own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets, or dealing for the accounts of other members of those markets and being guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such a firm is assumed by clearing members of the same markets;

q ‘delta’ means the expected change in an option price as a proportion of a small change in the price of the instrument underlying the option;

r ‘own funds’ means own funds as defined in Directive 2006/48/EC; and

s ‘capital’ means own funds.

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

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

2 The terms ‘parent undertaking’, ‘subsidiary undertaking’, ‘asset management company’ and ‘financial institution’ shall cover undertakings defined in Article 4 of Directive 2006/48/EC.

The terms ‘financial holding company’, ‘parent financial holding company in a Member State’, ‘EU parent financial holding company’ and ‘ancillary services undertaking’ shall cover undertakings defined in Article 4 of Directive 2006/48/EC, save that every reference to credit institutions shall be read as a reference to institutions.

3 For the purposes of applying Directive 2006/48/EC to groups covered by Article 2(1) which do not include a credit institution, the following definitions shall apply:

a ‘financial holding company’ means a financial institution the subsidiary undertakings of which are either exclusively or mainly investment firms or other financial institutions, at least one of which is an investment firm, and which is not a mixed financial holding company within the meaning of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate[(1)];

b ‘mixed-activity holding company’ means a parent undertaking, other than a financial holding company or an investment firm or a mixed financial holding company within the meaning of Directive 2002/87/EC, the subsidiaries of which include at least one investment firm; and

c ‘competent authorities’ means the national authorities which are empowered by law or regulation to supervise investment firms.

(**1**) OJ L 35, 11.2.2003, p. 1. Directive as amended by Directive 2005/1/EC.