

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and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) (repealed)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

### *Section 4*

#### ***Monitoring and control of large exposures***

##### *Article 28*

1 Institutions 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 Articles 113(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 limits laid down in Articles 111 to 117 of Directive 2006/48/EC, those limits 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 limits 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;
- (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 limits laid down in Article 111(1) and (2) of Directive 2006/48/EC have been exceeded during the preceding three months.

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