Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance)

Article 2

Amendments to Directive 2006/49/EC

Directive 2006/49/EC is hereby amended as follows:

1. in Article 12, the first paragraph is replaced by the following:

   "Original own funds" means the sum of points (a) to (ca), less the sum of points (i), (j) and (k) of Article 57 of Directive 2006/48/EC.;

2. Article 28 is amended as follows:

   (a) paragraph 1 is replaced by the following:

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

   (b) paragraph 3 is deleted;

3. in Article 30, paragraph 4 is replaced by the following:

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 to be subject to the same treatment as laid down in Article 111(1) of Directive 2006/48/EC and in Article 106(2)(c) of that Directive respectively.;

4. Article 31 is amended as follows:

   (a) in the first paragraph, points (a) and (b) is replaced by the following:

   (a) the exposure on the non-trading book to the client or group of clients in question does not exceed the limit laid down in Article 111(1) of Directive 2006/48/EC, 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 laid down in Article 111(1) of Directive 2006/48/EC, that additional capital requirement being calculated in accordance with Annex VI to this Directive;;

   (b) in the first paragraph, point (e) is replaced by the following:

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

(c) the second paragraph is replaced by the following:

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

5. in Article 32(1), the first subparagraph is replaced by the following:

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 laid down in Article 111(1) 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.;

6. in Article 35, the following paragraph is added:

6. Investment firms shall be covered by the uniform formats, frequencies and dates of reporting referred to in Article 74(2) of Directive 2006/48/EC.;

7. in Article 38, the following paragraph is added:

3. Article 42a of Directive 2006/48/EC, with the exception of point (a) of its paragraph 1, shall apply mutatis mutandis to the supervision of investment firms unless the investment firms fulfil the criteria set out in Article 20(2), 20(3) or 46(1) of this Directive.;

8. in Article 45(1), the date ‘31 December 2010’ is replaced by ‘31 December 2014’;

9. in Article 47, the date ‘31 December 2009’ is replaced by ‘31 December 2010’ and the reference to points 4 and 8 of Annex V of the Directive 93/6/EEC is replaced by reference to points 4 and 8 of Annex VIII;

10. in Article 48(1), the date ‘31 December 2010’ is replaced by ‘31 December 2014’.