

*Draft Order laid before Parliament under section 9N of the Bank of England Act 1998, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2013 No.**

**FINANCIAL SERVICES AND MARKETS**

**The Bank of England Act 1998 (Macro-prudential Measures) Order 2013**

*Made* - - - - 2013  
*Coming into force* - - 1st April 2013

In accordance with section 9N of the Bank of England Act 1998(1), a draft of this Order has been laid before Parliament and approved by a resolution of each House;

The Treasury, in exercise of the powers conferred by section 9I(2) and 9L of the Bank of England Act 1998(2), make the following Order:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Bank of England Act 1998 (Macro-prudential Measures) Order 2013 and comes into force on 1st April 2013.

(2) In this Order—

“banking consolidation directive” means 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(3);

“commercial property exposure” means an exposure which is (to any extent) secured on land or other immoveable property being used primarily for commercial or non-residential purposes;

“consolidated basis”, in relation to a measure, means on the basis that the undertaking to which the measure applies and one or more other undertakings are to be treated as a single undertaking;

“credit institution” has the meaning given by Article 4(1) of the banking consolidation directive;

“excluded deposit taker” means—

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(1) [1998 c.11](#). Inserted by section 4 of the Financial Services Act 2012 ([c.21](#)).

(2) Inserted by section 4 of the Financial Services Act 2012. In relation to the first order under section 9L, subsection (2) does not apply by virtue of paragraph 6 of Schedule 20 to the Financial Services Act 2012.

(3) OJ L 177, 30.6.2006, p.1.

- (a) a credit union within the meaning of section 31 of the Credit Unions Act 1979<sup>(4)</sup>, or
- (b) a person with permission under Part 4A of FSMA 2000<sup>(5)</sup> to effect or carry out contracts of insurance as principal,

“exposure” means an asset or off-balance sheet item;

“financial sector entity” means any of the following—

- (a) a credit institution,
- (b) an investment firm,
- (c) a financial institution (meaning an undertaking other than a credit institution or investment firm, the principal activity of which is to acquire holdings or to pursue one or more of the activities listed in points 2 to 12 and 15 of Annex I to the banking consolidation directive),
- (d) an ancillary services undertaking (meaning an undertaking the principal activity of which consists in owning or managing property, managing data-processing services or any other similar activity which is ancillary to the principal activity of one or more credit institutions, investment firms, insurance undertakings or reinsurance undertakings),
- (e) an insurance undertaking,
- (f) a third country insurance undertaking,
- (g) a reinsurance undertaking,
- (h) a third country reinsurance undertaking, or
- (i) an insurance holding company (meaning an undertaking which is not a mixed financial holding company the main business of which is to acquire and hold participating interests in subsidiary undertakings which are exclusively or mainly insurance undertakings, reinsurance undertakings, third country insurance undertakings or third country reinsurance undertakings, and which has at least one subsidiary undertaking which is an insurance undertaking or a reinsurance undertaking),

“financial sector exposure” means—

- (a) an exposure under, or which relates to, a contract with a financial sector entity, or
- (b) an exposure to, or which relates to, the securities or other instruments issued by such an entity,

“first non-life directive” means Directive [73/239/EEC](#) of the Council of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance<sup>(6)</sup>;

“insurance undertaking” means an undertaking which has received authorisation as an insurance undertaking in accordance with the first non-life directive or the life assurance consolidation directive;

“investment firm” has the meaning given by section 424A of FSMA 2000<sup>(7)</sup>;

“life assurance consolidation directive” means Directive [2002/83/EC](#) of the European Parliament and of the Council of 5 November 2000 concerning life assurance<sup>(8)</sup>;

“mixed financial holding company” means an undertaking which is not a credit institution, an insurance undertaking or an investment firm which has at least one subsidiary undertaking which is a credit institution, an insurance undertaking or an investment firm and which,

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(4) [1979 c.34](#).

(5) Inserted by section 11 of the Financial Services Act 2012.

(6) OJ L 228, 16.8.1973, p.3.

(7) Inserted by [SI 2006/2975](#); amended by [SI 2007/126](#).

(8) OJ L 345, 19.12.2002, p.1.

together with its subsidiary undertakings, constitutes a financial conglomerate (within the meaning given by Article 2.14 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<sup>(9)</sup>) (disregarding any decision taken under Article 3(3) of that Directive);

“participating interest” has the meaning given by section 421A of FSMA 2000<sup>(10)</sup>;

“PRA-authorised person” has the meaning given by section 2B of FSMA 2000<sup>(11)</sup>;

“reinsurance directive” means Directive [2005/68/EC](#) of the European Parliament and of the Council of 16 November 2005 on reinsurance<sup>(12)</sup>;

“reinsurance undertaking” means an undertaking which has received authorisation in accordance with Article 3 of the reinsurance directive;

“requirement” includes a requirement to refrain from taking action;

“residential property exposure” means an exposure which is (to any extent) secured on land or other immoveable property being used primarily for residential purposes;

“solo basis”, in relation to a measure, means on the basis of the situation of the undertaking to which the measure applies;

“subsidiary undertaking” has the meaning given by section 420 of FSMA 2000;

“third country insurance undertaking” means an undertaking which would require authorisation in accordance with the first non-life directive or the life assurance consolidation directive if it had its head office in the EEA;

“third country reinsurance undertaking” means an undertaking which would require authorisation in accordance with the reinsurance directive if it had its head office in the EEA;

“UK bank” means a UK institution which has permission under Part 4A of FSMA 2000 to carry on the regulated activity of accepting deposits but which is not an excluded deposit taker;

“UK institution” means an institution which is incorporated in, or formed under the law of, any part of the United Kingdom;

“UK investment firm” means a UK institution which—

- (a) has permission under Part 4A of FSMA 2000,
- (b) is a PRA-authorised person by virtue of a designation under article 3 of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013<sup>(13)</sup>, and
- (c) is an investment firm.

## Macro-prudential measures

2.—(1) The measures listed in the first column of the table (and any measure falling within a listed measure) are prescribed in relation to the regulator specified in the second column of the table.

(2) Each of those measures may be applied on, or by reference to, a solo basis or on, or by reference to, a consolidated basis.

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<sup>(9)</sup> OJ L 35, 11.02.2003, p.1.

<sup>(10)</sup> Inserted by [SI 2008/948](#).

<sup>(11)</sup> Inserted by section 6 of the Financial Services Act 2012.

<sup>(12)</sup> OJ L 323, 9.12.2005, p.1.

<sup>(13)</sup> SI 2013/XXX.

## Macro-prudential measures

<i>Macro-prudential measure</i>	<i>Regulator</i>
To require UK banks to maintain additional own funds <sup>(14)</sup> by reference to their residential property exposures, commercial property exposures or financial sector exposures or to impose requirements on UK banks by reference to the failure to maintain such additional own funds	PRA
To require UK investment firms which are PRA-authorized persons to maintain additional own funds by reference to their residential property exposures, commercial property exposures or financial sector exposures or to impose requirements on such UK investment firms by reference to the failure to maintain such additional own funds	PRA
To require UK banks to treat residential property exposures, commercial property exposures or financial sector exposures as if they gave rise to an increased level of risk specified by the FPC	PRA
To require UK investment firms which are PRA-authorized persons to treat residential property exposures, commercial property exposures or financial sector exposures as if they gave rise to an increased level of risk specified by the FPC	PRA

### Disapplication of procedural requirements

3.—(1) Paragraph (2) applies if—

- (a) the FPC has given a direction to the PRA under section 9H of the Act which specifies an increase in additional own funds or an increase in the level of risk that exposures specified in the direction are to be treated as giving rise to (“the first direction”),
- (b) the FPC subsequently revokes the first direction, and
- (c) immediately after that revocation the FPC gives another direction to the PRA under section 9H of the Act (“the subsequent direction”) which is in substance identical to the first direction except in relation to the increase specified in the direction.

(2) To the extent that the PRA is implementing the subsequent direction, section 138J(2)(a) of FSMA 2000 (requirement to include cost benefit analysis when consulting on proposed rules) does not apply.

(3) For the purposes of this article, it is immaterial whether the increase is specified by reference to a figure, a proportion, a percentage or otherwise.

*Name*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

<sup>(14)</sup> Articles 56 to 67 of the banking consolidation directive describe what the unconsolidated own funds of a credit institution are, for regulatory purposes, to consist of.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order prescribes macro-prudential measures for the purposes of section 9H of the Bank of England Act 1998 (c.11) (“the 1998 Act”) (power of the Financial Policy Committee of the Bank of England to direct the Financial Conduct Authority and the Prudential Regulation Authority).

The Order specifies the imposition of requirements by the Prudential Regulation Authority on UK banks and UK investment firms to maintain additional own funds (in other words, capital requirements) by reference to residential property exposures, commercial property exposures or financial sector exposures. The Order also specifies the imposition of requirements by reference to the failure to maintain such own funds. Such requirements might for example include an obligation not to make certain discretionary payments. The Order also specifies the imposition of requirements by the Prudential Regulation Authority on UK banks and UK investment firms to treat such exposures as if they gave rise to an increased level of risk.

The Financial Policy Committee may give directions that any such requirements are to be imposed either on a solo basis (by reference to the position of the undertakings which are the subject of the direction) or on a consolidated basis (by reference to the position of the undertakings which are the subject of the direction, taken together with relevant members of that undertaking’s group).

The Financial Policy Committee will, under section 9H of the 1998 Act, be able to direct the Prudential Regulation Authority to implement the measures prescribed by the Order in relation to UK banks and UK investment firms which are PRA-authorized persons (as defined by section 2B of the Financial Services and Markets Act 2000 (c.8) (“FSMA”)).

Article 3 provides that where the Financial Policy Committee gives a direction which specifies a particular increase (for example an increase in the risk weighting to be applied to residential property exposures) and subsequently gives another direction which is identical in substance to the first direction except in relation to the level of the increase, the Prudential Regulation Authority need not comply with the obligation under section 138J of FSMA to include a cost benefit analysis when consulting on rules that the Prudential Regulation Authority proposes to make to implement the subsequent direction.

A full impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from Her Majesty’s Treasury, 1 Horse Guards Road, London SW1A 2HQ or on [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk) and is published alongside the Order on [www.legislation.gov.uk](http://www.legislation.gov.uk).