
STATUTORY INSTRUMENTS

2013 No. 3115

The Capital Requirements Regulations 2013

PART 4

PRA and FCA: cooperation and co-ordination

Co-operation within the European System of Financial Supervision

6. The appropriate regulator must, in the exercise of its duties as a competent authority under the capital requirements directive and the capital requirements regulation—

- (a) take into account any convergence in relation to the use of supervisory tools and supervisory practices in the application of the capital requirements directive and the capital requirements regulation, and for that purpose must—
 - (i) co-operate with trust and full mutual respect with other competent authorities designated for the purposes of the capital requirements directive and capital requirements regulation, in particular when ensuring the flow of appropriate and reliable information between themselves and other members of the European System of Financial Supervision (referred to in Article 2(2) of the EBA Regulation);
 - (ii) co-operate with and participate in the activities of EBA and, as appropriate, the colleges of supervisors;
 - (iii) in accordance with Article 16 of the EBA Regulation, make every effort to comply with the guidelines and recommendations issued by EBA and respond to the warnings and recommendations issued by the ESRB pursuant to Article 16 of the ESRB Regulation; and
 - (iv) co-operate closely with the ESRB; and
- (b) duly consider the potential impact of their decisions on the stability of the financial system in other EEA States, such consideration, in emergency situations, to be based on the information available at the relevant time.

Co-operation with EBA

7.—(1) The appropriate regulator must provide EBA with all the information necessary to carry out its duties under the capital requirements directive, the capital requirements regulation and the EBA Regulation.

(2) The appropriate regulator must inform EBA in advance of any meetings relating to the development and co-ordination of the recovery and resolution plans referred to in Article 74(4) of the capital requirements directive, including the main issues to be discussed and the activities to be considered, and invite EBA to participate in those meetings.

Information gathering, planning and co-ordination duties

8.—(1) The appropriate regulator must co-operate closely with other relevant competent authorities in the EEA and (where appropriate) the EEA consolidating supervisor and provide them with all information which is essential for, or relevant to, the exercise of their supervisory tasks.

(2) For the purposes of this regulation, information shall be regarded as essential if it could materially influence the assessment of the financial soundness of an institution or financial institution in another EEA State and, in particular, includes—

- (a) the legal structure, governance and organisational structure of the group, including all regulated entities, non-regulated subsidiaries and significant branches⁽¹⁾ belonging to the group, and the parent undertakings;
- (b) identification of the relevant competent authorities and the competent authorities responsible for the supervision of regulated entities in the group;
- (c) procedures for the collection and verification of information from institutions which are members of a group;
- (d) adverse developments in institutions or other members of the group, which could seriously affect other institutions which are members of the group;
- (e) major sanctions and exceptional measures taken by the EEA consolidating supervisor or any of the relevant competent authorities under the capital requirements directive.

(3) The appropriate regulator may, in accordance with Article 19 of the EBA Regulation, request EBA to act in relation to any of the following matters—

- (a) where a competent authority has not communicated essential information; or
- (b) where a request for co-operation, in particular to exchange relevant information, has been rejected by a competent authority or has not been acted upon within a reasonable time.

(4) Where an appropriate regulator has authorised the subsidiary of an EEA parent institution, and needs information regarding the implementation of the approaches and methodologies set out in the capital requirements directive, which may already be available to the EEA consolidating supervisor, it must, wherever possible, obtain that information by requesting its disclosure from the EEA consolidating supervisor.

Requirement to consult other competent authorities: major sanctions or exceptional measures

9.—(1) Where the appropriate regulator is considering whether to impose a major sanction or exceptional measure on an institution, it must, before making its decision, consult—

- (a) the EEA consolidating supervisor; and
- (b) where the decision would be of importance to another competent authority's supervisory tasks, that competent authority.

(2) Paragraph (1) does not apply where the appropriate regulator considers that—

- (a) there is an urgent need to act; or
- (b) consultation may jeopardise the effectiveness of its decision.

(3) Where paragraph (1) does not apply by virtue of paragraph (2), the appropriate regulator must, without delay, inform the EEA consolidating supervisor and any competent authority falling within paragraph (1)(b) of the action that it has taken.

(4) The reference in paragraph (1) to a major sanction or exceptional measure includes—

(1) For the meaning of "significant branch" see Article 51 of the capital requirements directive and see regulation 15.

- (a) the imposition of a specific own funds requirement in accordance with Article 104 of the capital requirements directive;
- (b) the imposition of any limitation on the use of the advanced measurement approach for the calculation of own funds requirements under Article 312(2) of the capital requirements regulation.

Emergency situations: notification requirements

10.—(1) This regulation applies where—

- (a) an entity belonging to a group has been authorised, or a significant branch is established, in the United Kingdom; and
- (b) an emergency situation, including a situation as defined in Article 18 of the EBA Regulation or a situation of adverse developments in financial markets, arises in the United Kingdom, which potentially jeopardises the market liquidity and the stability of the financial system in any other EEA State where an entity belonging to a group has been authorised or where a significant branch is established.

(2) The appropriate regulator must notify the following entities as soon as practicable that an emergency situation has occurred—

- (a) the European Central Bank;
- (b) EBA;
- (c) ESRB;
- (d) the central bank of the other EEA State referred to in paragraph (1)(b); and
- (e) the central government departments of that other EEA State which are responsible for legislation concerning the supervision of institutions, financial institutions and insurance undertakings.

(3) The appropriate regulator must, when providing notification in accordance with paragraph (2), provide all information that is essential for the purpose of that body's tasks, unless it is prevented from disclosing that information by section 348 of FSMA (restrictions on disclosure of confidential information by FCA, PRA etc)(2).

Collaboration concerning supervision of cross-border institutions

11.—(1) Where an institution is authorised in the United Kingdom and has a branch or provides services in another EEA State, the appropriate regulator must(3)—

- (a) collaborate closely with the competent authority of the institution's host EEA State in its supervision of that institution;
- (b) supply the competent authority of the institution's host EEA State with all information concerning the ownership and management of the institution that is likely to facilitate the institution's authorisation and supervision;
- (c) supply the competent authority of the institution's host EEA State with all information likely to facilitate the monitoring of the institution, in particular with regard to any factors that may influence the systemic risk posed by the institution, including its liquidity, solvency, deposit guarantee, limitation of large exposures to which it is subject, administrative and accounting procedures, and internal control mechanisms;

(2) Section 348 was amended by the Financial Services Act 2010 (c.28), section 24 and Schedule 2 paragraphs 1 and 26, the Financial Services Act 2012 (c.21), section 41 and Schedule 20 paragraph 9.

(3) Sub-paragraphs (d) to (f) of paragraph (1) come into force on a date specified in a Commission delegated act. See Schedule 1.

- (d) provide the competent authority of the institution's host EEA State with information and findings pertaining to the supervision of the liquidity of the institution in accordance with Part 6 of the capital requirements regulation and Chapter 3 of Title 7 of the capital requirements directive, to the extent that such information and findings are relevant to the protection of depositors or investors in the host EEA State;
- (e) immediately inform the competent authority of the institution's host EEA State when the institution operating in that State experiences liquidity stress, or can reasonably be expected to experience liquidity stress, and provide the competent authority with details of the planning and implementation of a recovery plan and any prudential measures taken in the context of that plan;
- (f) explain to the competent authority of the institution's host EEA State on request how it has taken into account the information and findings provided by that competent authority.

(2) Where an institution is authorised in another EEA State and has a branch or provides services in the United Kingdom, the appropriate regulator must notify the competent authority of the institution's home EEA State and EBA in accordance with Article 50(4) of the capital requirements directive before taking any measures to prevent further breaches of the capital requirements directive or capital requirements regulation(4).

(3) Where an appropriate regulator makes a request for collaboration from a competent authority in another EEA State and the competent authority either rejects the request or fails to act upon it within a reasonable time, the appropriate regulator may refer the matter to EBA (who may act in accordance with Article 19 of the EBA Regulation)(5).

On-the-spot checks and inspections: during CRD transitional period

12. Before an appropriate regulator conducts an on-the-spot check or inspection of a branch of an institution which has been authorised in another EEA State, it must notify the competent authority of that State(6).

On-the-spot checks or inspections: after CRD transitional period

13.—(1) Before an appropriate regulator conducts an on-the-spot check or inspection of a branch of an institution which has been authorised in another EEA State, it must consult the competent authority of that State(7).

(2) After the on-the-spot check or inspection has been carried out, the appropriate regulator must disclose to the competent authority of the institution's home EEA State all information received and findings that are relevant to the risk assessment of the institution or the stability of the financial system of the United Kingdom(8).

On-the-spot checks and inspections: powers of EEA competent authorities

14.—(1) The provisions of Part 11 of FSMA (information gathering and investigations) mentioned in paragraph (2) apply—

- (a) for the purpose specified in paragraph (3) as they apply for the purposes of FSMA; but
- (b) subject to the modifications mentioned in paragraph (4).

(2) The provisions of Part 11 of FSMA referred to in paragraph (1) are—

(4) Paragraph (2) comes into force on a date to be specified in a Commission delegated act. See Schedule 1.
 (5) Paragraph (3) comes into force on a date to be specified in a Commission delegated act. See Schedule 1.
 (6) This regulation ceases to have effect on a date to be specified in a Commission delegated act. See Schedule 1.
 (7) This paragraph comes into force on a date to be specified in a Commission delegated act. See Schedule 1.
 (8) This paragraph comes into force on a date to be specified in a Commission delegated act. See Schedule 1.

- (a) subsections (1) to (6), (9) and (10) of section 165 (regulators' power to require information: authorised persons etc)(**9**);
- (b) subsections (1) to (8) of section 166 (reports by skilled persons)(**10**);
- (c) section 167(1) (appointment of persons to carry out general investigations)(**11**);
- (d) subsections (1), (2), and (4) to (8) of section 170 (investigations: general)(**12**);
- (e) subsections (1) to (3), (5) and (6) of section 171 (powers of persons appointed under section 167)(**13**);
- (f) subsections (2) to (6), and (8), of section 175 (information and documents: supplemental provisions)(**14**);
- (g) subsections (1) to (3), and (5) to (11), of section 176 (entry of premises under warrant)(**15**);
- (h) section 176A (retention of documents taken under section 176)(**16**); and
- (i) section 177 (offences)(**17**).

(3) The specified purpose is enabling a competent authority of a home EEA State to carry out on-the-spot checks and inspections of branches in the United Kingdom of institutions authorised in that EEA State in accordance with Article 52 or 159 of the capital requirements directive.

(4) The modifications referred to in paragraph (1) are—

- (a) references to a “regulator” are to be interpreted as references to the competent authority of the EEA State;
- (b) references to an authorised person are to be interpreted as references to the branch in the United Kingdom of the institution authorised in that EEA State;
- (c) in section 165—
 - (i) in subsection (1), for “either” substitute “a”; and
 - (ii) in subsection (4), for “either regulator of functions conferred on it by or under this Act” substitute “a regulator of functions conferred on it as the competent authority for the purposes of the capital requirements directive or capital requirements regulation”;
- (d) in section 166—
 - (i) in subsection (1), for “either” substitute “a”; and
 - (ii) in subsection (2), omit paragraphs (b) to (d) and “who is, or was at the relevant time, carrying on a business”;
- (e) in section 167(1)—
 - (i) for “an investigating authority” substitute “a regulator”;
 - (ii) for “the investigating authority” substitute “the regulator”; and

(9) Section 165 was amended by the Financial Services Act 2010, s24 and Schedule 2 paragraphs 1 and 15. There are other amendments but none is relevant.

(10) Section 166 was substituted by the Financial Services Act 2012, s41 and Schedule 12 paragraph 1.

(11) Section 167 was amended by the Financial Services Act 2012, s41 and Schedule 12 paragraph 7. There are other amendments but none is relevant.

(12) Section 170 was amended by the Financial Services Act 2012, s41 and Schedule 12 paragraph 10.

(13) Section 167 was amended by [S.I. 2007/126](#).

(14) Section 175 was amended by the Financial Services Act 2012, s41 and Schedule 12 paragraph 13.

(15) Section 176 was amended by [S.I. 2005/1433](#), the Financial Services Act 2010, s24 and Schedule 2 paragraph 1 and 17 and the Financial Services Act 2012, s41 and Schedule 12 paragraph 14.

(16) Section 176A was inserted by the Financial Services Act 2012, s41 and Schedule 12 paragraph 15.

(17) Section 177 was amended by [S.I. 2001/1090](#), the Criminal Justice Act 2003, s280 and Schedule 26 paragraph 54 and the Financial Services Act 2012, s114 and Schedule 18 paragraph 1 and 8.

- (iii) for “on its behalf” to the end of the subsection substitute “on its behalf for the purposes of carrying out on-the-spot checks and inspections under Article 52 or 159 of the capital requirements directive of branches of credit institutions or investments firms authorised in the regulator’s EEA State.”;
- (f) in section 170—
 - (i) in each case, for “an investigating authority” substitute “a regulator”;
 - (ii) in each case, for “the investigating authority” substitute “the regulator”; and
 - (iii) in subsection (1) omit “or 168(3) to (5)”;
- (g) in section 175—
 - (i) in subsection (2) omit “, or any relevant person,”; and
 - (ii) in subsection (8) omit “or 168(3) or (5)”;
- (h) in section 176—
 - (i) in subsection (1) for “Secretary of State, either” substitute “a” and for “first, second or third” substitute “first or second”;
 - (ii) in subsection (3)(a) omit “or an appointed representative”;
 - (iii) in subsection (10) omit “or 168(3) or (5)”;
 - (iv) in paragraph (a) of subsection (11) omit “87C, 87J,” and “165A, 169A,”; and
 - (v) in paragraph (b) of subsection (11) omit “171, 172, 173 or”;
- (i) in section 177(5)—
 - (i) in paragraph (a), for “six months” substitute “three months” and for “the statutory maximum” substitute “level 5 on the standard scale”; and
 - (ii) omit paragraph (b).

Significant branches: UK is the host EEA State

- 15.—**(1) This regulation applies where—
- (a) a credit institution, or an investment firm which is not subject to Article 95 of the capital requirements regulation, is authorised in another EEA State;
 - (b) the credit institution or investment firm has established a branch in the United Kingdom; and
 - (c) an appropriate regulator is the competent authority for that branch.
- (2) The appropriate regulator may make a request to the competent authority of the home EEA State or, where appropriate, to the EEA consolidating supervisor (in which case a copy of the request shall be sent to the competent authority of the home EEA State) for the branch to be designated as significant.
- (3) A request made under paragraph (2) must include reasons for considering the branch to be significant with particular regard to—
- (a) the likely impact of a suspension or closure of the operations of the institution on systemic liquidity and the payment, clearing and settlement systems in the United Kingdom;
 - (b) the size and importance of the branch in terms of the number of clients within the context of the banking or financial system of the United Kingdom; and
 - (c) in the case of a branch of a credit institution, whether the market share of the branch in terms of deposits in the United Kingdom exceeds 2%.
- (4) The appropriate regulator must—

- (a) make every effort to reach a joint decision with the competent authority of the home EEA State and, where appropriate, the EEA consolidating supervisor, on the designation of the branch as significant; and
 - (b) if a joint decision is made, provide the competent authorities concerned with a document setting out the fully reasoned joint decision.
- (5) If a joint decision has not been reached within two months of receipt of a request made by the appropriate regulator under paragraph (2), the appropriate regulator must—
- (a) make a decision within a further period of two months on whether or not to designate the branch as significant, taking into account any views and reservations of the competent authority of the home EEA State and, where appropriate, the EEA consolidating supervisor; and
 - (b) provide the competent authorities concerned with a document containing its fully reasoned decision.
- (6) Where a branch has been designated as significant and the competent authority of the home EEA State fails to consult the appropriate regulator in accordance with paragraph 5 of Article 51(2) of the capital requirements directive or maintains that the operational steps required by Article 86(11) of the capital requirements directive are inadequate, the appropriate regulator may refer the matter to EBA and request its assistance in accordance with Article 19 of the EBA Regulation(18).

Significant branches: UK is the home EEA State or EEA consolidating supervisor

16.—(1) Paragraphs (2) and (3) of this regulation apply where—

- (a) an appropriate regulator is the competent authority of the home EEA State or the EEA consolidating supervisor of a credit institution or an investment firm which is not subject to Article 95 of the capital requirements regulation; and
- (b) the appropriate regulator has received a request (or a copy of a request) from the competent authority of a host EEA State for a branch of the credit institution or investment firm established in that State to be designated as significant.

(2) The appropriate regulator must make every effort to reach a joint decision with the competent authority of the host EEA State and, where appropriate, the EEA consolidating supervisor, on the designation of the branch as significant.

(3) Where a joint decision has not been reached and the competent authority of the host EEA State has made and notified the appropriate regulator of its own decision to designate the branch as significant, the appropriate regulator must recognise that decision as determinative.

(4) Paragraphs (5) to (9) of this regulation apply where the appropriate regulator is the competent authority of the home EEA State and a decision has been made to designate a branch of an institution established in another EEA State as significant.

(5) The appropriate regulator must(19)—

- (a) in relation to the institution for which it is the home EEA State competent authority, communicate to the competent authority of the host EEA State the information referred to in regulation 8(2)(d) or (e);
- (b) in preparation for and during an emergency situation, plan and co-ordinate supervisory activities in cooperation with the competent authority of the host EEA State and, if necessary, its central bank;

(18) Paragraph (6) come into force on a date to be specified in a Commission delegated act. See Schedule 1.

(19) Sub-paragraphs (c) to (e) of paragraph (5)(4) come into force on a date to be specified in a Commission delegated act. See Schedule 1.

- (c) notify a competent authority of the host EEA State of the outcome of any risk assessment referred to in Article 97 of the capital requirements directive or, where applicable, regulation 29 or 31 of these Regulations;
 - (d) notify the competent authority of the host EEA State of any decision to exercise a supervisory power or impose a specific liquidity requirement, insofar as that decision is relevant to the branch; and
 - (e) consult a competent authority of a host EEA State about the operational steps required by Article 86(11) of the capital requirements directive where that is relevant to liquidity risks in the host EEA State's currency.
- (6) Where the appropriate regulator—
- (a) is not required to establish a college of supervisors by regulation 33; and
 - (b) the institution has significant branches in two or more EEA States other than the United Kingdom,

it must, acting on the basis of written co-ordination and co-operation agreements entered into after consulting the competent authorities of the host EEA States, establish a college of supervisors in accordance with paragraphs (7) to (9).

(7) The purpose of the college of supervisors is to facilitate co-operation under regulation 11 and paragraph (5) of this regulation.

- (8) Where it establishes a college of supervisors, the appropriate regulator must—
- (a) inform members in advance about the organisation of and agenda for any meeting of the college of supervisors, including any activities to be considered at that meeting;
 - (b) decide which competent authorities may attend any meeting or participate in any activity;
 - (c) chair any meeting; and
 - (d) inform members in a timely manner of the actions taken at any meeting or any activities carried out.

(9) When making a decision under paragraph (8)(b), the appropriate regulator must take into account the relevance to each competent authority of the supervisory activity to be planned or coordinated, and in particular—

- (a) the potential impact on the stability of the financial system in the EEA State concerned; and
- (b) the obligations under paragraph (5).

Duties to notify EBA and EIOPA

- 17.—(1) The appropriate regulator must inform EBA of—
- (a) the names of the authorities or bodies which may receive confidential information in accordance with Article 57(5) of the capital requirements directive.
 - (b) any action it has taken pursuant to Article 86(3) of the capital requirements directive where developments in relation to an institution's liquidity risk profile may lead to the instability of that institution or systemic instability;
 - (c) the results of any review it has carried out in accordance with Article 97(1) of the capital requirements directive which shows that an institution may pose systemic risk in accordance with Article 23 of the EBA Regulation;
 - (d) any administrative penalties imposed on an institution, unless such a disclosure would be contrary to section 348 of FSMA;

- (e) any authorisation given to a member of a management body of an institution in accordance with Article 91 of the capital requirements directive permitting that person to hold an additional non-executive directorship;
 - (f) the functioning of the review and evaluation process referred to in Article 97 of the capital requirements directive and the methodology used to base the decisions referred to in Articles 98, 100, 101, 102, 104 and 105 of the capital requirements directive on this process;
 - (g) any review and evaluation process conducted for the purposes of Article 103(1) of the capital requirements directive;
 - (h) any delegation of responsibility for supervising an institution, made in accordance with Article 115(2) of the capital requirements directive.
- (2) The results of a review referred to in paragraph (1)(c) must be provided to EBA without delay.
- (3) Where the appropriate regulator is the EEA consolidating supervisor in relation to a group it must—
- (a) where the members of the group include a credit institution, provide EBA with all information regarding the legal and organisational structure of the group and its governance;
 - (b) inform EBA and EIOPA of decisions taken under Article 120(1) and (2) of the capital requirements directive with respect to the risk-based supervision of any mixed financial holding company which is subject to equivalent provisions under the capital requirements directive and under Directive [2002/87/EC](#)(20) or Directive [2009/138/EC](#)(21).

(20) OJ no 035, 11/2/2003, p1.

(21) OJ no 335, 17/12/2009, p1.