

## SCHEDULE

Regulation 4

### PART 1

#### Interpretation

1. In this Schedule—

“credit items in the course of transmission”, in relation to an eligible institution, means standing orders and other credit transfers debited to customers’ accounts, and payment orders including cheques and bankers’ payments, in respect of which the eligible institution is required to make a payment and has not yet made it;

“debit items in the course of collection”, in relation to an eligible institution, means payment orders including cheques (other than cheques passed to United Kingdom offices of other eligible institutions for collection) and bankers’ payments in respect of which the eligible institution is entitled to receive a payment and has not yet received it;

“finance lease” means a lease granted on terms which have the effect of transferring to the lessee all or substantially all of the risk and rewards of ownership of the asset or assets subject to the lease;

“fixed assets”, in relation to an eligible institution, means assets which are intended for use on a continuing basis in the institution’s activities;

“group” has the meaning given by section 474(1) of the Companies Act 2006<sup>(1)</sup>;

“items in suspense”—

- (a) includes, except as provided for in sub-paragraph (b), all credit balances in the books of an eligible institution that are not in customers’ names, but that relate to funds held on behalf of customers or others, including but not limited to—
- (i) accounts holding funds awaiting transfer to customers (other than accounts relating to interest accruing and interest suspense accounts);
  - (ii) returnable application monies for issues of securities;
  - (iii) funds of any customer awaiting investment which have been transferred to an account not in the name of the customer;
  - (iv) funds transferred from the account of any customer to an account not in the name of the customer to meet acceptances, confirmed credits and similar obligations;
  - (v) funds placed on account to meet travellers’ cheques issued by the eligible institution but not yet presented;
  - (vi) valuation fees awaiting transfer to a person who has made a report on the value of land;
  - (vii) accounts holding funds which the eligible institution has received as collecting agent on behalf of a charity;
- (b) excludes balances awaiting settlement of securities transactions held in an account not in the name of the customer;

“net sterling liabilities to non-resident offices”, in relation to an eligible institution, means the amount by which the institution’s total sterling liabilities to non-resident offices exceed its total sterling claims on non-resident offices;

“non-resident banking subsidiary”, in relation to an eligible institution or a non-resident parent, means a body corporate incorporated in a country or territory outside the United Kingdom, or

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(1) 2006 c. 46.

a partnership or other unincorporated association formed under the law of such a country or territory, whose sole or main business is banking and—

- (a) in the case of an undertaking with a share capital, all of whose voting share capital is beneficially owned by that eligible institution or that non-resident parent, or
- (b) in the case of any other undertaking, all of whose shares are beneficially owned by that eligible institution or that non-resident parent;

“non-resident offices”, in relation to an eligible institution, means the offices outside the United Kingdom of—

- (a) that institution,
- (b) any non-resident banking subsidiary of that institution, and
- (c) if that institution has a non-resident parent, that non-resident parent and any of its non-resident banking subsidiaries;

“non-resident parent”, in relation to an eligible institution, means a body corporate incorporated in a country or territory outside the United Kingdom, or a partnership or other unincorporated association formed under the law of such a country or territory which beneficially owns—

- (a) in the case of an undertaking with a share capital, all of the voting share capital of that institution, or
- (b) in the case of any other undertaking, all of the shares of that institution;

“over two year deposits” in relation to an eligible institution, means deposits—

- (a) made with the institution on terms to the effect that repayment cannot be required before the end of the period of two years beginning with the day on which the deposit is made (other than in exceptional circumstances outside the control of the depositor specified at the time the deposit is made), and
- (b) which have been reported as such deposits by the institution to the Bank;

“retransfer agreement” means—

- (a) a sale and repurchase agreement,
- (b) an agreement under which one party sells securities or other assets to another, and by a related transaction undertakes to purchase the same or equivalent securities or assets from that other party on a specified date, or at call, at a specified price, or
- (c) an agreement under which one party otherwise transfers securities or other assets to another in return for a cash payment, and as part of the same transaction undertakes to make a cash payment to that other party upon the transfer to it by that other party of the same or equivalent securities or assets on as specified date, or at call;

“sale and repurchase agreement” means an agreement under which one party sells securities or other assets to another, and as part of the same transaction undertakes to purchase the same or equivalent securities or assets from that other party on a specified date, or at call, at a specified price;

“securities” includes shares, stocks, debentures, debenture stock, loan stock and bonds;

“sterling deposit liabilities to non-resident offices”, in relation to an eligible institution, means sterling liabilities of the United Kingdom offices of that institution to its non-resident offices which—

- (a) fall within paragraph 8 or 10, and
- (b) have been reported as such liabilities by the institution to the Bank;

“total sterling claims on non-resident offices”, in relation to an eligible institution, means the total sterling claims of the United Kingdom offices of that institution on its non-resident offices which have been reported as such claims by the institution to the Bank;

“total sterling liabilities to non-resident offices”, in relation to an eligible institution, means the total sterling liabilities of the United Kingdom offices of that institution to its non-resident offices, which have been reported as such liabilities by the institution to the Bank;

“undertaking” has the meaning given in section 1161(1) of the Companies Act 2006;

“voting share capital” in relation to an undertaking, means issued shares carrying rights to vote in all or substantially all circumstances at general meetings of the undertaking; and, in determining for the purposes of this Schedule whether any shares carry rights to vote, any temporary suspension of voting rights attached to those shares must be ignored.

2. In paragraph 1, in the definitions of “non-resident banking subsidiary” and “non-resident parent”, references to shares are—

- (a) in relation to an undertaking with a share capital, references to allotted shares,
- (b) in relation to an undertaking with capital but no share capital, references to rights to share in the capital of the undertaking, and
- (c) in relation to an undertaking without capital, references to interests—
  - (i) conferring any right to share in the profits, or any liability to contribute to the losses, of the undertaking, or
  - (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.

3. In this Schedule, in relation to an eligible institution which is—

- (a) a building society within the meaning of the Building Societies Act 1986<sup>(2)</sup>, or
- (b) an institution which is incorporated in, or formed under, the law of the Republic of Ireland and whose characteristics correspond to those of such a building society,

references to deposits made with an eligible institution include shares in the institution other than shares which are own funds within the meaning given in point (118) of Article 4(1) of [Regulation \(EU\) No 575/2013](#) on prudential requirements for credit institutions and investment firms<sup>(3)</sup>.

4.—(1) In this Schedule, references to liabilities in respect of sterling deposits made with United Kingdom offices of an eligible institution include sterling liabilities of the institution that are any of the following—

- (a) finance leases entered into by United Kingdom offices of the institution;
  - (b) accounts of such offices with United Kingdom offices of other eligible institutions which are overdrawn;
  - (c) stored value cards issued by such offices.
- (2) The liabilities referred to in sub-paragraph (1) exclude—
- (a) deposits made by non-resident offices of the institution with United Kingdom offices of the institution solely for the purpose of enabling the eligible institution to purchase fixed assets, and
  - (b) deposits made solely for the purpose of funding the depositor’s participation in a loan made, or to be made, to a third party.

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(2) 1986 c. 53.

(3) EUR 2013/575.

(3) In this paragraph, “stored value cards” means a card, which includes any token, coupon, stamp, form, booklet or other document or thing, issued by an eligible institution under a relevant agreement.

(4) In sub-paragraph (3) a relevant agreement is an agreement which provides that—

- (a) upon production of the card the eligible institution will, or a third party may, supply goods or services (which may include the payment of cash) to the holder of the card, and
- (b) the value of those goods or services may not exceed the amount of any payment or payments previously made to the institution by the holder of the card or the balance remaining after previous transactions.

5. In this Schedule, references to certificates of deposit—

- (a) include negotiable or transferable deposits made on terms that are in all respects identical to the terms applying to deposits where a certificate of deposit could have been issued but has not been issued, but
- (b) exclude any certificates of deposit issued by an eligible institution which are then held by that institution.

6.—(1) For the purpose of determining the eligible liabilities of an eligible institution, where a transaction is treated in the books and records of that institution as having been entered into by, or with, an office of that institution in a particular country or territory, that transaction must be treated as such.

(2) Without limiting sub-paragraph (1), this includes in particular—

- (a) any transaction which is treated in the books and records of an eligible institution as giving rise to a liability on the part of a United Kingdom office of that institution to a non-resident office of that institution must be treated as giving rise to such a liability,
- (b) where a liability described in paragraph (a) relates to a deposit, that deposit must be treated as made with that United Kingdom office,
- (c) any transaction which is treated in the books and records of an eligible institution as giving rise to a claim on a non-resident office of that institution by a United Kingdom office of that institution must be treated as giving rise to such a claim.

7. For the purpose of determining the eligible liabilities of an eligible institution, where a transaction is treated in the books and records of that institution as having been entered into by, or with, a United Kingdom office of another eligible institution that transaction must be treated as such.

## PART 2

### Eligible Liabilities

#### Amounts to be included when calculating eligible liabilities

8. The amount of the eligible institution’s liabilities that are sterling deposits made with United Kingdom offices of the eligible institution except for any of the following—

- (a) deposits evidenced by an instrument falling within paragraph 9;
- (b) deposits made by the Bank;
- (c) over two year deposits.

9. The amount of the eligible institution’s liabilities that are certificates of deposit, commercial paper, bonds, notes and other similar instruments which are denominated in sterling and issued by

United Kingdom offices of the eligible institution on terms requiring repayment not later than five years from the date of issue.

**10.**—(1) The amount of the eligible institution’s liabilities to make payments in sterling under retransfer agreements entered into by United Kingdom offices of the eligible institutions—

- (a) for the purchase of securities or other assets, or
  - (b) in return for the transfer to the eligible institution of securities or other assets.
- (2) Sub-paragraph (1) does not include retransfer agreements entered into with the Bank.

**11.** The amount of all sterling items in suspense held by United Kingdom offices of the eligible institution.

**12.** 60% of the amount of sterling credit items in the course of transmission by United Kingdom offices of the eligible institution to any of the following—

- (a) the Bank;
- (b) any other United Kingdom office of the eligible institution;
- (c) a United Kingdom office of any other eligible institution.

**13.**—(1) The amount by which the total liabilities of the United Kingdom offices of the eligible institution denominated in currencies other than sterling exceed the total assets of those offices denominated in such currencies.

(2) In sub-paragraph (1) the total liabilities and the total assets are the total liabilities and total assets as reported to the Bank.

Amounts to be deducted when calculating eligible liabilities

**14.**—(1) The amount of any sterling deposits made by United Kingdom offices of the eligible institution with, and sterling loans made by such offices to, United Kingdom offices of other eligible institutions.

- (2) Sub-paragraph (1) includes certificates of deposit and commercial paper which are—
- (a) denominated in sterling,
  - (b) held by United Kingdom offices of the eligible institution, and
  - (c) issued by United Kingdom offices of other eligible institutions,

but does not include any instrument falling within paragraph 18.

**15.** Sterling amounts payable to United Kingdom offices of the eligible institution by United Kingdom offices of any other eligible institution under the terms of any finance lease.

**16.** The amount of sterling cheques passed by United Kingdom offices of the eligible institution to United Kingdom offices of other eligible institutions for collection.

**17.** The amount of the eligible institution’s claims to receive payments in sterling under retransfer agreements entered into by United Kingdom offices of the eligible institution with United Kingdom offices of other eligible institutions—

- (a) for the sale of securities or other assets, or
- (b) in return for the transfer by the eligible institution of securities or other assets.

**18.**—(1) The value of the preference shares, bonds, notes and other similar debt instruments which are denominated and issued by a United Kingdom office of any other eligible institution on terms requiring redemption or repayment not later than five years from the date of issue which are held by United Kingdom offices of the eligible institution for its own account.

(2) Sub-paragraph (1) does not include certificates of deposit and commercial paper, but does include subordinated loan capital not represented by the issue of securities.

**19.** 60% of the amount of sterling debit items in the course of collection by United Kingdom offices of the eligible institution from any of the following—

- (a) the Bank;
- (b) any other United Kingdom office of the eligible institution;
- (c) a United Kingdom office of any other eligible institution.

**20.** The amount by which the eligible institution's sterling deposit liabilities to non-resident offices exceed the institution's net sterling liabilities to non-resident offices.

## PART 3

### Calculation of Eligible Liabilities

#### **Liabilities in respect of sterling deposits**

**21.—**(1) In calculating the amount of an eligible institution's liabilities in respect of sterling deposits made with United Kingdom offices of the institution—

- (a) the total credit balances on the relevant accounts of any customer with those offices must be reduced by the total debit balances on those accounts, and
- (b) any interest which has accrued but has not yet been credited must be ignored.

(2) For the purposes of sub-paragraph (1)(a), where the eligible institution provides banking facilities to different undertakings within the same group, and compliance with any limit on those facilities is determined by reference to net amounts, the total credit balances on the relevant accounts of such undertakings with those offices must be reduced by the total debit balances on those accounts.

(3) For the purposes of this paragraph, an account with an eligible institution is a relevant account if the following conditions are satisfied—

- (a) the account is denominated in sterling;
- (b) where the account is held in the name of an individual, that individual is resident in the United Kingdom;
- (c) where the account is held in the name of an undertaking, the account is an account of a United Kingdom office of that undertaking;
- (d) the account and all other accounts which the institution treats as netted with that account are managed and controlled on a net basis;
- (e) the institution has received a written opinion from its legal advisers that—
  - (i) a legally enforceable right of set-off exists in respect of the account and all other accounts which the institution treats as netted with that account, and
  - (ii) such a right exists under the law of each jurisdiction whose law could affect the enforceability of that right (including upon default, liquidation or bankruptcy or any analogous event under the law of that jurisdiction).

#### **Liabilities and claims in respect of retransfer agreements**

**22.—**(1) In calculating the amount of an eligible institution's liability to make a payment for the purchase of, or otherwise in return for the transfer to it of, securities or other assets under a retransfer

agreement, the amount of the institution's liability to make such a payment must be reduced by the amount of any deposit paid by the institution under that agreement.

(2) In calculating the amount of an eligible institution's claim to receive a payment for the sale of, or otherwise in return for the transfer by it of, securities or other assets under a retransfer agreement, the amount of the institution's claim must be reduced by the amount of any deposit paid to the institution under that agreement.

(3) In calculating the amount payable by or to an eligible institution under a retransfer agreement involving the purchase of securities or other assets, no account may be taken of any of the following—

- (a) any amount by which the purchase price under the agreement exceeds the sale price of the securities or other assets originally sold under the agreement;
- (b) in the case of both purchase price and sale price, any amount payable in respect of any income which has accrued on the securities or other assets purchased or sold.

### **Holdings of securities**

**23.**—(1) For the purposes of these Regulations, securities held by United Kingdom offices of an eligible institution—

- (a) include any security which the institution is required to purchase, or accept a transfer of, under a retransfer agreement entered into by any such office, and
- (b) exclude any security which the institution is required to sell or transfer under such an agreement.

(2) In sub-paragraph (1), where the retransfer agreement provides for the purchase or transfer of equivalent securities, references to any security are references to the amount of any security which—

- (a) are of a type which may be sold or transferred under that agreement, and
- (b) the eligible institution is required under the agreement—
  - (i) to purchase, or accept a transfer of, or
  - (ii) to sell or transfer.

### **Avoidance of double-counting**

**24.**—(1) If any liability of an eligible institution would fall within more than one of the descriptions of liability set out in paragraphs 8 to 13 of this Schedule, that liability may only be counted as a liability once when aggregating the amounts referred to in those paragraphs for the purpose of regulation 4.

(2) If any item relating to an eligible institution would fall within more than one of the descriptions set out in paragraphs 14 to 20 of this Schedule, that item may only be counted once when aggregating the amounts referred to in those paragraphs for the purpose of regulation 4.