

2012 No. 917

FINANCIAL SERVICES AND MARKETS

The Capital Requirements (Amendment) Regulations 2012

Made - - - - 22nd March 2012

Laid before Parliament 23rd March 2012

Coming into force - - 16th April 2012

The Treasury are a government department designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to—

- (a) credit and financial institutions and the taking of deposits or other repayable funds from the public(b); and
- (b) measures relating to investment firms and to the provision of investment services(c).

The Treasury, in exercise of the powers conferred by section 2(2) of that Act, make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Capital Requirements (Amendment) Regulations 2012 and come into force on 16th April 2012.

Amendment of the Capital Requirements Regulations 2006

2. The Capital Requirements Regulations 2006(d) are amended as follows.

3. In regulation 1(2) (interpretation)—

- (a) in the definition of “banking consolidation directive” for “by Directive 2009/111/EC” substitute “on 24th November 2010 by Directives 2010/76/EU(e) and 2010/78/EU(f)”;
- (b) in the definition of “capital adequacy directive” for “by Directive 2009/111/EC” substitute “on 24th November 2010 by Directives 2010/76/EU and 2010/78/EU”;
- (c) after the definition of “EEA parent financial holding company” insert—
““ESRB” means the European Systemic Risk Board established by Regulation (EU) No. 1092/2010 of the European Parliament and of the Council of 24 November 2010 on

(a) 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and the European Union (Amendment) Act 2008 (c.7), section 3(3) and Part 1 of the Schedule.
(b) S.I. 2001/3495.
(c) S.I.1993/2661.
(d) S.I. 2006/3221. Relevant amendments were made by S.I. 2010/2628.
(e) OJ No. L 329, 14.12.2010, p3.
(f) OJ No. L 331, 15.12.2010, p120.

European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board(a);”; and

(d) after the definition of “proposal” insert—

““regulation establishing EBA” means Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority)(b);”.

4. In regulation 3 (applications to the Authority as EEA consolidated supervisor) after paragraph (3) insert—

“(4) If, by the end of the six month period referred to in paragraph (2)(b), any of the relevant competent authorities has referred the matter to EBA in accordance with Article 19 of the regulation establishing EBA, the Authority must defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that regulation on the Authority’s decision on the application.

(5) If EBA takes a decision in accordance with Article 19(3) of the regulation establishing EBA, the Authority must take its decision on the application in conformity with the decision of EBA.”.

5. In regulation 10A (the Authority’s duties as an EEA consolidated supervisor: joint decision on level of own funds)—

(a) in paragraphs (5) and (6)(a) and (b), for “the Committee of European Banking Supervisors” substitute “EBA”;

(b) after paragraph (6) insert—

“(6A) If, by the end of the four month period referred to in paragraph (6), any of the relevant competent authorities has referred the matter to EBA in accordance with Article 19 of the regulation establishing EBA, the Authority must defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that regulation on the Authority’s decision on the matters referred to in paragraph (2).

(6B) If EBA takes a decision in accordance with Article 19(3) of the regulation establishing EBA, the Authority must take its decision on the matters referred to in paragraph (2) in conformity with the decision of EBA.”;

(c) in paragraph (7) after “paragraph (6)(a)” insert “or (6B)”; and

(d) in paragraph (8) for “(2) and (6)” substitute “(2), (6) and (6A)”.

6. In regulation 10B (the Authority’s duties as an EEA consolidated supervisor: joint decision on level of own funds)—

(a) in paragraphs (4) and (5)(a) and (b), for “the Committee of European Banking Supervisors” substitute “EBA”;

(b) after paragraph (5) insert—

“(5A) If, by the end of the four month period referred to in paragraph (5), any of the relevant competent authorities has referred the matter to EBA in accordance with Article 19 of the regulation establishing EBA, the Authority must defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that regulation.

(5B) If EBA takes a decision in accordance with Article 19(3) of the regulation establishing EBA, the Authority must take its decision on the matters referred to in paragraph (5)(a) in conformity with the decision of EBA.”; and

(c) in paragraph (7) for “(3) and (5)” substitute “(3), (5) and (5A)”.

7. In regulation 11 (the Authority’s duties as an EEA consolidated supervisor: co-ordination and co-operation requirements) after paragraph (3) insert—

(a) OJ No. L 331, 15.12.2010, p1.

(b) OJ No. L 331, 15.12.2010, p12.

“(4) Where a relevant competent authority fails to co-operate with the Authority to the extent required, the Authority may refer the matter to EBA, which may act in accordance with Article 19 of the regulation establishing EBA.”.

8. In regulation 12A (the Authority’s duties as an EEA consolidated supervisor: requirement to establish a college of supervisors)—

- (a) in paragraph (4) after “co-operate closely with” insert “EBA and”;
- (b) in paragraph (7)—
 - (i) in sub-paragraph (a) for “the Committee of European Banking Supervisors” substitute “EBA”; and
 - (ii) in sub-paragraph (b) for “the Committee” substitute “EBA”.

9. In regulation 14(1) (the Authority’s duties as an EEA or national consolidated supervisor: obligations in emergency situations) after sub-paragraph (a) insert—

- “(aa) EBA;
- (ab) ESRB;”.

10. In regulation 16A (significant branches) after paragraph (5) insert—

“(6) If, by the end of the first two month period referred to in paragraph (5), any of the relevant competent authorities has referred the matter to EBA in accordance with Article 19 of the regulation establishing EBA, the Authority must defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that regulation on the Authority’s decision on the designation of the branch as significant.

(7) If EBA takes a decision in accordance with Article 19(3) of the regulation establishing EBA, the Authority must take its decision on the designation of the branch as significant in conformity with the decision of EBA.”.

11. In regulation 16E (the Authority’s general duties) in paragraphs (b) and (c) for “the Committee of European Banking Supervisors” substitute “EBA”.

12. In regulation 16F (the Bank of England’s general duties)—

- (a) in paragraph (b) after “including” insert “a situation as defined in Article 18 of the regulation establishing EBA or a situation of”; and
- (b) after “the EEA consolidated supervisor” insert “and EBA”.

13. After regulation 16F (the Bank of England’s general duties) insert—

“The Authority’s duties in relation to employee remuneration

16G. The Authority must—

- (a) use the information collected in accordance with the criteria for disclosure established in paragraph 15(f) of Part 2 of Annex XII of the banking consolidation directive to benchmark remuneration trends and practices;
- (b) collect the information specified in Article 22(5) of the banking consolidation directive; and
- (c) provide EBA with the information referred to in paragraphs (a) and (b).”.

14. In regulation 26(2) (restriction on disclosure)—

- (a) at the end of paragraph (d) delete “or”;
- (b) at the end insert—
 - “(f) requires the credit institution to limit variable remuneration as a percentage of total net revenues where such variable remuneration is inconsistent with the maintenance of a sound capital base; or
 - (g) requires the credit institution to use net profits to strengthen the capital base.”.

Consequential amendments to primary legislation

15. Schedule 1 (which amends primary legislation) has effect.

Consequential amendments to secondary legislation

16. Schedule 2 (which amends secondary legislation) has effect.

Michael Fabricant

Angela Watkinson

22nd March 2012

Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE 1

Regulation 15

Consequential amendments to primary legislation

Building Societies Act 1986

1. In section 119(2B) of the Building Societies Act 1986(**a**) (meaning of “the Banking Consolidation Directive”), for “by Directive 2009/111/EC” substitute “on 24th November 2010 by Directives 2010/76/EU and 2010/78/EU”.

Financial Services and Markets Act 2000

2. In Part 1 of Schedule 3 to the Financial Services and Markets Act 2000(**b**) (defined terms), in paragraph 2 (meaning of “the banking consolidation directive”), for “by Directive 2009/111/EC” substitute “on 24th November 2010 by Directives 2010/76/EU and 2010/78/EU”.

Banking (Special Provisions) Act 2008

3. In section 15(3) of the Banking (Special Provisions) Act 2008(**c**) (meaning of “the Banking Consolidation Directive”), for “by Directive 2009/111/EC” substitute “on 24th November 2010 by Directives 2010/76/EU and 2010/78/EU”.

Banking Act 2009

4. In section 14(5)(b) of the Banking Act 2009(**d**) (meaning of “securities”), for “by Directive 2009/111/EC” substitute “on 24th November 2010 by Directives 2010/76/EU and 2010/78/EU”.

(a) 1986 c.53; subsection (2B) was inserted by S.I. 1996/1669 and amended by S.I. 2006/3221 and S.I.2010/2628.

(b) 2000 c.8; paragraph 2 was amended by S.I. 2006/3221 and S.I.2010/2628.

(c) 2008 c.2; section 15(3) was amended by S.I. 2010/2628.

(d) 2009 c.1; section 14(5) was amended by S.I. 2010/2628.

SCHEDULE 2

Regulation 16

Consequential amendments to secondary legislation

Cash Ratio Deposits (Eligible Liabilities) Order 1998

1. In article 2(3) of the Cash Ratio Deposits (Eligible Liabilities) Order 1998(a) for “by Directive 2009/111/EC” substitute “on 24th November 2010 by Directives 2010/76/EU and 2010/78 /EU”.

Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

2. In regulation 2 of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(b) (interpretation), in the definition of “markets in financial instruments directive information” at the end insert “as last amended on 24th November 2010 by Directives 2010/76/EU and 2010/78 /EU of the European Parliament and of the Council”.

Uncertificated Securities Regulations 2001

3. In the Uncertificated Securities Regulations 2001(c)—

- (a) in paragraph 28(4) of Schedule 1, in the definition of “banking consolidation directive” for “by Directive 2009/111” substitute “on 24th November 2010 by Directives 2010/76/EU and 2010/ 78/EU”;
- (b) in paragraph 1 of Schedule 2—
 - (i) in sub-paragraph (1)(b), for “by Directive 2009/111/EC” substitute “on 24th November 2010 by Directives 2010/76/EU and 2010/ 78/EU”;
 - (ii) at the end of sub-paragraph (2) insert “as last amended on 24th November 2010 by Directives 2010/76/EU and 2010/78 /EU of the European Parliament and of the Council”.

Financial Conglomerates and Other Financial Groups Regulations 2004

4. In regulation 1(2) of the Financial Conglomerates and Other Financial Groups Regulations 2004(d), in the definition of “the capital adequacy directive” for “by Directive 2009/111/EC” substitute “on 24th November 2010 by Directives 2010/76/EU and 2010/78 /EU”.

Pension Protection Fund (Entry Rules) Regulations 2005

5. In regulation 1(3) of the Pension Protection Fund (Entry Rules) Regulations 2005(e), in the definition of “EEA credit institution” for “by Directive 2009/111/EC” substitute “on 24th November 2010 by Directives 2010/76/EU and 2010/78/ /EU”.

(a) S.I. 1998/1130. Article 2(3) was amended by S.I. 2006/3221 and S.I. 2010/2628.
(b) S.I. 2001/2188. Relevant amendments were made by S.I. 2006/3413 and S.I. 2010/2628.
(c) S.I. 2001/3755. Paragraph 28(4) of Schedule 1 was amended by S.I. 2010/2628 and paragraph 1 of Schedule 2 was amended by S.I. 2006/3221 and S.I. 2010/2628.
(d) S.I. 2004/1862. Relevant amendments were made by S.I. 2006/3221 and 2010/2628.
(e) S.I. 2005/590. Relevant amendments were made by S.I. 2009/451 and S.I. 2010/2628.

Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007

6. In regulation 4C of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007^(a), in paragraphs (3)(c)(iii) and (4)(b) for “by Directive 2009/111/EC” substitute “on 24th November 2010 by Directives 2010/76/EU and 2010/78 /EU”.

Covered Bonds Regulations 2008

7. In regulation 1(2) of the Regulated Covered Bonds Regulations 2008^(b), in the definition of “banking consolidation directive”, at the end insert “as last amended on 24th November 2010 by Directives 2010/76/EU and 2010/78 /EU of the European Parliament and of the Council”.

^(a) S.I. 2007/126. Regulation 4C was inserted by S.I. 2007/763 and amended by S.I. 2010/2628.
^(b) S.I. 2008/346, to which there are amendments not relevant to these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Capital Requirements Regulations 2006 (S.I. 2006/3221) (the “principal Regulations”) for the purposes of implementing (in part) two Directives.

The first Directive is Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), European Supervisory Authority (European Insurance and Occupational Pensions Authority) and European Supervisory Authority (European Securities and Markets Authority) (“Omnibus 1”) (OJ L 331/120 15.12.2010).

The second Directive is Directive 2010/76 /EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations and the supervisory review of remuneration policies (“CRD3”) (OJ L 329/3, 14.12.2010).

Regulation 3 amends the definitions in regulation 1(2) of the principal Regulations for the purposes of both Omnibus 1 and CRD3.

Regulations 4 to 12 relate to Omnibus 1. Regulations 4 to 7 and 10 insert provisions into the principal Regulations enabling the European Banking Authority (“EBA”) to settle disagreements between competent authorities in relation to various joint decisions required to be made under Directive 2006/48/EC. Regulations 5, 6, 8, 9, 11 and 12 replace references to the Committee of European Banking Supervisors with references to the EBA and include references to the EBA and European Systemic Risk Board in relation to various co-operation and notification obligations required by Directive 2006/48/EC.

Regulations 13 and 14 relate to CRD3. Regulation 13 amends the principal Regulations to impose new duties on the Authority to benchmark remuneration trends and practices in credit institutions and investment firms, collect information about employee remuneration and notify that information to the EBA. Regulation 14 amends the list of relevant measures in regulation 26 of the principal Regulations, in relation to which certain provisions on disclosure of information in the Financial Services and Markets Act 2000 (c.8) apply.

Schedules 1 and 2 make consequential amendments to update the references in primary and secondary legislation to the directives amended by Omnibus 1 and CRD3.

Transposition Tables setting out how Directives 2006/48/EC and 2006/49/EC (as amended by Directives 2010/76/EU and 2010/78/EU) are transposed into UK law are available from the Insurance and Savings Team, HM Treasury, 1 Horseguards Road, London, SW1A 2HQ. The Transposition Tables are also available on the Treasury’s website (www.hmtreasury.gov.uk). A Transposition Note setting out how Directive 2010/78/EU is transposed into UK law is also available on the Treasury’s website.

An impact assessment has not been prepared for this instrument as it has no additional impact on businesses, charity or voluntary bodies. Impact assessments were prepared for the principal Regulations as originally made and the amendments made to them by S.I. 2010/906 and S.I. 2010/2628 and are available on the Treasury’s website.

STATUTORY INSTRUMENTS

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