

2010 No. 2628

FINANCIAL SERVICES AND MARKETS

The Capital Requirements (Amendment) Regulations 2010

<i>Made</i> - - - -	<i>28th October 2010</i>
<i>Laid before Parliament</i>	<i>29th October 2010</i>
<i>Coming into force</i> - -	<i>31st December 2010</i>

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

2. These Regulations may be cited as the Capital Requirements (Amendment) Regulations 2010 and come into force on 31st December 2010.

Amendment of the Capital Requirements Regulations 2006

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

Interpretation

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

- (a) at the end of the definition of “banking consolidation directive” insert “as last amended by Directive 2009/111/EC of the European Parliament and of the Council(e)”; and
- (b) after the definition of “banking consolidation directive” insert—

(a) 1972 c.68. By virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183). For the decision of the EEA Joint Committee in relation to Directive 2009/111/EC, see Decision No. 85/2010 of 2 July 2010 amending Annex IX (Financial Services) to the EEA Agreement (not yet published in the Official Journal of the European Communities).

(b) S.I. 2001/3495.

(c) S.I.1993/2661.

(d) S.I. 2006/3221, as amended by S.I. 2010/906.

(e) O.J. L302, 17.11.09, p97.

- “banking or investment group” means the group to which an EEA parent credit institution, EEA parent investment firm or EEA parent financial holding company belongs;”;
- (c) at the end of the definition of “capital adequacy directive” insert “as last amended by Directive 2009/111/EC of the European Parliament and of the Council”;
 - (d) in the definition of “decision” after “means” insert “, for the purposes of Part 2,”;
 - (e) after the definition of “EEA parent financial holding company” insert—
 - “home EEA state” means the EEA state in which a credit institution or investment firm has been authorised in accordance with the banking consolidation directive or the capital adequacy directive;
 - “host EEA state” means the EEA state in which a credit institution or investment firm authorised in another EEA state has a branch;”;
 - (f) in the definition of “joint decision” after “means” insert “, for the purposes of Part 2,”;
 - (g) after the definition of “relevant competent authority” insert—
 - “relevant investment firm” means an investment firm which does not meet the conditions set out in Article 20(2) or (3) or the first paragraph of Article 46 of the capital adequacy directive;
 - “risk assessment” means, unless the context otherwise requires, an evaluation of the risks to which a credit institution or investment firm or a banking or investment group is or might be exposed, in accordance with Articles 123 and 124 of the banking consolidation directive;
 - “significant branch” has the meaning given by regulation 16A.”.

Exercise of supervision

5. In Part 3 (exercise of supervision), for regulation 10 (the Authority’s duties as an EEA consolidated supervisor) substitute—

“10. Regulations 10A, 11, 12 and 12A apply where the Authority is the EEA consolidated supervisor.

10A.—(1) The Authority must submit a report containing its risk assessment of a banking or investment group to the relevant competent authorities.

(2) Subject to paragraph (8), the Authority must take all reasonable steps to reach a joint decision with the relevant competent authorities, within four months of submitting its report, on—

- (a) the application of Articles 123 and 124 of the banking consolidation directive to determine the adequacy of the consolidated level of own funds held by the group with respect to its financial situation and risk profile; and
- (b) the required level of own funds for the application of Article 136(2) of the banking consolidation directive to each member of the group and to the group as a whole.

(3) The Authority must consider, for the purposes of reaching a joint decision, the risk assessments prepared in relation to subsidiaries by the relevant competent authorities.

(4) The Authority must provide the relevant institution with a document setting out the fully reasoned joint decision.

(5) Where a joint decision cannot be reached, the Authority must, at the request of any of the relevant competent authorities, consult the Committee of European Banking Supervisors, or may do so of its own initiative.

(6) Subject to paragraph (8), if a joint decision has not been made within four months of the Authority submitting its report in accordance with paragraph (1), the Authority must—

- (a) after considering the risk assessments prepared in relation to subsidiaries by the relevant competent authorities and any advice given by the Committee of

European Banking Supervisors, make a decision on the matters referred to in paragraph (2);

- (b) where the Authority's decision differs significantly from any advice given by the Committee of European Banking Supervisors, give reasons for the difference;
- (c) provide all relevant competent authorities and the relevant institution with a document containing its decision and the decisions of the relevant competent authorities on the levels of own funds required to be held by subsidiaries on an individual or, where appropriate, sub-consolidated basis;
- (d) recognise the decisions taken by the relevant competent authorities, mentioned in sub-paragraph (c), as determinative.

(7) The Authority must update the joint decision reached in accordance with paragraph (2) or its own decision made under paragraph (6)(a)—

- (a) annually; or
- (b) in exceptional circumstances, on receipt of a fully reasoned written request by a relevant competent authority to update the decision on the application of Article 136(2) of the banking consolidation directive;

and, where sub-paragraph (b) applies, the updated decision may be made after consultation with the competent authority making the request, without consulting the other relevant competent authorities.

(8) Where the Authority submits a report in accordance with paragraph (1) before 1st January 2013, for "four months" in paragraphs (2) and (6) substitute "six months".

(9) In this regulation "relevant institution" means the credit institution or investment firm for whose supervision on a consolidated basis the Authority is responsible.

10B.—(1) This regulation applies where the Authority is a relevant competent authority and receives a report containing the risk assessment of a banking or investment group from the EEA consolidated supervisor.

(2) The Authority must submit to the EEA consolidated supervisor a report containing its risk assessment of each subsidiary of the group it has authorised.

(3) Subject to paragraph (7), the Authority must take all reasonable steps to reach a joint decision with the EEA consolidated supervisor and any other relevant competent authorities on the matters referred to in regulation 10A(2) within four months of the Authority receiving the report from the EEA consolidated supervisor.

(4) Where agreement on a joint decision cannot be reached, the Authority may request that the EEA consolidated supervisor consults the Committee of European Banking Supervisors.

(5) Subject to paragraph (7), if a joint decision has not been reached within four months of the Authority receiving the report from the EEA consolidated supervisor, the Authority must—

- (a) make a decision on the level of own funds required to be held by each subsidiary it has authorised, on an individual or, where appropriate, sub-consolidated basis, in accordance with Articles 123, 124 and 136(2) of the banking consolidation directive, taking into account the views of the EEA consolidated supervisor and any advice given by the Committee of European Banking Supervisors;
- (b) where the Authority's decision differs significantly from any advice given by the Committee of European Banking Supervisors, give reasons for the difference;
- (c) provide the EEA consolidated supervisor with a document containing its decision; and
- (d) recognise the decisions taken by the EEA consolidated supervisor and any other relevant competent authorities on the levels of own funds required to be held by the banking or investment group or its subsidiaries outside the United Kingdom, as determinative.

(6) The Authority may, in exceptional circumstances, make a fully reasoned written request to the EEA consolidated supervisor to update the decision on the level of own funds required to be held by any subsidiary of the group within the United Kingdom in accordance with article 136(2) of the banking consolidation directive.

(7) Where the Authority receives the report from the EEA consolidated supervisor before 1st January 2013, for “four months” in paragraphs (3) and (5) substitute “six months”.

6. For paragraph (1) of regulation 11 substitute—

“(1) The Authority must take such steps as it considers appropriate—

(a) in going-concern situations—

(i) to co-ordinate the gathering and dissemination of relevant or essential information;

(ii) to plan and co-ordinate supervisory activities in co-operation with other relevant competent authorities;

(b) in preparation for and during emergency situations, including adverse developments in credit institutions or relevant investment firms or in financial markets—

(i) to co-ordinate the gathering and dissemination of relevant or essential information;

(ii) to plan and co-ordinate supervisory activities, including exceptional measures, preparation of risk assessments, implementation of contingency plans and communication to the public, in co-operation with other relevant competent authorities and, where necessary, central banks.”.

Establishment of colleges of supervisors

7. After regulation 12 insert—

“**12A.**—(1) Where a credit institution or investment firm belongs to a group whose members include at least one other credit institution or investment firm which is established in another EEA state, the Authority must, acting on the basis of agreements entered into pursuant to regulation 15, establish a college of supervisors to—

(a) facilitate its duties as an EEA consolidated supervisor; and

(b) ensure appropriate co-ordination and co-operation with competent authorities outside the EEA where appropriate.

(2) The college of supervisors shall facilitate the EEA consolidated supervisor and the other relevant competent authorities carrying out the following tasks—

(a) exchanging relevant information;

(b) agreeing on the voluntary allocation of tasks and the voluntary delegation of responsibilities where appropriate;

(c) determining supervisory examination programmes based on a risk assessment of the relevant banking or investment group in accordance with Article 124 of the banking consolidation directive;

(d) increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements;

(e) where appropriate, applying the prudential requirements under the banking consolidation directive on a consistent basis to all members of a banking or investment group;

(f) planning and co-ordination of supervisory activities in preparation for and during emergency situations, taking into account the work of any other relevant bodies established for such purposes.

(3) The following bodies may participate in the college of supervisors—

- (a) the relevant competent authorities;
 - (b) the competent authorities of a host EEA state in which a significant branch is established;
 - (c) central banks;
 - (d) competent authorities situated outside the EEA, provided that, in the opinion of the Authority and all relevant competent authorities, they are subject to confidentiality requirements equivalent to the requirements of section 2 of Chapter 1 of Title V of the banking consolidation directive.
- (4) The Authority must co-operate closely with the other competent authorities participating in the college of supervisors.
- (5) The Authority 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;
 - (d) inform members in a timely manner of the actions taken at any meeting or any activities carried out.
- (6) When making a decision under paragraph (5)(b), the Authority must take into account the relevance to each competent authority of the supervisory activity to be planned or co-ordinated, and in particular—
- (a) the potential impact on the stability of the financial system in the EEA state concerned; and
 - (b) the competent authority's obligations as the competent authority of the home EEA state under Article 42a(2) of the banking consolidation directive.
- (7) Subject to confidentiality requirements under section 2 of Chapter 1 of Title V of the banking consolidation directive, the Authority must—
- (a) inform the Committee of European Banking Supervisors of the activities of the college of supervisors, including in emergency situations; and
 - (b) provide the Committee with all information that is of particular relevance for the purposes of supervisory convergence.”.

The Authority's duties as EEA consolidated supervisor or national consolidated supervisor

8. For regulation 14 substitute—

“14.—(1) Where an emergency situation, including 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 banking or investment group has been authorised or where a significant branch is established, the Authority must notify as soon as practicable—

- (a) the European Central Bank;
- (b) the central bank of the EEA state; and
- (c) the central government departments of the EEA state which are responsible for legislation on the supervision of credit institutions, financial institutions, investment services and insurance companies.

(2) The Authority, in notifying any body under paragraph (1), must provide all information that is essential for the purpose of that body's tasks, which it is not prevented from disclosing.”.

9.—(1) The existing regulation 15 is re-numbered regulation 15(1).

(2) After that provision (as re-numbered) insert—

“(2) Where the agreements referred to in paragraph (1) relate to the establishment of colleges of supervisors, they shall be entered into by the Authority after consultation with the relevant competent authorities.”.

10. After regulation 16 insert—

“Significant branches

16A.—(1) This regulation applies where a credit institution or relevant investment firm authorised in another EEA state has established a branch in the United Kingdom.

(2) The Authority may make a request to the competent authority of the home EEA state or, where appropriate, to the EEA consolidated 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 credit institution or investment firm on market 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 relation to a branch of a credit institution, whether the market share of the branch in terms of deposits exceeds 2% in the United Kingdom.

(4) The Authority must—

- (a) do everything in its power to reach a joint decision with the competent authority of the home EEA state and, where appropriate, the EEA consolidated 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 containing 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 Authority under paragraph (2), the Authority 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 consolidated supervisor; and
- (b) provide the competent authorities concerned with a document containing the fully reasoned decision.

16B.—(1) This regulation applies where the Authority is the competent authority of the home EEA state or the EEA consolidated supervisor and has received a request (or a copy of a request) from the competent authority of a host EEA state for a branch of a credit institution or relevant investment firm established in that state to be designated as significant.

(2) The Authority must do everything in its power to reach a joint decision with the competent authority of the host EEA state and, where appropriate, the EEA consolidated 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 to the Authority its own decision to designate the branch as significant, the Authority must recognise that decision as determinative.

16C.—(1) This regulation applies where the Authority is the competent authority of the home EEA state and a decision has been made to designate a branch of a credit institution or relevant investment firm established in another EEA state as significant.

(2) The Authority must—

- (a) in relation to the credit institution or relevant investment firm 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 11(3)(d) and (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.

16D.—(1) This regulation applies where the Authority is the competent authority of the home EEA state and decisions have been made to designate branches of a credit institution or relevant investment firm established in at least two other EEA states as significant.

(2) Where a college of supervisors has not been established in relation to the credit institution or investment firm whose branches have been designated as significant, the Authority must establish a college of supervisors acting on the basis of agreements entered into pursuant to regulation 15.

(3) Where a college of supervisors has been established by the Authority under paragraph (2), the requirements in regulation 12A(5) and (6) apply.

The Authority's general duties

16E. The Authority must in the exercise of its duties as the competent authority under the banking consolidation directive and the capital adequacy directive—

- (a) consider the potential impact of its decisions on the stability of the financial system in other EEA states, such consideration, in particular in emergency situations, to be based on information available at the relevant time;
- (b) participate in the activities of the Committee of European Banking Supervisors;
- (c) follow the guidelines, recommendations, standards and other measures agreed by the Committee of European Banking Supervisors, unless it considers that there are good reasons not to do so, in which case it must set out those reasons.

The Bank of England's general duties

16F. Where—

- (a) an entity belonging to a banking or investment group has been authorised, or a significant branch is established, in the United Kingdom; and
- (b) an emergency situation, including adverse developments in financial markets, arises, which potentially jeopardises the market liquidity and the stability of the financial system in the United Kingdom,

the Bank of England must notify as soon as practicable the national consolidated supervisor or, where appropriate, the EEA consolidated supervisor.”.

Credit institutions and external credit assessment institutions

11. In regulation 22(a) (recognition for exposure risk-weighting purposes)—

- (a) at the beginning of paragraph (1) insert “Subject to paragraph (6) below,”;
- (b) after paragraph (5) insert—

“(6) The Authority must consider that the ECAI's assessment methodology complies with the requirements of objectivity, independence, ongoing review and transparency for the purposes of paragraph (1)(b)(i) if the ECAI is registered as a credit rating agency in accordance with the EC Regulation.”.

(a) Regulations 22 and 23 were amended by S.I. 2010/906.

12. In regulation 23 (recognition for securitisation risk-weighting purposes)—

- (a) at the beginning of paragraph (1) insert “Subject to paragraph (9) below,”;
- (b) after paragraph (8) insert—

“(9) The Authority must consider that the ECAI’s assessment methodology complies with the requirements of objectivity, independence, ongoing review and transparency for the purposes of paragraph (1)(a)(i) if the ECAI is registered as a credit rating agency in accordance with the EC Regulation.”.

13. After paragraph 7 of Part 1 of Schedule 1 (recognition of ECAIs) insert—

“7A. For the purposes of recognition for securitisation risk-weighting, the Authority must take such steps as it considers necessary to ensure that, with regard to credit assessments relating to structured finance instruments, an ECAI will make publicly available an explanation of how the performance of pool assets affects its credit assessments. ”.

Consequential amendments to primary legislation

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

Consequential amendments to secondary legislation

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

Michael Fabricant

Angela Watkinson

28th October 2010

Two of the Lords Commissioners of Her Majesty’s Treasury

SCHEDULE 1

Regulation 13

Consequential amendments to primary legislation

Building Societies Act 1986

16. In section 119(2B) of the Building Societies Act 1986(a) (meaning of “the Banking Consolidation Directive”), at the end insert “as last amended by Directive 2009/111/EC of the European Parliament and of the Council”.

Financial Services and Markets Act 2000

17. 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”) at the end insert “as last amended by Directive 2009/111/EC of the European Parliament and of the Council”.

Banking (Special Provisions) Act 2008

18. In section 15(3) of the Banking (Special Provisions) Act 2008(c) (meaning of “the Banking Consolidation Directive”), at the end insert “as last amended by Directive 2009/111/EC of the European Parliament and of the Council”.

(a) 1986 c.53; subsection (2B) was substituted by S.I. 2006/3221.

(b) 2000 c.8; paragraph 2 was substituted by S.I. 2006/3221.

(c) 2008 c.2.

Banking Act 2009

19. In section 14(5)(b) of the Banking Act 2009(a) (meaning of “securities”), at the end insert “as last amended by Directive 2009/111/EC of the European Parliament and of the Council”.

SCHEDULE 2

Regulation 14

Consequential amendments to secondary legislation

Cash Ratio Deposits (Eligible Liabilities) Order 1998

20. In article 2(3) of the Cash Ratio Deposits (Eligible Liabilities) Order 1998(b), at the end insert “as last amended by Directive 2009/111/EC of the European Parliament and of the Council”.

Financial Services and Markets Act 2000 (Consultation with Competent Authorities) Regulations 2001

21. In regulation 2 of the Financial Services and Markets Act 2000 (Consultation with Competent Authorities) Regulations 2001(c)—

- (a) in the definition of “capital adequacy directive”, at the end insert “as last amended by Directive 2009/111/EC of the European Parliament and of the Council”;
- (b) in the definition of “EEA consolidated supervisor”, in both cases where it appears, for “Articles 71 or 72” substitute “Article 125 or 126”.

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

22.—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(d) are amended as follows.

(2) In regulation 2 (interpretation), at the end of the definition of “markets in financial instruments directive information” insert “or its functions in relation to the supervision of investment firms under Directive 2006/49/EC of the European Parliament and of the Council(e)”.

(3) In regulation 9 (disclosure by the Authority or Authority workers to certain other persons)—

- (a) in paragraph (1) for “(3) and (3A)” substitute “(3), (3A) and (4)”;
- (b) after paragraph (3B) insert—

“(4) Paragraph (1) does not permit disclosure of information to persons specified in the first column in Part 5 of Schedule 1 (except to the extent that they are referred to in other parts of that Schedule) other than where—

- (a) it is obtained in the course of discharging the Authority’s functions under the banking consolidation directive;
- (b) there is an emergency situation, as referred to in Article 130(1) of that directive; and
- (c) such information is relevant for the performance of such persons’ functions.”.

(4) In Schedule 1 (disclosure of confidential information whether or not subject to directive restrictions)—

(a) 2009 c.1.

(b) S.I. 1998/1130. Article 2(3) was amended by S.I. 2006/3221.

(c) S.I. 2001/2509 as amended by S.I. 2003/2066 and S.I. 2004/1862. There are other amending instruments but none is relevant.

(d) S.I. 2001/2188; relevant amendments were made by S.I. 2006/3413 and the Enterprise Act 2002 (c.40), section 2.

(e) O.J. L177, 30.06.06, p201.

- (a) in sub-paragraph (b)(iii) of the entry in the right-hand column of the table next to the entry for the Office of Fair Trading in the left-hand column, for “article 30.5” substitute “article 47(a)”;
- (b) in sub-paragraph (b)(iii) of the entry in the right-hand column of the table next to the entry for the Competition Commission in the left-hand column of the table, for “article 30.5 substitute “article 47(a)”;
- (c) after Part 4 of the table insert—

“PART 5

<i>Person</i>	<i>Functions</i>
A central government department in another EEA state, responsible for legislation on the supervision of credit institutions, financial institutions, investment services and insurance companies	Its functions as such”

Uncertificated Securities Regulations 2001

23. In the Uncertificated Securities Regulations 2001(a)—

- (a) in paragraph 28(4) of Schedule 1, at the end of the definition of “banking consolidation directive” insert “as last amended by Directive 2009/111 of the European Parliament and of the Council”;
- (b) in paragraph 1 of Schedule 2—
 - (i) at the end of sub-paragraph (1)(b) insert “as last amended by Directive 2009/111/EC of the European Parliament and of the Council”;
 - (ii) in sub-paragraph (2) for “Directive 2000/12/EC” substitute “Directive 2006/48/EC”.

Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003

24. In paragraph 1 of the Schedule to the Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003(b), in the definition of “financial institution” for “Article 1 of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000” substitute “Article 4(5) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006”.

Financial Conglomerates and Other Financial Groups Regulations 2004

25. In regulation 1(2) of the Financial Conglomerates and Other Financial Groups Regulations 2004(c)—

- (a) at the end of the definition of “the capital adequacy directive” insert “as last amended by Directive 2009/111/EC of the European Parliament and of the Council”;
- (b) in sub-paragraph (a) of the definition of “regulated entity” delete “the second sub-paragraph of”.

Pension Protection Fund (Entry Rules) Regulations 2005

26. In regulation 1(3) of the Pension Protection Fund (Entry Rules) Regulations 2005(d), in the definition of “EEA credit institution”, before “which” insert “as last amended by Directive 2009/111/EC of the European Parliament and of the Council,”.

(a) S.I. 2001/3755. Paragraph 28 of Schedule 1 was amended by S.I. 2007/124 and paragraph 1 of Schedule 2 was amended by S.I. 2006/3221.
 (b) S.I. 2003/1370. Paragraph 1 was amended by S.I. 2006/3221.
 (c) S.I. 2004/1862. Sub-paragraph (a) of regulation 1(2) was amended by S.I. 2006/3221.
 (d) S.I. 2005/590. Paragraph 1(3) was amended by S.I. 2009/451; there are other amendments not relevant to these Regulations.

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

27. In regulation 4C of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007^(a), at the end of sub-paragraph (3)(c)(iii) and sub-paragraph (4)(b) insert “as last amended by Directive 2009/111/EC of the European Parliament and of the Council”.

^(a) S.I. 2007/126. Regulation 4C was inserted by S.I. 2007/763.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, in part, Directive 2009/111/EC of the European Parliament and of the Council amending Directives 2006/48/EC and 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 (“the Directive”) (OJ L302, 17.11.09, p97). The Financial Services Authority (“the Authority”) is responsible for implementing other parts of the Directive.

Regulation 3 amends certain definitions in Part 1 of the Capital Requirements Regulations 2006 (S.I. 2006/3221) (the “principal Regulations”) and inserts new definitions.

Regulations 4 to 9 amend Part 3 of the principal Regulations. Regulation 4 inserts provisions establishing procedures for the Authority to determine the adequacy of the consolidated level of own funds held by a banking or investment group, whether as the EEA consolidated supervisor or a national supervisor for members of a group. Regulation 5 amends the provisions in the principal Regulations on co-operation between competent authorities. Regulations 6 and 8 insert new provisions concerning the establishment of colleges of supervisors for pan-European banking or investment groups. Regulation 7 amends the notification provisions which apply to the Authority in the case of an emergency situation. Regulation 9 inserts provisions establishing procedures for branches of a credit institution or investment firm to be designated as “significant”, imposing new duties on the Authority to have regard to the impact of its decisions on the stability of the financial system in other EEA states and in relation to the Committee on European Banking Supervisors. It also imposes a new notification duty on the Bank of England.

Regulations 10, 11 and 12 update the principal Regulations in relation to external credit assessment institutions, to take account of Regulation (EC) No. 1060/2009 of the European Parliament and of the Council of 16th September 2009 on credit rating agencies (OJ L302, 17.11.09, p1).

Schedule 1 makes consequential amendments to update the definition of “banking consolidation directive” in three existing Acts of Parliament.

Schedule 2 makes consequential amendments to update references to the banking consolidation directive and capital adequacy directive in secondary legislation, and to correct consequential amendments made by the principal Regulations.

Transposition Tables setting out how Directives 2006/48/EC and 2006/49/EC (as amended by the Directive) are transposed into UK law are available from HM Treasury, 1 Horseguards Road, London, SW1A 2HQ. The Transposition Tables are also available on HM Treasury’s website (www.hm-treasury.gov.uk).

An Impact Assessment has been produced for this instrument and has been deposited in both Houses of Parliament. It is available either from the above address or on HM Treasury’s website.

£5.75