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Contents

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other Acts are printed in bold type and preceded by an asterisk.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 93/6/EEC

of 15 March 1993

on the capital adequacy of investments firms and credit institutions

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the first and third sentences of Article 57 (2) thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas the main objective of Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (4) is to allow investment firms authorized by the competent authorities of their home Member States and supervised by the same authorities to establish branches and provide services freely in other Member States; whereas that Directive accordingly provides for the coordination of the rules governing the authorization and pursuit of the business of investment firms;

Whereas that Directive does not, however, establish common standards for the own funds of investment firms nor indeed does it establish the amounts of the initial capital of such firms; whereas it does not establish a common framework for monitoring the risks incurred by the same firms; whereas it refers, in several of its provisions, to another Community initiative, the objective of which would be precisely to adopt coordinated measures in those fields;

Whereas the approach that has been adopted is to effect only the essential harmonization that is necessary and sufficient to secure the mutual recognition of authorization and of prudential supervision systems; whereas the adoption of measures to coordinate the definition of the own funds of investment firms, the establishment of the amounts of their initial capital and the establishment of a common framework for monitoring the risks incurred by investment firms are essential aspects of the harmonization necessary for the achievement of mutual recognition within the framework of the internal financial market;

Whereas it is appropriate to establish different amounts of initial capital depending on the range of activities that investment firms are authorized to undertake;

Whereas existing investment firms should be permitted, under certain conditions, to continue their business even if they do not comply with the minimum amount of initial capital fixed for new firms;

Whereas the Member States may also establish rules stricter than those provided for in this Directive;

Whereas this Directive forms part of the wider international effort to bring about approximation of the rules in force regarding the supervision of investment firms and credit institutions (hereinafter referred to collectively as 'institutions');

Whereas common basic standards for the own funds of institutions are a key feature in an internal market in the

(1) OJ No C 152, 21. 6. 1990, p. 6; and OJ No C 50, 25. 2. 1992, p. 5.
(2) OJ No C 326, 16. 12. 1991, p. 89; and OJ No C 337, 21. 12. 1992, p. 114.
(3) OJ No C 69, 18. 3. 1991, p. 1.
(4) See page 27 of this Official Journal.

investment services sector, since own funds serve to ensure the continuity of institutions and to protect investors;

Whereas in a common financial market, institutions, whether they are investment firms or credit institutions, engage in direct competition with one another;

Whereas it is therefore desirable to achieve equality in the treatment of credit institutions and investment firms;

Whereas, as regards credit institutions, common standards are already established for the supervision and monitoring of credit risks in Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions [1];

Whereas it is necessary to develop common standards for market risks incurred by credit institutions and provide a complementary framework for the supervision of the risks incurred by institutions, in particular market risks, and more especially position risks, counterparty/settlement risks and foreign-exchange risks;

Whereas it is necessary to introduce the concept of a 'trading book' comprising positions in securities and other financial instruments which are held for trading purposes and are subject mainly to market risks and exposures relating to certain financial services provided to customers;

Whereas it is desirable that institutions with negligible trading-book business, in both absolute and relative terms, should be able to apply Directive 89/647/EEC, rather than the requirements imposed in Annexes I and II to this Directive;

Whereas it is important that monitoring of settlement/delivery risks should take account of the existence of systems offering adequate protection that reduces that risk;

Whereas, in any case, institutions must comply with this Directive as regards the coverage of the foreign-exchange risks on their overall business; whereas lower capital requirements should be imposed for positions in closely correlated currencies, whether statistically confirmed or arising out of binding intergovernmental agreements, with a view in particular to the creation of the European Monetary Union;

Whereas the existence, in all institutions, of internal systems for monitoring and controlling interest-rate risks on all of their business is a particularly important way of minimizing such risks; whereas, consequently, such systems must be subject to overview by the competent authorities;

Whereas Council Directive 92/121/EEC of 21 December 1992 on the monitoring and control of large exposures of credit institutions [2] is not aimed at establishing common rules for monitoring large exposures in activities which are principally subject to market risks; whereas that Directive makes reference to another Community initiative intended to adopt the requisite coordination of methods in that field;

Whereas it is necessary to adopt common rules for the monitoring and control of large exposures incurred by investment firms;

Whereas the own funds of credit institutions have already been defined in Council Directive 89/299/EEC of 17 April 1989 on the own funds of credit institutions [3];

Whereas the basis for the definition of the own funds of institutions should be that definition;

Whereas, however, there are reasons why for the purposes of this Directive the definition of the own funds of institutions may differ from that in the aforementioned Directive in order to take account of the particular characteristics of the activities carried on by those institutions which mainly involve market risks;

Whereas Council Directive 92/30/EEC of 6 April 1992 on the supervision of credit institutions on a consolidated basis [4] states the principle of consolidation; whereas it does not establish common rules for the consolidation of financial institutions which are involved in activities principally subject to market risks; whereas that Directive makes reference to another Community initiative intended to adopt coordinated measures in that field;

Whereas Directive 92/30/EEC does not apply to groups which include one or more investment firms but no credit institutions; whereas it was, however, felt desirable to provide a common framework for the introduction of the supervision of investment firms on a consolidated basis;

Whereas technical adaptations to the detailed rules laid down in this Directive may from time to time be necessary to take account of new developments in the investment services field; whereas the Commission will accordingly propose such adaptations as are necessary;

Whereas the Council should, at a later stage, adopt provision for the adaptation of this Directive to technical progress in accordance with Council Decision 87/373/EEC of 13 July 1987 laying down the procedures

[1] OJ No L 386, 30. 12. 1989, p. 14. Directive as amended by Directive 92/30/EEC (OJ No L 110, 28. 4. 1992, p. 52).

[2] OJ No L 29, 5. 2. 1993, p. 1.

[3] OJ No L 124, 5. 5. 1989, p. 16. Directive as last amended by Directive 92/30/EEC (OJ No L 110, 24. 9. 1992, p. 52).

[4] OJ No L 110, 28. 4. 1992, p. 52.

for the exercise of implementing powers conferred on the Commission [1]; whereas meanwhile the Council itself, on a proposal from the Commission, should carry out such adaptations;

Whereas provision should be made for the review of this Directive within three years of the date of its application in the light of experience, developments on financial markets and work in international fora of regulatory authorities; whereas that review should also include the possible review of the list of areas that may be subject to technical adjustment;

Whereas this Directive and Directive 93/22/EEC on investment services in the securities field are so closely interrelated that their entry into force on different dates could lead to the distortion of competition,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Member States shall apply the requirements of this Directive to investment firms and credit institutions as defined in Article 2.

2. A Member State may impose additional or more stringent requirements on the investment firms and credit institutions that it has authorized.

DEFINITIONS

Article 2

For the purposes of this Directive:

1. *credit institutions* shall mean all institutions that satisfy the definition in the first indent of Article 1 of the First Council Directive (77/780/EEC) of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions [2] which are subject to the requirements imposed by Directive 89/647/EEC;

2. *investment firms* shall mean all institutions that satisfy the definition in point 2 of Article 1 of Directive 93/22/EEC, which are subject to the requirements imposed by the same Directive, excluding:

   — credit institutions,

   — local firms as defined in 20, and

   — firms which only receive and transmit orders from investors without holding money or securities belonging to their clients and which for that reason may not at any time place themselves in debit with their clients;

3. *institutions* shall mean credit institutions and investment firms;

4. *recognized third-country investment firms* shall mean firms which, if they were established within the Community, would be covered by the definition of investment firm in 2, which are authorized in a third country and which are subject to and comply with prudential rules considered by the competent authorities as at least as stringent as those laid down in this Directive;

5. *financial instruments* shall mean the instruments listed in Section B of the Annex to Directive 93/22/EEC;

6. the *trading book* of an institution shall consist of:

   (a) its proprietary positions in financial instruments which are held for resale and/or which are taken on by the institution with the intention of benefiting in the short term from actual and/or expected differences between their buying and selling prices, or from other price or interest-rate variations, and positions in financial instruments arising from matched principal broking, or positions taken in order to hedge other elements of the trading book;

   (b) the exposures due to the unsettled transactions, free deliveries and over-the-counter (OTC) derivative instruments referred to in paragraphs 1, 2, 3 and 5 of Annex II, the exposures due to repurchase agreements and securities lending which are based on securities included in the trading book as defined in (a) referred to in paragraph 4 of Annex II, those exposures due to reverse repurchase agreements and securities-borrowing transactions described in the same paragraph, provided the competent authorities so approve, which meet either the conditions (i), (ii), (iii) and (v) or conditions (iv) and (v) as follows:

      (i) the exposures are marked to market daily following the procedures laid down in Annex II;

      (ii) the collateral is adjusted in order to take account of material changes in the value of the securities involved in the agreement or transaction in question, according to a rule acceptable to the competent authorities;

[1] OJ No L 197, 18. 7. 1987, p. 33.
[2] OJ No L 322, 17. 12. 1977, p. 30. Directive as amended by Directive 89/646/EEC (OJ No L 386, 30. 12. 1989, p. 1).

(iii) the agreement or transaction provides for the claims of the institution to be automatically and immediately offset against the claims of its counter-party in the event of the latter's defaulting;

(iv) the agreement or transaction in question is an interprofessional one;

(v) such agreements and transactions are confined to their accepted and appropriate use and artificial transactions, especially those not of a short-term nature, are excluded; and

(c) those exposures in the form of fees, commission, interest, dividends and margin on exchange-traded derivatives which are directly related to the items included in the trading book referred to in paragraph 6 of Annex II.

Particular items shall be included in or excluded from the trading book in accordance with objective procedures including, where appropriate, accounting standards in the institution concerned, such procedures and their consistent implementation being subject to review by the competent authorities;

7. *parent undertaking, subsidiary undertaking* and *financial institution* shall be defined in accordance with Article 1 of Directive 92/30/EEC;

8. *financial holding company* shall mean a financial institution the subsidiary undertakings of which are either exclusively or mainly credit institutions, investment firms or other financial institutions, one of which at least is a credit institution or an investment firm;

9. *risk weightings* shall mean the degrees of credit risk applicable to the relevant counter-parties under Directive 89/647/EEC. However, assets constituting claims on and other exposures to investment firms or recognized third-country investment firms and exposures incurred to recognized clearing houses and exchanges shall be assigned the same weighting as that assigned where the relevant counterparty is a credit institution;

10. *over-the-counter (OTC) derivative instruments* shall mean the interest-rate and foreign-exchange contracts referred to in Annex II to Directive 89/647/EEC and off-balance-sheet contracts based on equities, provided that no such contracts are traded on recognized exchanges where they are subject to daily margin requirements and, in the case of foreign-exchange contracts, that every such contract has an original maturity of more than 14 calendar days;

11. *regulated market* shall mean a market that satisfies the definition given in Article 1 (13) of Directive 93/22/EEC;

12. *qualifying items* shall mean long and short positions in the assets referred to in Article 6 (1) (b) of Directive 89/647/EEC and in debt instruments issued by investment firms or by recognized third-country investment firms. It shall also mean long and short positions in debt instruments provided that such instruments meet the following conditions: such instruments must firstly be listed on at least one regulated market in a Member State or on a stock exchange in a third country provided that that exchange is recognized by the competent authorities of the relevant Member State; and secondly both be considered by the institution concerned to be sufficiently liquid and, because of the solvency of the issuer, be subject to a degree of default risk which is comparable to or lower than that of the assets referred to in Article 6 (1) (b) of Directive 89/647/EEC; the manner in which the instruments are assessed shall be subject to scrutiny by the competent authorities, which shall overturn the judgment of the institution if they consider that the instruments concerned are subject to too high a degree of default risk to be qualifying items.

Notwithstanding the foregoing and pending further coordination, the competent authorities shall have the discretion to recognize as qualifying items instruments which are sufficiently liquid and which, because of the solvency of the issuer, are subject to a degree of default risk which is comparable to or lower than that of the assets referred to in Article 6 (1) (b) of Directive 89/647/EEC. The default risk associated with such instruments must have been evaluated at such a level by at least two credit-rating agencies recognized by the competent authorities or by only one such credit-rating agency so long as they are not rated below such a level by any other credit-rating agency recognized by the competent authorities.

The competent authorities may, however, waive the condition imposed in the preceding sentence if they judge it inappropriate in the light of, for example, the characteristics of the market, the issuer, the issue, or some combination of those characteristics.

Furthermore, the competent authorities shall require the institutions to apply the maximum weighting shown in Table 1 in paragraph 14 of Annex I to instruments which show a particular risk because of the insufficient solvency of the issuer or liquidity.

The competent authorities of each Member State shall regularly provide the Council and the Commission with information concerning the

methods used to evaluate the qualifying items, in particular the methods used to assess the degree of liquidity of the issue and the solvency of the issuer;

13. *central government items* shall mean long and short positions in the assets referred to in Article 6 (1) (a) of Directive 89/647/EEC and those assigned a weighting of 0% in Article 7 of the same Directive;

14. *convertible* shall mean a security which, at the option of the holder, can be exchanged for another security, usually the equity of the issuer;

15. *warrant* shall mean an instrument which gives the holder the right to purchase a number of shares of common stock or bonds at a stipulated price until the warrant's expiry date. They may be settled by the delivery of the securities themselves or their equivalent in cash;

16. *covered warrant* shall mean an instrument issued by an entity other than the issuer of the underlying instrument which gives the holder the right to purchase a number of shares of common stock or bonds at a stipulated price or a right to secure a profit or avoid a loss by reference to fluctuations in an index relating to any of the financial instruments listed in Section B of the Annex to Directive 93/22/EEC until the warrant's expiry date;

17. *repurchase agreement* and *reverse repurchase agreement* shall mean any agreement in which an institution or its counter-party transfers securities or guaranteed rights relating to title to securities where that guarantee is issued by a recognized exchange which holds the rights to the securities and the agreement does not allow an institution to transfer or pledge a particular security to more than one counter-party at one time, subject to a commitment to repurchase them (or substituted securities of the same description) at a specified price on a future date specified, or to be specified, by the transferor, being a *repurchase agreement* for the institution selling the securities and a *reverse repurchase agreement* for the institution buying them.

A reverse repurchase agreement shall be considered an interprofessional transaction when the counter-party is subject to prudential coordination at Community level or is a Zone A credit institution as defined in Directive 89/647/EEC or is a recognized third-country investment firm or when the agreement is concluded with a recognized clearing house or exchange;

18. *securities lending* and *securities borrowing* shall mean any transaction in which an institution or its counter-party transfers securities against appropriate collateral subject to a commitment that the borrower will return equivalent securities at some future date or when requested to do so by the transferor, being *securities lending* for the institution transferring the securities and *securities borrowing* for the institution to which they are transferred.

Securities borrowing shall be considered an interprofessional transaction when the counterparty is subject to prudential coordination at Community level or is a Zone A credit institution as defined in Directive 89/647/EEC or is a recognized third-country investment firm or when the transaction is concluded with a recognized clearing house or exchange;

19. *clearing member* shall mean a member of the exchange or the clearing house which has a direct contractual relationship with the central counterparty (market guarantor); non-clearing members must have their trades routed through a clearing member;

20. *local firm* shall mean a firm dealing only for its own account on a financial-futures or options exchange or for the accounts of or making a price to other members of the same exchange and guaranteed by a clearing member of the same exchange. Responsibility for ensuring the performance of contracts entered into by such a firm must be assumed by a clearing member of the same exchange, and such contracts must be taken into account in the calculation of the clearing member's overall capital requirements so long as the local firm's positions are entirely separate from those of the clearing member;

21. *delta* shall mean the expected change in an option price as a proportion of a small change in the price of the instrument underlying the option;

22. for the purposes of paragraph 4 of Annex I, *long position* shall mean a position in which an institution has fixed the interest rate it will receive at some time in the future, and *short position* shall mean a position in which it has fixed the interest rate it will pay at some time in the future;

23. *own funds* shall mean own funds as defined in Directive 89/299/EEC. This definition may, however, be amended in the circumstances described in Annex V;

24. *initial capital* shall mean items 1 and 2 of Article 2 (1) of Directive 89/299/EEC;

25. *original own funds* shall mean the sum of items 1, 2 and 4, less the sum of items 9, 10 and 11 of Article 2 (1) of Directive 89/299/EEC;

26. *capital* shall mean own funds;

27. *modified duration* shall be calculated using the formula set out in paragraph 26 of Annex I.

INITIAL CAPITAL

Article 3

1. Investment firms which hold clients' money and/or securities and which offer one or more of the following services shall have initial capital of ECU 125 000:

— the reception and transmission of investors' orders for financial instruments,

— the execution of investors' orders for financial instruments,

— the management of individual portfolios of investments in financial instruments,

provided that they do not deal in any financial instruments for their own account or underwrite issues of financial instruments on a firm commitment basis.

The holding of non-trading-book positions in financial instruments in order to invest own funds shall not be considered as dealing for the purposes set out in the first paragraph or for the purposes of paragraph 2.

The competent authorities may, however, allow an investment firm which executes investors' orders for financial instruments to hold such instruments for its own account if:

— such positions arise only as a result of the firm's failure to match investors' orders precisely,

— the total market value of all such positions is subject to a ceiling of 15 % of the firm's initial capital,

— the firm meets the requirements imposed in Articles 4 and 5, and

— such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.

2. Member States may reduce the amount referred to in paragraph 1 to ECU 50 000 where a firm is not authorized to hold clients' money or securities, to deal for its own account, or to underwrite issues on a firm commitment basis.

3. All other investment firms shall have initial capital of ECU 730 000.

4. The firms referred to in the second and third indents of Article 2 (2) shall have initial capital of ECU 50 000 in so far as they benefit from freedom of establishment or provide services under Articles 14 or 15 of Directive 93/22/EEC.

5. Notwithstanding paragraphs 1 to 4, Member States may continue the authorization of investment firms and firms covered by paragraph 4 in existence before this Directive is applied the own funds of which are less than the initial capital levels specified for them in paragraphs 1 to 4. The own funds of such firms shall not fall below the highest reference level calculated after the date of notification of this Directive. That reference level shall be the average daily level of own funds calculated over a six-month period preceding the date of calculation. It shall be calculated every six months in respect of the corresponding preceding period.

6. If control of a firm covered by paragraph 5 is taken by a natural or legal person other than the person who controlled it previously, the own funds of that firm must attain at least the level specified for it in paragraphs 1 to 4, except in the following situations:

(i) in the case of the first transfer by inheritance after the application of this Directive, subject to the competent authorities' approval, for not more than 10 years after that transfer;

(ii) in the case of a change in the composition of a partnership, as long as at least one of the partners at the date of the application of this Directive remains in the partnership, for not more than 10 years after the date of the application of this Directive.

7. In certain specific circumstances and with the consent of the competent authorities, however, in the event of a merger of two or more investment firms and/or firms covered by paragraph 4, the own funds of the firm produced by the merger need not attain the level specified in paragraphs 1 to 4. Nevertheless, during any period when the levels specified in paragraphs 1 to 4 have not been attained, the own funds of the new firm may not fall below the merged firms' total own funds at the time of the merger.

8. The own funds of investment firms and firms covered by paragraph 4 may not fall below the level specified in paragraphs 1 to 5 and 7. If they do, however, the competent authorities may, where the circumstances justify it, allow such firms a limited period in which to rectify their situations or cease their activities.

PROVISIONS AGAINST RISKS

Article 4

1. The competent authorities shall require institutions to provide own funds which are always more than or equal to the sum of:

(i) the capital requirements, calculated in accordance with Annexes I, II and VI, for their trading-book business;

(ii) the capital requirements, calculated in accordance with Annex III, for all of their business activities;

(iii) the capital requirements imposed in Directive 89/647/EEC for all of their business activities, excluding both their trading-book business and their illiquid assets it they are deducted from own funds under paragraph 2 (d) of Annex V;

(iv) the capital requirements imposed in paragraph 2.

Irrespective of the amount of the capital requirement referred to in (i) to (iv) the own-funds requirement for investment firms shall never be less than the amount prescribed in Annex IV.

2. The competent authorities shall require institutions to cover the risks arising in connection with business that is outside the scope of both this Directive and Directive 89/647/EEC and considered to be similar to the risks covered by those Directives by adequate own funds.

3. If the own funds held by an institution fall below the amount of the own funds requirement imposed in paragraph 1, the competent authorities shall ensure that the institution in question takes appropriate measures to rectify its situation as quickly as possible.

4. The competent authorities shall require institutions to set up systems to monitor and control the interest-rate risk on all of their business, and those systems shall be subject to overview by the competent authorities.

5. Institutions shall be required to satisfy their competent authorities that they employ systems which can calculate their financial positions with reasonable accuracy at any time.

6. Notwithstanding paragraph 1, the competent authorities may allow institutions to calculate the capital requirements for their trading-book business in accordance with Directive 89/647/EEC rather than in accordance with Annexes I and II to this Directive provided that:

(i) the trading-book business of such institutions does not normally exceed 5 % of their total business;

(ii) their total trading-book positions do not normally exceed ECU 15 million; and

(iii) the trading-book business of such institutions never exceeds 6 % of their total business and their total trading-book positions never exceed ECU 20 million.

7. In order to calculate the proportion that trading-book business bears to total business as in paragraph 6 (i) and (iii), the competent authorities may refer either to the size of the combined on- and off-balance-sheet business, to the profit and loss account or to the own funds of the institutions in question, or to a combination of those measurements. When the size of on- and off-balance-sheet business is assessed, debt instruments shall be valued at their market prices or their principal values, equities at their market prices and derivatives according to the nominal or market values of the instruments underlying them. Long positions and short positions shall be summed regardless of their signs.

8. If an institution should happen for more than a short period to exceed either or both of the limits imposed in paragraph 6 (i) and (ii) or to exceed either or both of the limits imposed in paragraph 6 (iii), it shall be required to meet the requirements imposed in Article 4 (1) (i) rather than those of Directive 89/647/EEC in respect of its trading-book business and to notify the competent authority.

MONITORING AND CONTROL OF LARGE EXPOSURES

Article 5

1. Institutions shall monitor and control their large exposures in accordance with Directive 92/121/EEC.

2. Notwithstanding paragraph 1, those institutions which calculate the capital requirements for their trading-book business in accordance with Annexes I and II shall monitor and control their large exposures in accordance with Directive 92/121/EEC subject to the modifications laid down in Annex VI to this Directive.

VALUATION OF POSITIONS FOR REPORTING PURPOSES

Article 6

1. Institutions shall mark to market their trading books on a daily basis unless they are subject to Article 4 (6).

2. In the absence of readily available market prices, for example in the case of dealing in new issues on the primary markets, the competent authorities may waive the requirement imposed in paragraph 1 and require institutions to use alternative methods of valuation provided that those methods are sufficiently prudent and have been approved by competent authorities.

SUPERVISION ON A CONSOLIDATED BASIS

Article 7

General principles

1. The capital requirements imposed in Articles 4 and 5 for institutions which are neither parent undertakings nor subsidiaries of such undertakings shall be applied on a solo basis.

2. The requirements imposed in Articles 4 and 5 for:

— any institution which has a credit institution within the meaning of Directive 92/30/EEC, an investment firm or another financial institution as a subsidiary or which holds a participation in such an entity, and

— any institution the parent undertaking of which is a financial holding company

shall be applied on a consolidated basis in accordance with the methods laid down in the abovementioned Directive and in paragraphs 7 to 14 of this Article.

3. When a group covered by paragraph 2 does not include a credit institution, Directive 92/30/EEC shall apply, subject to the following adaptations:

— *financial holding company* shall mean a financial institution the subsidiary undertakings of which are either exclusively or mainly investment firms or other financial institutions one at least of which is an investment firm,

— *mixed-activity holding company* shall mean a parent undertaking, other than a financial holding company or an investment firm, the subsidiaries of which include at least one investment firm,

— *competent authorities* shall mean the national authorities which are empowered by law or regulation to supervise investment firms,

— every reference to *credit institutions* shall be replaced by a reference to *investment firms*,

— the second subparagraph of Article 3 (5) of Directive 92/30/EEC shall not apply,

— in Articles 4 (1) and (2) and 7 (5) of Directive 92/30/EEC each reference to Directive 77/780/EEC shall be replaced by a reference to Directive 93/22/EEC,

— for the purposes of Articles 3 (9) and 8 (3) of Directive 92/30/EEC the references to the *Banking Advisory Committee* shall be substituted by references to the Council and the Commission,

— the first sentence of Article 7 (4) of Directive 92/30/EEC shall be replaced by the following:

'Where an investment firm, a financial holding company or a mixed-activity holding company controls one or more subsidiaries which are insurance companies, the competent authorities and the authorities entrusted with the public task of supervising insurance undertakings shall cooperate closely'.

4. The competent authorities required or mandated to exercise supervision of groups covered by paragraph 3 on a consolidated basis may, pending further coordination on the supervision of such groups on a consolidated basis and where the circumstances justify it, waive that obligation provided that each investment firm in such a group:

(i) uses the definition of own funds given in paragraph 9 of Annex V;

(ii) meets the requirements imposed in Articles 4 and 5 on a solo basis;

(iii) sets up systems to monitor and control the sources of capital and funding of all other financial institutions within the group.

5. The competent authorities shall require investment firms in a group which has been granted the waiver provided for in paragraph 4 to notify them of those risks, including those associated with the composition and sources of their capital and funding, which could undermine their financial positions. If the competent authorities then consider that the financial positions of those investment firms is not adequately protected, they shall require them to take measures including, if necessary, limitations on the transfer of capital from such firms to group entities.

6. Where the competent authorities waive the obligation of supervision on a consolidated basis provided for in paragraph 4 they shall take other appropriate measures to monitor the risks, namely large exposures, of the whole group, including any undertakings not located in a Member State.

7. Member States may waive the application of the requirements imposed in Articles 4 and 5, on an individual or subconsolidated basis, to an institution which, as a parent undertaking, is subject to supervision on a consolidated basis, and to any subsidiary of such an institution which is subject to their authorization and supervision and is included in the supervision on a consolidated basis of the institution which is its parent company.

The same right of waiver shall be granted where the parent undertaking is a financial holding company which has its head office in the same Member State as the institution, provided that it is subject to the same supervision as that exercised over credit institutions or investment firms, and in particular the requirements imposed in Articles 4 and 5.

In both cases, if the right of waiver is exercised measures must be taken to ensure the satisfactory allocation of own funds within the group.

8. Where an institution the parent undertaking of which is an institution has been authorized and is situated in another Member State, the competent

authorities which granted that authorization shall apply the rules laid down in Articles 4 and 5 to that institution on a individual or, where appropriate, a subconsolidated basis.

9. Notwithstanding paragraph 8, the competent authorities responsible for authorizing the subsidiary of a parent undertaking which is an institution may, by a bilateral agreement, delegate their responsibility for supervising the subsidiary's capital adequacy and large exposures to the competent authorities which authorized and supervise the parent undertaking. The Commission must be kept informed of the existence and content of such agreements. It shall forward such information to the competent authorities of the other Member States and to the Banking Advisory Committee and to the Council, except in the case of groups covered by paragraph 3.

Calculating the consolidated requirements

10. Where the rights of waiver provided for in paragraphs 7 and 9 are not exercised, the competent authorities may, for the purpose of calculating the capital requirements set out in Annex I and the exposures to clients set out in Annex VI on a consolidated basis, permit net positions in the trading book of one institution to offset positions in the trading book of another institution according to the rules set out in Annexes I and VI respectively.

In addition, they may allow foreign-exchange positions subject to Annex III in one institution to offset foreign-exchange positions subjet to Annex III in another institution in accordance with the rules set out in Annex III.

11. The competent authorities may also permit offsetting of the trading book and of the foreign-exchange positions of undertakings located in third countries, subject to the simultaneous fulfilment of the following conditions:

(i) those undertakings have been authorized in a third country and either satisfy the definition of credit institution given in the first indent of Article 1 of Directive 77/780/EEC or are recognized third-country investment firms;

(ii) such undertakings comply, on a solo basis, with capital adequacy rules equivalent to those laid down in this Directive;

(iii) no regulations exist in the countries in question which might significantly affect the transfer of funds within the group.

12. The competent authorities may also allow the offsetting provided for in paragraph 10 between institutions within a group that have been authorized in the Member State in question, provided that:

(i) there is a satisfactory allocation of capital within the group;

(ii) the regulatory, legal or contractual framework in which the institutions operate is such as to guarantee mutual financial support within the group.

13. Furthermore, the competent authorities may allow the offsetting provided for in paragraph 10 between institutions within a group that fulfil the conditions imposed in paragraph 12 and any institution included in the same group which has been authorized in another Member State provided that that institution is obliged to fulfil the capital requirements imposed in Articles 4 and 5 on a solo basis.

Definition of consolidated own funds

14. In the calculation of own funds on a consolidated basis Article 5 of Directive 89/299/EEC shall apply.

15. The competent authorities responsible for exercising supervision on a consolidated basis may recognize the validity of the specific own-funds definitions applicable to the institutions concerned under Annex V in the calculation of their consolidated own funds.

REPORTING REQUIREMENTS

Article 8

1. Member States shall require that investment firms and credit institutions provide the competent authorities of their home Member States with all the information necessary for the assessment of their compliance with the rules adopted in accordance with this Directive. Member States shall also ensure that institutions' internal control mechanisms and administrative and accounting procedures permit the verification of their compliance with such rules at all times.

2. Investment firms shall be obliged to report to the competent authorities in the manner specified by the latter at least once every month in the case of firms covered by Article 3 (3), at least once every three months in the case of firms covered by Article 3 (1) and at least once every six months in the case of firms covered by Article 3 (2).

3. Notwithstanding paragraph 2, investment firms covered by Article 3 (1) and (3) shall be required to provide the information on a consolidated or subconsolidated basis only once every six months.

4. Credit institutions shall be obliged to report in the manner specified by the competent authorities as often as they are obliged to report under Directive 89/647/EEC.

5. The competent authorities shall oblige institutions to report to them immediately any case in which their counterparties in repurchase and reverse repurchase

agreements or securities-lending and securities-borrowing transactions default on their obligations. The Commission shall report to the Council on such cases and their implications for the treatment of such agreements and transactions in this Directive not more than three years after the date referred to in Article 12. Such reports shall also describe the way that institutions meet those of conditions (i) to (v) in Article 2 (6) (b) that apply to them, in particular that referred to in condition (v). Furthermore it shall give details of any changes in the relative volume of institutions' traditional lending and their lending through reverse repurchase agreements and securities-borrowing transactions. If the Commission concludes on the basis of this report and other information that further safeguards are needed to prevent abuse it shall make appropriate proposals.

COMPETENT AUTHORITIES

Article 9

1. Member States shall designate the authorities which are to carry out the duties provided for in this Directive. They shall inform the Commission thereof, indicating any division of duties.

2. The authorities referred to in paragraph 1 must be public authorities or bodies officially recognized by national law or by public authorities as part of the supervisory system in operation in the Member State concerned.

3. The authorities concerned must be granted all the powers necessary for the performance of their tasks, and in particular that of overseeing the constitution of trading books.

4. The competent authorities of the various Member States shall collaborate closely in the performance of the duties provided for in this Directive, particularly when investment services are provided on a services basis or through the establishment of branches in one or more Member States. They shall on request supply one another with all information likely to facilitate the supervision of the capital adequacy of investment firms and credit institutions, in particular the verification of their compliance with the rules laid down in this Directive. Any exchange of information between competent authorities which is provided for in this Directive in respect of investment firms shall be subject to the obligation of professional secrecy imposed in Article 25 of Directive 93/22/EEC and, as regards credit institutions, to the obligation imposed in Article 12 of Directive 77/780/EEC, as amended by Directive 89/646/EEC.

Article 10

Pending adoption of a further Directive laying down provisions for adapting this Directive to technical progress in the areas specified below, the Council shall, acting by qualified majority on a proposal from the Commission, in accordance with Decision 87/373/EEC, adopt those adaptations which may be necessary, as follows:

— clarification of the definitions in Article 2 in order to ensure uniform application of this Directive throughout the Community,

— clarification of the definitions in Article 2 to take account of developments on financial markets,

— alteration of the amounts of initial capital prescribed in Article 3 and the amount referred to in Article 4 (6) to take account of developments in the economic and monetary field,

— the alignment of terminology on and the framing of definitions in accordance with subsequent acts on institutions and related matters.

TRANSITIONAL PROVISIONS

Article 11

1. Member States may authorize investment firms subject to Article 30 (1) of Directive 93/22/EEC the own funds of which are on the day of the application of this Directive lower than the levels specified in Article 3 (1) to (3) of this Directive. Thereafter, however, the own funds of such investment firms must fulfil the conditions laid down in Article 3 (5) to (8) of this Directive.

2. Notwithstanding paragraph 14 of Annex I, Member States may set a specific-risk requirement for any bonds assigned a weighting of 10 % under Article 11 (2) of Directive 89/647/EEC equal to half the specific-risk requirement for a qualifying item with the same residual maturity as such a bond.

FINAL PROVISIONS

Article 12

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive by the date fixed in the second paragraph of Article 31 of Directive 93/22/EEC. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions they shall include a reference to this Directive or add such a reference on the occasion of their official publication. The manner in which such references are to be made shall be laid down by the Member States.

2. Member States shall communicate to the Commission the main provisions of national law which they adopt in the field covered by this Directive.

Article 13

The Commission shall as soon as possible submit to the Council proposals for capital requirements in respect of commodities trading, commodity derivatives and units of collective-investment undertakings.

The Council shall decide on the Commission's proposals no later than six months before the date of application of this Directive.

REVIEW CLAUSE

Article 14

Within three years of the date referred to in Article 12, acting on a proposal from the Commission, the Council shall examine and, if necessary, revise this Directive in the light of the experience acquired in applying it, taking into account market innovation and, in particular, developments in international fora of regulatory authorities.

Article 15

This Directive is addressed to the Member States.

Done at Brussels, 15 March 1993.

For the Council
The President
M. JELVED

ANNEX I

POSITION RISK

INTRODUCTION

Netting

1. The excess of an institution's long (short) positions over its short (long) positions in the same equity, debt and convertible issues and identical financial futures, options, warrants and covered warrants shall be its net position in each of those different instruments. In calculating the net position the competent authorities shall allow positions in derivative instruments to be treated, as laid down in paragraphs 4 to 7, as positions in the underlying (or notional) security or securities. Institutions' holdings of their own debt instruments shall be disregarded in calculating specific risk under paragraph 14.

2. No netting shall be allowed between a convertible and an offsetting position in the instrument underlying it, unless the competent authorities adopt an approach under which the likelihood of a particular convertible's being converted is taken into account or have a capital requirement to cover any loss which conversion might entail.

3. All net positions, irrespective of their signs, must be converted on a daily basis into the institution's reporting currency at the prevailing spot exchange rate before their aggregation.

Particular instruments

4. Interest-rate futures, forward-rate agreements (FRAs) and forward commitments to buy or sell debt instruments shall be treated as combinations of long and short positions. Thus a long interest-rate futures position shall be treated as a combination of a borrowing maturing on the delivery date of the futures contract and a holding of an asset with maturity date equal to that of the instrument or notional position underlying the futures contract in question. Similarly a sold FRA will be treated as a long position with a maturity date equal to the settlement date plus the contract period, and a short position with maturity equal to the settlement date. Both the borrowing and the asset holding shall be included in the Central government column of Table 1 in paragraph 14 in order to calculate the capital required against specific risk for interest-rate futures and FRAs. A forward commitment to buy a debt instrument shall be treated as a combination of a borrowing maturing on the delivery date and a long (spot) position in the debt instrument itself. The borrowing shall be included in the central government column of Table 1 for purposes of specific risk, and the debt instrument under whichever column is appropriate for it in the same table. The competent authorities may allow the capital requirement for an exchange-traded future to be equal to the margin required by the exchange if they are fully satisfied that it provides an accurate measure of the risk associated with the future and that the method used to calculate the margin is equivalent to the method of calculation set out in the remainder of this Annex.

5. Options on interest rates, debt instruments, equities, equity indices, financial futures, swaps and foreign currencies shall be treated as if they were positions equal in value to the amount of the underlying instrument to which the option refers, multiplied by its delta for the purposes of this Annex. The latter positions may be netted off against any offsetting positions in the identical underlying securities or derivatives. The delta used shall be that of the exchange concerned, that calculated by the competent authorities or, where that is not available or for OTC options, that calculated by the institution itself, subject to the competent authorities' being satisfied that the model used by the institution is reasonable.

   However, the competent authorities may also prescribe that institutions calculate their deltas using a methodology specified by the competent authorities.

   The competent authorities shall require that the other risks, apart from the dealt risk, associated with options are safeguarded against. The competent authorities may allow the requirement against a written exchange-traded option to be equal to the margin required by the exchange if they are fully

satisfied that it provides an accurate measure of the risk associated with the option and that the method used to calculate the margin is equivalent to the method of calculation set out in the remainder of this Annex for such options. In addition they may allow the requirement on a bought exchange-traded or OTC option to be the same as that for the instrument underlying it, subject to the constraint that the resulting requirement does not exceed the market value of the option. The requirement against a written OTC option shall be set in relation to the instrument underlying it.

6. Warrants and covered warrants shall be treated in the same way as options under paragraph 5.

7. Swaps shall be treated for interest-rate risk purposes on the same basis as on-balance-sheet instruments. Thus an interest-rate swap under which an institution receives floating-rate interest and pays fixed-rate interest shall be treated as equivalent to a long position in a floating-rate instrument of maturity equivalent to the period until the next interest fixing and a short position in a fixed-rate instrument with the same maturity as the swap itself.

8. However, institutions which mark to market and manage the interest-rate risk on the derivative instruments covered in paragraphs 4 to 7 on a discounted-cash-flow basis may use sensitivity models to calculate the positions referred to above and may use them for any bond which is amortized over its residual life rather than via one final repayment of principal. Both the model and its use by the institution must be approved by the competent authorities. These models should generate positions which have the same sensitivity to interest-rate changes as the underlying cash flows. This sensitivity must be assessed with reference to independent movements in sample rates across the yield curve, with at least one sensitivity point in each of the maturity bands set out in Table 2 of paragraph 18. The positions shall be included in the calculation of capital requirements according to the provisions laid down in paragraphs 15 to 30.

9. Institutions which do not use models under paragraph 8 may instead, with the approval of the competent authorities, treat as fully offsetting any positions in derivative instruments covered in paragraphs 4 to 7 which meet the following conditions at least:

   (i) the positions are of the same value and denominated in the same currency;

   (ii) the reference rate (for floating-rate positions) or coupon (for fixed-rate positions) is closely matched;

   (iii) the next interest-fixing date or, for fixed coupon positions, residual maturity corresponds with the following limits:

   — less than one month hence: same day,

   — between one month and one year hence: within seven days,

   — over one year hence: within 30 days.

10. The transferor of securities or guaranteed rights relating to title to securities in a repurchase agreement and the lender of securities in a securities lending shall include these securities in the calculation of its capital requirement under this Annex provided that such securities meet the criteria laid down in Article 2 (6) (a).

11. Positions in units of collective-investment undertakings shall be subject to the capital requirements of Directive 89/647/EEC rather than to position-risk requirements under this Annex.

Specific and general risks

12. The position risk on a traded debt instrument or equity (or debt or equity derivative) shall be divided into two components in order to calculate the capital required against it. The first shall be its specific-risk component — this is the risk of a price change in the instrument concerned due to factors related to its issuer or, in the case of a derivative, the issuer of the underlying instrument. The second component shall cover its general risk — this is the risk of a price change in the instrument due (in the case of a traded debt instrument or debt derivative) to a change in the level of interest rates or (in the case of an equity or equity derivative) to a broad equity-market movement unrelated to any specific attributes of individual securities.

TRADED DEBT INSTRUMENTS

13. The institution shall classify its net positions according to the currency in which they are denominated and shall calculate the capital requirement for general and specific risk in each individual currency separately.

Specific risk

14. The institution shall assign its net positions, as calculated in accordance with paragraph 1, to the appropriate categories in Table 1 on the basis of their residual maturities and then multiply them by the weightings shown. It shall sum its weighted positions (regardless of whether they are long or short) in order to calculate its capital requirement against specific risk.

Table 1

Central government items	Qualifying items			Other items
	Up to 6 months	Over 6 and up to 24 months	Over 24 months	
0,00 %	0,25 %	1,00 %	1,60 %	8,00 %

General risk

(a) *Maturity-based*

15. The procedure for calculating capital requirements against general risk involves two basic steps. First, all positions shall be weighted according to maturity (as explained in paragraph 16), in order to compute the amount of capital required against them. Second, allowance shall be made for this requirement to be reduced when a weighted position is held alongside an opposite weighted position within the same maturity band. A reduction in the requirement shall also be allowed when the opposite weighted positions fall into different maturity bands, with the size of this reduction depending both on whether the two positions fall into the same zone, or not, and on the particular zones they fall into. There are three zones (groups of maturity bands) altogether.

16. The institution shall assign its net positions to the appropriate maturity bands in column 2 or 3, as appropriate, in Table 2 appearing in paragraph 18. It shall do so on the basis of residual maturity in the case of fixed-rate instruments and on the basis of the period until the interest rate is next set in the case of instruments on which the interest rate is variable before final maturity. It shall also distinguish between debt instruments with a coupon of 3 % or more and those with a coupon of less than 3 % and thus allocate them to column 2 or column 3 in Table 2. It shall then multiply each of them by the weighing for the maturity band in question in column 4 in Table 2.

17. It shall then work out the sum of the weighted long positions and the sum of the weighted short positions in each maturity band. The amount of the former which are matched by the latter in a given maturity band shall be the matched weighted position in that band, while the residual long or short position shall be the unmatched weighted position for the same band. The total of the matched weighted positions in all bands then be calculated.

18. The institution shall compute the totals of the unmatched weighted long positions for the bands included in each of the zones in Table 2 in order to derive the unmatched weighted long position for each zone. Similarly the sum of the unmatched weighted short positions for each band in a particular zone shall be summed to compute the unmatched weighted short position for that zone. That part of the unmatched weighted long position for a given zone that is matched by the unmatched weighted short position for the same zone shall be the matched weighted position for that zone. That part of the unmatched weighted long or unmatched weighted short position for a zone that cannot be thus matched shall be the unmatched weighted position for that zone.

Table 2

Zone	Maturity band		Weighting (in %)	Assumed interest rate change (in %)
	Coupon of 3 % or more	Coupon of less than 3 %		
(1)	(2)	(3)	(4)	(5)
One	0 ≤ 1 month	0 ≤ 1 month	0,00	—
	> 1 ≤ 3 months	> 1 ≤ 3 months	0,20	1,00
	> 3 ≤ 6 months	> 3 ≤ 6 months	0,40	1,00
	> 6 ≤ 12 months	> 6 ≤ 12 months	0,70	1,00
Two	> 1 ≤ 2 years	> 1,0 ≤ 1,9 years	1,25	0,90
	> 2 ≤ 3 years	> 1,9 ≤ 2,8 years	1,75	0,80
	> 3 ≤ 4 years	> 2,8 ≤ 3,6 years	2,25	0,75
Three	> 4 ≤ 5 years	> 3,6 ≤ 4,3 years	2,75	0,75
	> 5 ≤ 7 years	> 4,3 ≤ 5,7 years	3,25	0,70
	> 7 ≤ 10 years	> 5,7 ≤ 7,3 years	3,75	0,65
	> 10 ≤ 15 years	> 7,3 ≤ 9,3 years	4,50	0,60
	> 15 ≤ 20 years	> 9,3 ≤ 10,6 years	5,25	0,60
	> 20 years	> 10,6 ≤ 12,0 years	6,00	0,60
		> 12,0 ≤ 20,0 years	8,00	0,60
		> 20 years	12,50	0,60

19. The amount of the unmatched weithted long (short) position in zone one which is matched by the unmatched weighted short (long) position in zone two shall then be computed. This shall be referred to in paragraph 23 as the matched weighted position between zones one and two. The same calculation shall then be undertaken with regard to that part of the unmatched weighted position in zone two which is left over and the unmatched weighted position in zone three in order to calculate the matched weighted position between zones two and three.

20. The institution may, if it wishes, reverse the order in paragraph 19 so as to calculate the matched weighted position between zones two and three before working out that between zones one and two.

21. The remainder of the unmatched weighted position in zone one shall then be matched with what remains of that for zone three after the latter's matching with zone two in order to derive the matched weighted position between zones one and three.

22. Residual positions, following the three separate matching calculations in paragraphs 19, 20 and 21, shall be summed.

23. The institution's capital requirement shall be calculated as the sum of:

(a) 10 % of the sum of the matched weighted positions in all maturity bands;

(b) 40 % of the matched weighted position in zone one;

(c) 30 % of the matched weighted position in zone two;

(d) 30 % of the matched weighted position in zone three;

(e) 40 % of the matched weighted position between zones one and two and between zones two and three (see paragraph 19);

(f) 150 % of the matched weighted position between zones one and three;

(g) 100 % of the residual unmatched weighted positions.

(b) *Duration-based*

24. The competent authorities in a Member State may allow institutions in general or on an individual basis to use a system for calculating the capital requirement for the general risk on traded debt instruments which reflects duration instead of the system set out in paragraphs 15 to 23, provided that the institution does so on a consistent basis.

25. Under such a system the institution shall take the market value of each fixed-rate debt instrument and thence calculate its yield to maturity, which is implied discount rate for that instrument. In the case of floating-rate instruments, the institution shall take the market value of each instrument and thence calculate its yield on the assumption that the principal is due when the interest rate can next be changed.

26. The institution shall then calculate the modified duration of each debt instrument on the basis of the following formula:

$$\text{modified duration} = \frac{\text{duration (D)}}{(1 + r)}, \text{ where:}$$

$$D = \frac{\sum_{t=1}^{m} \frac{t\,C_t}{(1 + r)^t}}{\sum_{t=1}^{m} \frac{C_t}{(1 + r)^t}}$$

where:

r = yield to maturity (see paragraph 25),

C_t = cash payment in time t,

m = total maturity (see paragraph 25).

27. The institution shall then allocate each debt instrument to the appropriate zone in Table 3. It shall do so on the basis of the modified duration of each instrument.

Table 3

Zone	Modified duration (in years)	Assumed interest (change in %)
(1)	(2)	(3)
One	> 0 ≤ 1,0	1,0
Two	> 1,0 ≤ 3,6	0,85
Three	> 3,6	0,7

28. The institution shall then calculate the duration-weighted position for each instrument by multiplying its market price by its modified duration and by the assumed interest-rate change for an instrument with that particular modified duration (see column 3 in Table 3).

29. The institution shall work out its duration-weighted long and its duration-weighted short positions within each zone. The amount of the former which are matched by the latter within each zone shall be the matched duration-weighted position for that zone.

The institution shall then calculate the unmatched duration-weighted positions for each zone. It shall then follow the procedures laid down for unmatched weighted positions in paragraphs 19 to 22.

30. The institution's capital requirement shall then be calculated as the sum of:

(a) 2 % of the matched duration-weighted position for each zone;

(b) 40 % of the matched duration-weighted positions between zones one and two and between zones two and three;

(c) 150 % of the matched duration-weighted position between zones one and three;

(d) 100 % of the residual unmatched duration-weighted positions.

EQUITIES

31. The institution shall sum all its net long positions and all its net short positions in accordance with paragraph 1. The sum of the two figures shall be its overall gross position. The difference between them shall be its overall net position.

Specific risk

32. It shall multiply its overall gross position by 4 % in order to calculate its capital requirement against specific risk.

33. Notwithstanding paragraph 32, the competent authorities may allow the capital requirement against specific risk to be 2 % rather than 4 % for those portfolios of equities that an institution holds which meet the following conditions:

    (i) the equities shall not be those of issuers which have issued traded debt instruments that currently attract an 8 % requirement in Table 1 appearing in paragraph 14;

    (ii) the equities must be adjudged highly liquid by the competent authorities according to objective criteria;

    (iii) no individual position shall comprise more than 5 % of the value of the institution's whole equity portfolio. However, the competent authorities may authorize individual positions of up to 10 % provided that the total of such positions does not exceed 50 % of the portfolio.

General risk

34. Its capital requirement against general risk shall be its overall net position multiplied by 8 %.

Stock-index futures

35. Stock-index futures, the delta-weighted equivalents of options in stock-index futures and stock indices collectively referred to hereafter as 'stock-index futures', may be broken down into positions in each of their constituent equities. These positions may be treated as underlying positions in the equities in question; therefore, subject to the approval of the competent authorities, they may be netted against opposite positions in the underlying equities themselves.

36. The competent authorities shall ensure that any institution which has netted off its positions in one or more of the equities constituting a stock-index future against one or more positions in the stock-index future itself has adequate capital to cover the risk of loss caused by the future's values not moving fully in line with that of its constituent equities; they shall also do this when an institution holds opposite positions in stock-index futures which are not identical in respect of either their maturity or their composition or both.

37. Notwithstanding paragraphs 35 and 36, stock-index futures which are exchange traded and — in the opinion of the competent authorities — represent broadly diversified indices shall attract a capital requirement against general risk of 8 %, but no capital requirement against specific risk. Such stock-index futures shall be included in the calculation of the overall net position in paragraph 31, but disregarded in the calculation of the overall gross position in the same paragraph.

38. If a stock-index future is not broken down into its underlying positions, it shall be treated as if it were an individual equity. However, the specific risk on this individual equity can be ignored if the stock-index future in question is exchange traded and, in the opinion of the competent authorities, represents a broadly diversified index.

UNDERWRITING

39. In the case of the underwriting of debt and equity instruments, the competent authorities may allow an institution to use the following procedure in calculating its capital requirements. Firstly, it shall calculate the net positions by deducting the underwriting positions which are subscribed or

sub-underwritten by third parties on the basis of formal agreements; secondly, it shall reduce the net positions by the following reduction factors:

— working day 0: 100 %

— working day 1: 90 %

— working days 2 to 3: 75 %

— working day 4: 50 %

— working day 5: 25 %

— after working day 5: 0 %.

Working day zero shall be the working day on which the institution becomes unconditionally committed to accepting a known quantity of securities at an agreed price.

Thirdly, it shall calculate its capital requirements using the reduced underwriting positions. The competent authorities shall ensure that the institution holds sufficient capital against the risk of loss which exists between the time of the initial commitment and working day 1.

ANNEX II

SETTLEMENT AND COUNTER-PARTY RISK

SETTLEMENT/DELIVERY RISK

1. In the case of transactions in which debt instruments and equities (excluding repurchase and reverse repurchase agreements and securities lending and securities borrowing) are unsettled after their due delivery dates, an institution must calculate the price difference to which it is exposed. This is the difference between the agreed settlement price for the debt instrument or equity in question and its current market value, where the difference could involve a loss for the institution. It must multiply this difference by the appropriate factor in column A of the table appearing in paragraph 2 in order to calculate its capital requirement.

2. Notwithstanding paragraph 1, an institution may, at the discretion of its competent authorities, calculate its capital requirements by multiplying the agreed settelement price of every transaction which is unsettled between 5 and 45 working days after its due date by the appropriate factor in column B of the table below. As from 46 working days after the due date it shall take the requirement to be 100 % of the price difference to which it is exposed as in column A.

Number of working days after due settlement date	Column A (%)	Column B (%)
5—15	8	0,5
16—30	50	4,0
31—45	75	9,0
46 or more	100	see paragraph 2

COUNTER-PARTY RISK

Free deliveries

3.1. An institution shall be required to hold capital against counter-party risk if:

(i) it has paid for securities before receiving them or it has delivered securities before receiving payment for them; and

(ii) in the case of cross-border transactions, one day or more has elapsed since it made that payment or delivery.

3.2. The capital requirement shall be 8 % of the value of the securities or cash owed to the institution multiplied by the risk weighting applicable to the relevant counter-party.

Repurchase and reverse repurchase agreements and securities lending and borrowing

4.1. In the case of repurchase agreements and securities lending based on securities included in the trading book the institution shall calculate the difference between the market value of the securities and the amount borrowed by the institution or the market value of the collateral, where that difference is positive. In the case of reverse repurchase agreements and securities borrowing the institution shall calculate the difference between the amount the institution has lent or the market value of the collateral and the market value of the securities it has received, where that difference is positive.

The competent authorities shall take measures to ensure that the excess collateral given is acceptable.

Furthermore, the competent authorities may allow institutions not to include the amount of excess collateral in the calculations described in the first two sentences of this paragraph if the amount of excess collateral is guaranteed in such a way that the transferor is always assured that the excess collateral will be returned to it in the event of defaults of its counter-party.

Accrued interest shall be included in calculating the market value of amounts lent or borrowed and collateral.

4.2. The capital requirement shall be 8 % of the figure produced in accordance with paragraph 4.1, multiplied by the risk weighting applicable to the relevant counter-party.

OTC derivative instruments

5. In order to calculate the capital requirement on their OTC derivative instruments, institutions shall apply Annex II to Directive 89/647/EEC in the case of interest-rate and exchange-rate contracts; bought OTC equity options and covered warrants shall be subject to the treatment accorded to exchange-rate contracts in Annex II to Directive 89/647/EEC.

The risk weightings to be applied to the relevant counter-parties shall be determined in accordance with Article 2 (9) of this Directive.

OTHER

6. The capital requirements of Directive 89/647/EEC shall apply to those exposures in the form of fees, commission, interest, dividends and margin in exchange-traded futures or options contracts which are neither covered in this Annex or Annex I nor deducted from own funds under paragraph 2 (d) of Annex V and which are directly related to the items included in the trading book

The risk weightings to be applied to the relevant counter-parties shall be determined in accordance with Article 2 (9) of this Directive.

ANNEX III

FOREIGN-EXCHANGE RISK

1. If an institution's overall net foreign-exchange position, calculated in accordance with the procedure set out below, exceeds 2 % of its total own funds, it shall multiply the excess by 8 % in order to calculate its own-funds requirement against foreign-exchange risk.

2. A two-stage calculation shall be used.

3.1. Firstly, the institution's net open position in each currency (including the reporting currency) shall be calculated. This position shall consist of the sum of the following elements (positive or negative):

— the net spot position (i.e. all asset items less all liability items, including accrued interest, in the currency in question),

— the net forward position (i.e. all amounts to be received less all amounts to be paid under forward exchange transactions, including currency futures and the principal on currency swaps not included in the spot position),

— irrevocable guarantees (and similar instruments) that are certain to be called,

— net future income/expenses not yet accrued but already fully hedged (at the discretion of the reporting institution and with the prior consent of the competent authorities, net future income/expenses not yet entered in accounting records but already fully hedged by forward foreign-exchange transactions may be included here). Such discretion must be exercised on a consistent basis,

— the net delta (or delta-based) equivalent of the total book of foreign-currency options,

— the market value of other (i.e. non-foreign-currency) options,

— any positions which an institution has deliberately taken in order to hedge against the adverse effect of the exchange rate on its capital ratio may be excluded from the calculation of net open currency positions. Such positions should be of a non-trading or structural nature and their exclusion, and any variation of the terms of their exclusion, shall require the consent of the competent authorities. The same treatment subject to the same conditions as above may be applied to positions which an institution has which relate to items that are already deducted in the calculation of own funds.

3.2. The competent authorities shall have the discretion to allow institutions to use the net present value when calculating the net open position in each currency.

4. Secondly, net short and long positions in each currency other than the reporting currency shall be converted at spot rates into the reporting currency. They shall then be summed separately to form the total of the net short positions and the total of the net long positions respectively. The higher of these two totals shall be the institution's overall net foreign-exchange position.

5. Notwithstanding paragraphs 1 to 4 and pending further coordination, the competent authorities may prescribe or allow institutions to use alternative procedures for the purposes of this Annex.

6. Firstly, the competent authorities may allow institutions to provide lower capital requirements against positions in closely correlated currencies than those which would result from applying paragraphs 1 to 4 to them. The competent authorities may deem a pair of currencies to be closely correlated only if the likelihood of a loss — calculated on the basis of daily exchange-rate data for the preceding three or five years — occurring on equal and opposite positions in such currencies over the following 10 working days, which is 4 % or less of the value of the matched position in question (valued in terms of the reporting currency) has a probability of at least 99 %, when an observation period of three years is used, or 95 %, when an observation period of five years is used. The own-funds requirement on the matched position in two closely correlated currencies shall be 4 % multiplied by the value of the matched position. The capital requirement on unmatched positions in closely correlated currencies,

and all positions in other currencies, shall be 8 %, multiplied by the higher of the sum of the net short or the net long positions in those currencies after the removal of matched positions in closely correlated currencies.

7. Secondly, the competent authorities may allow institutions to apply an alternative method to those outlined in paragraphs 1 to 6 for the purposes of this Annex. The capital requirement produced by this method must be sufficient:

   (i) to exceed the losses, if any, that would have occurred in at least 95 % of the rolling 10-working-day periods over the preceding five years, or, alternatively, in at least 99 % of the rolling 10-working-day periods over the preceding three years, had the institution begun each such period with its current positions;

   (ii) on the basis of an analysis of exchange-rate movements during all the rolling 10-working-day periods over the preceding five years, to exceed the likely loss over the following 10-working-day holding period 95 % or more of the time, or, alternatively, to exceed the likely loss 99 % or more of the time where the analysis of exchange-rate movements covers only the preceding three years; or

   (iii) irrespective of the size of (i) or (ii) to exceed 2 % of the net open position as measured in paragraph 4.

8. Thirdly, the competent authorities may allow institutions to remove positions in any currency which is subject to a legally binding intergovernmental agreement to limit its variation relative to other currencies covered by the same agreement from whichever of the methods described in paragraphs 1 to 7 that they apply. Institutions shall calculate their matched positions in such currencies and subject them to a capital requirement no lower than half of the maximum permissible variation laid down in the intergovernmental agreement in question in respect of the currencies concerned. Unmatched positions in those currencies shall be treated in the same way as other currencies.

   Notwithstanding the first paragraph, the competent authorities may allow the capital requirement on the matched positions in currencies of Member States participating in the second stage of the European monetary union to be 1,6 %, multiplied by the value of such matched positions.

9. The competent authorities shall notify the Council and Commission of the methods, if any, that they are prescribing or allowing in respect of paragraphs 6 to 8.

10. The Commission shall report to the Council on the methods referred to in paragraph 9 and, where necessary and with due regard to international developments, shall propose a more harmonized treatment of foreign-exchange risk.

11. Net positions in composite currencies may be broken down into the component currencies according to the quotas in force.

ANNEX IV

OTHER RISKS

Investment firms shall be required to hold own funds equivalent to one quarter of their preceding year's fixed overheads. The competent authorities may adjust that requirement in the event of a material change in a firm's business since the preceding year. Where a firm has not completed a year's business, including the day it starts up, the requirement shall be a quarter of the fixed overheads figure projected in its business plan unless an adjustment to that plan is required by the authorities.

ANNEX V

OWN FUNDS

1. The own funds of investment firms and credit institutions shall be defined in accordance with Directive 89/299/EEC.

   For the purposes of this Directive, however, investment firms which do not have one of the legal forms referred to in Article 1 (1) of the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies [1] shall nevertheless be deemed to fall within the scope of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions [2].

2. Notwithstanding paragraph 1, the competent authorities may permit those institutions which are obliged to meet the own-funds requirements laid down in Annexes I, II, III, IV and VI to use an alternative definition when meeting those requirements only. No part of the own funds thus provided may be used simultaneously to meet other own-funds requirements. This alternative definition shall include the following items (a), (b) and (c) less item (d), the deduction of that item being left to the discretion of the competent authorities:

   (a) own funds as defined in Directive 89/299/EEC excluding only items (12) and (13) of Article 2 (1) of the same Directive for those investment firms which are required to deduct item (d) of this paragraph from the total of items (a), (b) and (c) of this paragraph;

   (b) an institution's net trading-book profits net of any foreseeable charges or dividends, less net losses on its other business provided that none of those amounts has already been included in item (a) of this paragraph under item 2 or 11 of Article 2 (1) of Directive 89/299/EEC;

   (c) subordinated loan capital and/or the items referred to in paragraphs 5, subject to the conditions set out in paragraphs 3 to 7;

   (d) illiquid assets as defined in paragraph 8.

3. The subordinated loan capital referred to in paragraph 2 (c) shall have an initial maturity of at least two years. It shall be fully paid up and the loan agreement shall not include any clause providing that in specified circumstances other than the winding up of the institution the debt will become repayable before the agreed repayment date, unless the competent authorities approve the repayment. Neither the principal nor the interest on such subordinated loan capital may be repaid if such repayment would mean that the own funds of the institution in question would then amount to less than 100 % of the institution's overall requirements.

   In addition, an institution shall notify the competent authorities of all repayments on such subordinated loan capital as soon as its own funds fall below 120 % of its overall requirements.

4. The subordinated loan capital referred to in paragraph 2 (c) may not exceed a maximum of 150 % of the original own funds left to meet the requirements laid down in Annexes I, II, III, IV and VI and may approach that maximum only in particular circumstances acceptable to the relevant authorities.

5. The competent authorities may permit institutions to replace the subordinated loan capital referred to in paragraphs 3 and 4 with items 3 and 5 to 8 of Article 2 (1) of Directive 89/299/EEC.

6. The competent authorities may permit investment firms to exceed the ceiling for subordinated loan capital prescribed in paragraph 4 if they judge it prudentially adequate and provided that the total of such subordinated loan capital and the items referred to in paragraph 5 does not exceed 200 % of the original own funds left to meet the requirements imposed in Annexes I, II, III, IV and VI, or 250 % of the same amount where investment firms deduct item 2 (d) referred to in paragraph 2 when calculating own funds.

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[1] OJ No L 222, 14. 8. 1978, p. 11. Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).

[2] OJ No L 372, 31. 12. 1986, p. 1.

7. The competent authorities may permit the ceiling for subordinated loan capital prescribed in paragraph 4 to be exceeded by a credit institution if they judge it prudentially adequate and provided that the total of such subordinated loan capital and the items referred to in paragraph 5 does not exceed 250 % of the original own funds left to meet the requirements imposed in Annexes I, II, III and VI.

8. Illiquid assets include:

— tangible fixed assets (except to the extent that land and buildings may be allowed to count against the loans which they are securing),

— holdings in, including subordinated claims on, credit or financial institutions which may be included in the own funds of such institutions, unless they have been deducted under items 12 and 13 of Article 2 (1) of Directive 89/299/EEC or under paragraph 9 (iv) of this Annex.

Where shares in a credit or financial institution are held temporarily for the purpose of a financial assistance operation designed to reorganize and save that institution, the competent authorities may waive this provision. They may also waive it in respect of those shares which are included in the investment firm's trading book,

— holdings and other investments, in undertakings other than credit institutions and other financial institutions, which are not readily marketable,

— deficiencies in subsidiaries,

— deposits made, other than those which are available for repayment within 90 days, and also excluding payments in connection with margined futures or options contracts,

— loans and other amounts due, other than those due to be repaid within 90 days,

— physical stocks, unless they are subject to the capital requirements imposed in Article 4 (2) and provided that such requirements are not less stringent than those imposed in Article 4 (1) (iii).

9. Those investment firms included in a group subject to the waiver described in Article 7 (4) shall calculate their own funds in accordance with paragraphs 1 to 8 subject to the following modifications:

(i) the illiquid assets referred to in paragraph 2 (d) shall be deducted;

(ii) the exclusion referred to in paragraph 2 (a) shall not cover those components of items 12 and 13 of Article 2 (1) of Directive 89/299/EEC which an investment firm holds in respect of undertakings included in the scope of consolidation as defined in Article 7 (2) of this Directive;

(iii) the limits referred to in Article 6 (1) (a) and (b) of Directive 89/299/EEC shall be calculated with reference to the original own funds less those components of items 12 and 13 of Article 2 (1) of Directive 89/299/EEC described in (ii) which are elements of the original own funds of the undertakings in question;

(iv) those components of items 12 and 13 of Article 2 (1) of Directive 89/299/EEC referred to in (iii) shall be deducted from the original own funds rather than from the total of all items as prescribed in Article 6 (1) (c) of the same Directive for the purposes, in particular, of paragraphs 4 to 7 of this Annex.

ANNEX VI

LARGE EXPOSURES

1. Institutions referred to in Article 5 (2) shall monitor and control their exposures to individual clients and groups of connected clients as defined in Directive 92/121/EEC, subject to the following modifications.

2. The exposures to individual clients which arise on the trading book shall be calculated by summing the following items (i), (ii) and (iii):

   (i) the excess — where positive — of an institution's long positions over its short positions in all the financial instruments issued by the client in question (the net position in each of the different instruments being calculated according to the methods laid down in Annex I);

   (ii) in the case of the underwriting of a debt or an equity instrument, the institution's exposure shall be its net exposure (which is calculated by deducting those underwriting positions which are subscribed or sub-underwritten by third parties on the basis of a formal agreement) reduced by the factors set out in paragraph 39 of Annex I.

   Pending further coordination, the competent authorities shall require institutions to set up systems to monitor and control their underwriting exposures between the time of the initial commitment and working day one in the light of the nature of the risks incurred in the markets in question;

   (iii) the exposures due to the transactions, agreements and contracts referred to in Annex II with the client in question, such exposures being calculated in the manner laid down in that Annex, without application of the weightings for counter-party risk.

3. Thereafter, the exposures to groups of connected clients on the trading book shall be calculated by summing the exposures to individual clients in a group, as calculated in paragraph 2.

4. The overall exposures to individual clients or groups of connected clients shall be calculated by summing the exposures which arise on the trading book and the exposures which arise on the non-trading book, taking into account Article 4 (6) to (12) of Directive 92/121/EEC. In order to calculate the exposure on the non-trading book, institutions shall take the exposure arising from assets which are deducted from their own funds by virtue of paragraph 2 (d) of Annex V to be zero.

5. Institutions' overall exposures to individual clients and groups of connected clients calculated in accordance with paragraph 4 shall be reported in accordance with Article 3 of Directive 92/121/EEC.

6. That sum of the exposures to an individual client or group of connected clients shall be limited in accordance with Article 4 of Directive 92/121/EEC subject to the transitional provisions of Article 6 of the same Directive.

7. Notwithstanding paragraph 6 the competent authorities may allow assets constituting claims and other exposures on investment firms, on recognized third-country investment firms and recognized clearing houses and exchanges in financial instruments to be subject to the same treatment accorded to those on credit institutions in Article 4 (7) (i), (9) and (10) of Directive 92/121/EEC.

8. The competent authorities may authorize the limits laid down in Article 4 of Directive 92/121/EEC to be exceeded subject to the following conditions being met simultaneously:

   1. the exposure on the non-trading book to the client or group of clients in question does not exceed the limits laid down in Directive 92/121/EEC, calculated with reference to own funds as defined in Directive 89/299/EEC, so that the excess arises entirely on the trading book;

   2. the firm meets an additional capital requirement on the excess in respect of the limits laid down in Article 4 (1) and (2) of Directive 92/121/EEC. This shall be calculated by selecting those components of the total trading exposure to the client or group of clients in question which attract the highest specific-risk requirements in Annex I and/or requirements in Annex II, the sum of which equals the amount of the excess referred to in 1; where the excess has not persisted for more than 10 days, the additional capital requirement shall be 200 % of the requirements referred to in the previous sentence, on these components.

As from 10 days after the excess has occurred, the components of the excess, selected in accordance with the above criteria, shall be allocated to the appropriate line in column 1 of the table below in ascending order of specific-risk requirements in Annex I and/or requirements in Annex II. The institution shall then meet an additional capital requirement equal to the sum of the specific-risk requirements in Annex I and/or the Annex II requirements on these components multiplied by the corresponding factor in column 2;

Table

Excess over the limits (on the basis of a percentage of own funds)	Factors
(1)	(2)
Up to 40 %	200 %
From 40 % to 60 %	300 %
From 60 % to 80 %	400 %
From 80 % to 100 %	500 %
From 100 % to 250 %	600 %
Over 250 %	900 %

3. where 10 days or less has elapsed since the excess occurred, the trading-book exposure to the client or group of connected clients in question must not exceed 500 % of the institution's own funds;

4. any excesses which have persisted for more than 10 days must not, in aggregate, exceed 600 % of the institution's own funds;

5. institutions must report to the competent authorities every three months all cases where the limits laid down in Article 4 (1) and (2) of Directive 92/121/EEC have been exceeded during the preceding three months. In each case in which the limits have been exceeded the amount of the excess and the name of the client concerned must be reported.

9. The competent authorities shall establish procedures, of which they shall notify the Council and the Commission, to prevent institutions from deliberately avoiding the additional capital requirements that they would otherwise incur on exposures exceeding the limits laid down in Article 4 (1) and (2) of Directive 92/121/EEC once those exposures have been maintained for more than 10 days, by means of temporarily transferring the exposures in question to another company, whether within the same group or not, and/or by undertaking artificial transactions to close out the exposure during the 10-day period and create a new exposure. Institutions shall maintain systems which ensure that any transfer which has this effect is immediately reported to the competent authorities.

10. The competent authorities may permit those institutions which are allowed to use the alternative definition of own funds under paragraph 2 of Annex V to use that definition for the purposes of paragraphs 5, 6 and 8 of this Annex provided that the institutions concerned are required, in addition, to meet all of the obligations set out in Articles 3 and 4 of Directive 92/121/EEC, in respect of the exposures which arise outside their trading books by using own funds as defined in Directive 89/299/EEC.

COUNCIL DIRECTIVE 93/22/EEC

of 10 May 1993

on investment services in the securities field

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57 (2) thereof,

Having regard to the proposal from the Commission [1],

In cooperation with the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

Whereas this Directive constitutes an instrument essential to the achievement of the internal market, a course determined by the Single European Act and set out in timetable form in the Commission's White Paper, from the point of view both of the right of establishment and of the freedom to provide financial services, in the field of investment firms;

Whereas firms that provide the investment services covered by this Directive must be subject to authorization by their home Member States in order to protect investors and the stability of the financial system;

Whereas the approach adopted is to effect only the essential harmonization necessary and sufficient to secure the mutual recognition of authorization and of prudential supervision systems, making possible the grant of a single authorization valid throughout the Community and the application of the principle of home Member State supervision; whereas, by virtue of mutual recognition, investment firms authorized in their home Member States may carry on any or all of the services covered by this Directive for which they have received authorization throughout the Community by establishing branches or under the freedom to provide services;

Whereas the principles of mutual recognition and of home Member State supervision require that the Member States' competent authorities should not grant or should withdraw authorization where factors such as the content of programmes of operations, the geographical distribution or the activities actually carried on indicate clearly that an investment firm has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities; whereas, for the purposes of this Directive, an investment firm which is a legal person must be authorized in the Member State in which it has its registered office; whereas an investment firm which is not a legal person must be authorized in the Member State in which it has its head office; whereas, in addition, Member States must require that an investment firm's head office must always be situated in its home Member State and that it actually operates there;

Whereas it is necessary, for the protection of investors, to guarantee the internal supervision of every firm, either by means of two-man management or, where that is not required by this Directive, by other mechanisms that ensure an equivalent result;

Whereas in order to guarantee fair competition, it must be ensured that investment firms that are not credit institutions have the same freedom to create branches and provide services across frontiers as is provided for by the Second Council Directive (89/646/EEC) of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions [4];

Whereas an investment firm should not be able to invoke this Directive in order to carry out spot or forward exchange transactions other than as services connected with the provision or investment services; whereas, therefore, the use of a branch solely for such foreign-exchange transactions would constitute misuse of the machinery of this Directive;

Whereas an investment firm authorized in its home Member State may carry on business throughout the Community by whatever means it deems appropriate; whereas, to that end it may, if it deems it necessary, retain tied agents to receive and transmit orders for its account and under its full and unconditional responsibility; whereas, in these circumstances, such agents' business must be regarded as that of the firm; whereas, moreover, this Directive does not prevent a home Member State from making the status of such agents subject to special requirements; whereas should

(1) OJ No C 43, 22. 2. 1989, p. 7; and OJ No C 42, 22. 2. 1990, p. 7.
(2) OJ No C 304, 4. 12. 1989, p. 39; and OJ No C 115, 26. 4. 1993.
(3) OJ No C 298, 27. 11. 1989, p. 6.
(4) OJ No L 386, 30. 12. 1989, p. 1. Directive as last amended by Directive 92/30/EEC (OJ No L 110, 28. 4. 1992, p. 52).

the investment firm carry on cross-border business, the host Member State must treat those agents as being the firm itself; whereas, moreover, the door-to-door selling of transferable securities should not be covered by this Directive and the regulation thereof should remain a matter for national provisions;

Whereas 'transferable securities' means those classes of securities which are normally dealt in on the capital market, such as government securities, shares in companies, negotiable securities giving the right to acquire shares by subscription or exchange, depositary receipts, bonds issued as part of a series, index warrants and securities giving the right to acquire such bonds by subscription;

Whereas 'money-market instruments' means those classes of instruments which are normally dealt in on the money market such as treasury bills, certificates of deposit and commercial paper;

Whereas the very wide definitions of transferable securities and money-market instruments included in this Directive are valid only for this Directive and consequently in no way affect the various definitions of financial instruments used in national legislation for other purposes such as taxation; whereas, furthermore, the definition of transferable securities covers negotiable instruments only; whereas, consequently, shares and other securities equivalent to shares issued by bodies such as building societies and industrial and provident societies, ownership of which cannot in practice be transferred except by the issuing body's buying them back, are not covered by this definition;

Whereas 'instrument equivalent to a financial-futures contract' means a contract which is settled by a payment in cash calculated by reference to fluctuations in interest or exchange rates, the value of any instrument listed in Section B of the Annex or an index of any such instruments;

Whereas, for the purposes of this Directive, the business of the reception and transmission of orders also includes bringing together two or more investors thereby bringing about a transaction between those investors;

Whereas no provision in this Directive affects the Community provisions or, failing such, the national provisions regulating public offers of the instruments covered by this Directive; whereas the same applies to the marketing and distribution of such instruments;

Whereas Member States retain full responsibility for implementing their own monetary-policy measures, without prejudice to the measures necessary to strengthen the European Monetary System;

Whereas it is necessary to exclude insurance undertakings the activities of which are subject to appropriate monitoring by the competent prudential-supervision authorities and which are coordinated at Community level and undertakings carrying out reinsurance and retrocession activities;

Whereas undertakings which do not provide services for third parties but the business of which consists in providing investment services solely for their parent undertakings, for their subsidiaries, or for other subsidiaries of their parent undertakings should not be covered by this Directive;

Whereas the purpose of this Directive is to cover undertakings the normal business of which is to provide third parties with investment services on a professional basis; whereas its scope should not therefore cover any person with a different professional activity (e.g. a barrister or solicitor) who provides investment services only on an incidental basis in the course of that other professional activity, provided that that activity is regulated and the relevant rules do not prohibit the provision, on an incidental basis, of investment services; whereas it is also necessary for the same reason to exclude from the scope of this Directive persons who provide investment services only for producers or users of commodities to the extent necessary for transactions in such products where such transactions constitute their main business;

Whereas firms which provide investment services consisting exclusively in the administration of employee-participation schemes and which therefore do not provide investment services for third parties should not be covered by this Directive;

Whereas it is necessary to exclude from the scope of this Directive central banks and other bodies performing similar functions as well as public bodies charged with or intervening in the management of the public debt, which concept covers the investment thereof; whereas, in particular, this exclusion does not cover bodies that are partly or wholly State-owned the role of which is commercial or linked to the acquisition of holdings;

Whereas it is necessary to exclude from the scope of this Directive any firms or persons whose business consists only of receiving and transmitting orders to certain counterparties and who do not hold funds or securities belonging to their clients; whereas, therefore, they will not enjoy the right of establishment and freedom to provide services under the conditions laid down in this Directive, being subject, when they wish to operate in another Member State, to the relevant provisions adopted by that State;

Whereas it is necessary to exclude from the scope of this Directive collective investment undertakings whether or

not coordinated at Community level, and the depositaries or managers of such undertakings, since they are subject to specific rules directly adapted to their activities;

Whereas, where associations created by a Member State's pension funds to permit the management of their assets confine themselves to such management and do not provide investment services for third parties, and where the pension funds are themselves subject to the control of the authorities charged with monitoring insurance undertakings, it does not appear to be necessary to subject such associations to the conditions for taking up business and for operation imposed by this Directive;

Whereas this Directive should not apply to 'agenti di cambio' as defined by Italian law since they belong to a category the authorization of which is not to be renewed, their activities are confined to the national territory and they do not give rise to a risk of the distortion of competition;

Whereas the rights conferred on investment firms by this Directive are without prejudice to the right of Member States, central banks and other national bodies performing similar functions to choose their counterparties on the basis of objective, non-discriminatory criteria;

Whereas responsibility for supervising the financial soundness of an investment firm will rest with the competent authorities of its home Member State pursuant to Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions [1], which coordinates the rules applicable to market risk;

Whereas a home Member State may, as a general rule, establish rules stricter than those laid down in this Directive, in particular as regards authorization conditions, prudential requirements and the rules of reporting and transparency;

Whereas the carrying on of activities not covered by this Directive is governed by the general provisions of the Treaty on the right of establishment and the freedom to provide services;

Whereas in order to protect investors an investor's ownership and other similar rights in respect of securities and his rights in respect of funds entrusted to a firm should in particular be protected by being kept distinct from those of the firm; whereas this principle does not, however, prevent a firm from doing business in its name but on behalf of the investor, where that is required by the very nature of the transaction and the investor is in agreement, for example stock lending;

Whereas the procedures for the authorization of branches of investment firms authorized in third countries will continue to apply to such firms; whereas those branches will not enjoy the freedom to provide services under the second paragraph of Article 59 of the Treaty or the right of establishment in Member States other than those in which they are established; whereas, however, requests for the authorization of subsidiaries or of the acquisition of holdings by undertakings governed by the laws of third countries are subject to a procedure intended to ensure that Community investment firms receive reciprocal treatment in the third countries in question;

Whereas the authorizations granted to investment firms by the competent national authorities pursuant to this Directive will have Community-wide, and no longer merely nationwide application, and existing reciprocity clauses will henceforth have no effect; whereas a flexible procedure is therefore needed to make it possible to assess reciprocity on a Community basis; whereas the aim of this procedure is not to close the Community's financial markets but rather, as the Community intends to keep its financial markets open to the rest of the world, to improve the liberalization of the global financial markets in third countries; whereas, to that end, this Directive provides for procedures for negotiating with third countries and, as a last resort, for the possibility of taking measures involving the suspension of new applications for authorization and the restriction of new authorizations;

Whereas one of the objectives of this Directive is to protect investors; whereas it is therefore appropriate to take account of the different requirements for protection of various categories of investors and of their levels of professional expertise;

Whereas the Member States must ensure that there are no obstacles to prevent activities that receive mutual recognition from being carried on in the same manner as in the home Member State, as long as they do not conflict with laws and regulations protecting the general good in force in the host Member State;

Whereas a Member State may not limit the right of investors habitually resident or established in that Member State to avail themselves of any investment service provided by an investment firm covered by this Directive situated outside that Member State and acting outwith that Member State;

Whereas in certain Member States clearing and settlement functions may be performed by bodies separate from the markets on which transactions are effected; whereas, accordingly, any reference in this Directive to access to and membership of regulated markets should be read as including references to access to and membership of bodies performing clearing and settlement functions for regulated markets;

[1] See page 1 of this Official Journal.

Whereas each Member State must ensure that within its territory, treatment of all investment firms authorized in any Member State and likewise all financial instruments listed on the Member States' regulated markets is non-discriminatory; whereas investment firms must all have the same opportunities of joining or having access to regulated markets; whereas, regardless of the manner in which transactions are at present organized in the Member States, it is therefore important, subject to the conditions imposed by this Directive, to abolish the technical and legal restrictions on access to the regulated markets within the framework of this Directive;

Whereas some Member States authorize credit institutions to become members of their regulated markets only indirectly, by setting up specialized subsidiaries; whereas the opportunity which this Directive gives credit institutions of becoming members of regulated markets directly without having to set up specialized subsidiaries constitutes a significant reform for those Member States and all its consequences should be reassessed in the light of the development of the financial markets; whereas, in view of those factors, the report which the Commission will submit to the Council on this matter no later than 31 December 1998 will have to take account of all the factors necessary for the Council to be able to reassess the consequences for those Member States, and in particular the danger of conflicts of interest and the level of protection afforded to investors;

Whereas it is of the greatest importance that the harmonization of compensation systems be brought into effect on the same date as this Directive; whereas, moreover, until the date on which a Directive harmonizing compensation systems is brought into effect, host Member States will be able to impose application of their compensation systems on investment firms including credit institutions authorized by other Member States, where the home Member States have no compensation systems or where their systems do not offer equivalent levels of protection;

Whereas the structure of regulated markets must continue to be governed by national law, without thereby forming an obstacle to the liberalization of access to the regulated markets of host Member States for investment firms authorized to provide the services concerned in their home Member States; whereas, pursuant to that principle, the law of the Federal Republic of Germany and the law of the Netherlands govern the activities *Kursmakler* and *hoekmannen* respectively so as to ensure that they do not exercise their functions in parallel with other functions; whereas it should be noted that *Kursmakler* and *hoekmannen* may not provide services in other Member States; whereas no one, whatever his home Member State, may claim to act as a *Kursmakler* or a *hoekman* without being subject to the same rules on incompatibility as result from the status of *Kursmakler* or *hoekman*;

Whereas it should be noted that this Directive cannot affect the measures taken pursuant to Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admission of securities to official stock-exchange listing [1];

Whereas the stability and sound operation of the financial system and the protection of investors presuppose that a host Member State has the right and responsibility both to prevent and to penalize any action within its territory by investment firms contrary to the rules of conduct and other legal or regulatory provisions it has adopted in the interest of the general good and to take action in emergencies; whereas, moreover, the competent authorities of the host Member State must, in discharging their responsibilities, be able to count on the closest cooperation with the competent authorities of the home Member State, particularly as regards business carried on under the freedom to provide services; whereas the competent authorities of the home Member State are entitled to be informed by the competent authorities of the host Member State of any measures involving penalties on an investment firm or restrictions on its activities which the latter have taken *vis-à-vis* the investment firms which the former have authorized so as to be able to perform their function of prudential supervision efficiently; whereas to that end cooperation between the competent authorities of home and host Member States must be ensured;

Whereas, with the two-fold aim of protecting investors and ensuring the smooth operation of the markets in transferable securities, it is necessary to ensure that transparency of transactions is achieved and that the rules laid down for that purpose in this Directive for regulated markets apply both to investment firms and to credit institutions when they operate on the market;

Whereas examination of the problems arising in the areas covered by the Council Directives on investment services and securities, as regards both the application of existing measures and the possibility of closer coordination in the future, requires cooperation between national authorities and the Commission within a committee; whereas the establishment of such a committee does not rule out other forms of cooperation between supervisory authorities in this field;

Whereas technical amendments to the detailed rules laid down in this Directive may from time to time be necessary to take account of new developments in the investment-services sector; whereas the Commission will make such amendments as are necessary, after referring the matter to the committee to be set up in the securities-markets field,

[1] OJ No L 66, 16. 3. 1979, p. 21. Directive last amended by the Act of Accession of Spain and Portugal.

HAS ADOPTED THIS DIRECTIVE:

TITLE I

Definitions and scope

Article 1

For the purposes of this Directive:

1. *investment service* shall mean any of the services listed in Section A of the Annex relating to any of the instruments listed in Section B of the Annex that are provided for a third party;

2. *investment firm* shall mean any legal person the regular occupation or business of which is the provision of investment services for third parties on a professional basis.

   For the purposes of this Directive, Member States may include as investment firms undertakings which are not legal persons if:

   — their legal status ensures a level of protection for third parties' interests equivalent to that afforded by legal persons, and

   — they are subject to equivalent prudential supervision appropriate to their legal form.

   However, where such natural persons provide services involving the holding of third parties' funds or transferable securities, they may be considered as investment firms for the purposes of this Directive only if, without prejudice to the other requirements imposed in this Directive and in Directive 93/6/EEC, they comply with the following conditions:

   — the ownership rights of third parties in instruments and funds belonging to them must be safeguarded, especially in the event of the insolvency of a firm or of its proprietors, seizure, set-off or any other action by creditors of the firm or of its proprietors,

   — an investment firm must be subject to rules designed to monitor the firm's solvency and that of its proprietors,

   — an investment firm's annual accounts must be audited by one or more persons empowered, under national law, to audit accounts,

   — where a firm has only one proprietor, he must make provision for the protection of investors in the event of the firm's cessation of business following his death, his incapacity or any other such event.

   No later than 31 December 1997 the Commission shall report on the application of the second and third subparagraphs of this point and, if appropriate, propose their amendment or deletion.

   Where a person provides one of the services referred to in Section A (1) (a) of the Annex and where that activity is carried on solely for the account of and under the full and unconditional responsibility of an investment firm, that activity shall be regarded as the activity not of that person but of the investment firm itself;

3. *credit institution* shall mean a credit institution as defined in the first indent of Article 1 of Directive 77/780/EEC [1] with the exception of the institutions referred to in Article 2 (2) thereof;

4. *transferable securities* shall mean:

   — shares in companies and other securities equivalent to shares in companies,

   — bonds and other forms of securitized debt

   which are negotiable on the capital market and

   — any other securities normally dealt in giving the right to acquire any such transferable securities by subscription or exchange or giving rise to a cash settlement

   excluding instruments of payment;

5. *money-market instruments* shall mean those classes of instruments which are normally dealt in on the money market;

6. *home Member State* shall mean:

   (a) where the investment firm is a natural person, the Member State in which his head office is situated;

   (b) where the investment firm is a legal person, the Member State in which its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated;

   (c) in the case of a market, the Member State in which the registered office of the body which provides trading facilities is situated or, if under its national law it has no registered office, the Member State in which that body's head office is situated;

[1] OJ No L 322, 17. 12. 1977, p. 30. Directive last amended by Directive 89/646/EEC (OJ No L 386, 30. 12. 1989, p. 1).

7. *host Member State* shall mean the Member State in which an investment firm has a branch or provides services;

8. *branch* shall mean a place of business which is a part of an investment firm, which has no legal personality and which provides investment services for which the investment firm has been autorized; all the places of business set up in the same Member State by an investment firm with headquarters in another Member State shall be regarded as a single branch;

9. *competent authorities* shall mean the authorities which each Member State designates under Article 22;

10. *qualifying holding* shall mean any direct or indirect holding in an investment firm which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the investment firm in which that holding subsists.

For the purposes of this definition, in the context of Articles 4 and 9 and of the other levels of holding referred to in Article 9, the voting rights referred to in Article 7 of Directive 88/627/EEC [1] shall be taken into account;

11. *parent undertaking* shall mean a parent undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC [2];

12. *subsidiary* shall mean a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC; any subsidiary of a subsidiary undertaking shall also be regarded as a subsidiary of the parent undertaking which is the ultimate parent of those undertakings;

13. *regulated market* shall mean a market for the instruments listed in Section B of the Annex which:

— appears on the list provided for in Article 16 drawn up by the Member State which is the home Member State as defined in Article 1 (6) (c),

— functions regularly,

— is characterized by the fact that regulations issued or approved by the competent authorities define the conditions for the operation of the market, the conditions for access to the market and, where Directive 79/279/EEC is applicable, the conditions governing admission to listing imposed in that Directive and, where that Directive is not applicable, the conditions that must be satisfied by a financial instrument before it can effectively be dealt in on the market,

— requires compliance with all the reporting and transparency requirements laid down pursuant to Articles 20 and 21;

14. *control* shall mean control as defined in Article 1 of Directive 83/349/EEC.

Article 2

1. This Directive shall apply to all investment firms. Only paragraph 4 of this Article and Articles 8 (2), 10, 11, 12, first paragraph, 14 (3) and (4), 15, 19 and 20, however, shall apply to credit institutions the authorization of which, under Directives 77/780/EEC and 89/646/EEC, covers one or more of the investment services listed in Section A of the Annex to this Directive.

2. This Directive shall not apply to:

(a) insurance undertakings as defined in Article 1 of Directive 73/239/EEC [3] or Article 1 of Directive 79/267/EEC [4] or undertakings carrying on the reinsurance and retrocession activities referred to in Directive 64/225/EEC [5];

(b) firms which provide investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;

(c) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;

(d) firms that provide investment services consisting exclusively in the administration of employee-participation schemes;

(e) firms that provide investment services that consist in providing both the services referred to in (b) and those referred to in (d);

(f) the central banks of Member States and other national bodies performing similar functions and other public bodies charged with or intervening in the management of the public debt;

[1] OJ No L 348, 17. 12. 1988, p. 62.
[2] OJ No L 193, 18. 7. 1983, p. 1. Directive last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).
[3] OJ No L 228, 16. 8. 1973, p. 3. Directive last amended by Directive 90/619/EEC (OJ No L 330, 29. 11. 1990, p. 50).
[4] OJ No L 63, 13. 3. 1979, p. 1. Directive last amended by Directive 90/618/EEC (OJ No L 330, 29. 11. 1990, p. 44).
[5] OJ No 56, 4. 4. 1964, p. 878/64.

(g) firms

— which may not hold clients' funds or securities and which for that reason may not at any time place themselves in debit with their clients, and

— which may not provide any investment service except the reception and transmission of orders in transferable securities and units in collective investment undertakings, and

— which in the course of providing that service may transmit orders only to

(i) investment firms authorized in accordance with this Directive;

(ii) credit institutions authorized in accordance with Directives 77/780/EEC and 89/646/EEC;

(iii) branches of investment firms or of credit institutions which are authorized in a third country and which are subject to and comply with prudential rules considered by the competent authorities as at least as stringent as those laid down in this Directive, in Directive 89/646/EEC or in Directive 93/6/EEC;

(iv) collective investment undertakings authorized under the law of a Member State to market units to the public and to the managers of such undertakings;

(v) investment companies with fixed capital, as defined in Article 15 (4) of Directive 77/91/EEC [1], the securities of which are listed or dealt in on a regulated market in a Member State;

— the activities of which are governed at national level by rules or by a code of ethics;

(h) collective investment undertakings whether coordinated at Community level or not and the depositaries and managers of such undertakings;

(i) persons whose main business is trading in commodities amongst themselves or with producers or professional users of such products and who provide investment services only for such producers and professional users to the extent necessary for their main business;

(j) firms that provide investment services consisting exclusively in dealing for their own account on financial-futures or options markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets. Responsibility for ensuring the performance of contracts entered into by such firms must be assumed by clearing members of the same markets;

(k) associations set up by Danish pension funds with the sole aim of managing the assets of pension funds that are members of those associations;

(l) 'agenti di cambio' whose activities and functions are governed by Italian Royal Decree No 222 of 7 March 1925 and subsequent provisions amending it, and who are authorized to carry on their activities under Article 19 of Italian Law No 1 of 2 January 1991.

3. No later than 31 December 1998 and at regular intervals thereafter the Commission shall report on the application of paragraph 2 in conjunction with Section A of the Annex and shall, where appropriate, propose amendments to the definition of the exclusions and the services covered in the light of the operation of this Directive.

4. The rights conferred by this Directive shall not extend to the provision of services as counterparty to the State, the central bank or other Member State national bodies performing similar functions in the pursuit of the monetary, exchange-rate, public-debt and reserves management policies of the Member State concerned.

TITLE II

Conditions for taking up business

Article 3

1. Each Member State shall make access to the business of investment firms subject to authorization for investment firms of which it is the home Member State. Such authorization shall be granted by the home Member State's competent authorities designated in accordance with Article 22. The authorization shall specify the investment services referred to in Section A of the Annex which the undertaking is authorized to provide. The authorization may also cover one or more of the non-core services referred to in Section C of the Annex. Authorization within the meaning of this Directive may in no case be granted for services covered only by Section C of the Annex.

2. Each Member State shall require that:

— any investment firm which is a legal person and which, under its national law, has a registered office shall have its head office in the same Member State as its registered office,

— any other investment firm shall have its head office in the Member State which issued its authorization and in which it actually carries on its business.

[1] OJ No L 26, 30. 1. 1977, p. 1. Directive last amended by the Act of Accession of Spain and Portugal.

3. Without prejudice to other conditions of general application laid down by national law, the competent authorities shall not grant authorization unless:

— an investment firm has sufficient initial capital in accordance with the rules laid down in Directive 93/6/EEC having regard to the nature of the investment service in question,

— the persons who effectively direct the business of an investment firm are of sufficiently good repute and are sufficiently experienced.

The direction of a firm's business must be decided by at least two persons meeting the above conditions. Where an appropriate arrangement ensures that the same result will be achieved, however, particularly in the cases provided for in the last indent of the third subparagraph of Article 1 (2), the competent authorities may grant authorization to investment firms which are natural persons or, taking account of the nature and volume of their activities, to investment firms which are legal persons where such firms are managed by single natural persons in accordance with their articles of association and national laws.

4. Member States shall also require that every application for authorization be accompanied by a programme of operations setting out *inter alia* the types of business envisaged and the organizational structure of the investment firm concerned.

5. An applicant shall be informed within six months of the submission of a complete application whether or not authorization has been granted. Reasons shall be given whenever an authorization is refused.

6. An investment firm may commence business as soon as authorization has been granted.

7. The competent authorities may withdraw the authorization issued to an investment firm subject to this Directive only where that investment firm:

(a) does not make use of the authorization within 12 months, expressly renounces the authorization or ceased to provide investment services more than six months previously unless the Member State concerned has provided for authorization to lapse in such cases;

(b) has obtained the authorization by making false statements or by any other irregular means;

(c) no longer fulfils the conditions under which authorization was granted;

(d) no longer complies with Directive 93/6/EEC;

(e) has seriously and systematically infringed the provisions adopted pursuant to Articles 10 or 11; or

(f) falls within any of the cases where national law provides for withdrawal.

Article 4

The competent authorities shall not grant authorization to take up the business of investment firms until they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings.

The competent authorities shall refuse authorization if, taking into account the need to ensure the sound and prudent management of an investment firm, they are not satisfied as to the suitability of the aforementioned shareholders or members.

Article 5

In the case of branches of investment firms that have registered offices outwith the Community and are commencing or carrying on business, the Member States shall not apply provisions that result in treatment more favourable than that accorded to branches of investment firms that have registered offices in Member States.

Article 6

The competent authorities of the other Member State involved shall be consulted beforehand on the authorization of any investment firm which is:

— a subsidiary of an investment firm or credit institution authorized in another Member State,

— a subsidiary of the parent undertaking of an investment firm or credit institution authorized in another Member State,

or

— controlled by the same natural or legal persons as control an investment firm or credit institution authorized in another Member State.

TITLE III

Relations with third countries

Article 7

1. The competent authorities of the Member States shall inform the Commission:

(a) of the authorization of any firm which is the direct or indirect subsidiary of a parent undertaking governed by the law of a third country;

(b) whenever such a parent undertaking acquires a holding in a Community investment firm such that the latter would become its subsidiary.

In both cases the Commission shall inform the Council until such time as a committee on transferable securities is set up by the Council acting on a proposal from the Commission.

When authorization is granted to any firm which is the direct or indirect subsidiary of a parent undertaking governed by the law of a third country, the competent authorities shall specify the structure of the group in the notification which they address to the Commission.

2. The Member States shall inform the Commission of any general difficulties which their investment firms encounter in establishing themselves or providing investment services in any third country.

3. Initially no later than six months before this Directive is brought into effect and thereafter periodically the Commission shall draw up a report examining the treatment accorded to Community investment firms in third countries, in the terms referred to in paragraphs 4 and 5, as regards establishment, the carrying on of investment services activities and the acquisition of holdings in third-country investment firms. The Commission shall submit those reports to the Council together with any appropriate proposals.

4. Whenever it appears to the Commission, either on the basis of the reports provided for in paragraph 3 or on the basis of other information, that a third country does not grant Community investment firms effective market access comparable to that granted by the Community to investment firms from that third country, the Commission may submit proposals to the Council for an appropriate mandate for negotiation with a view to obtaining comparable competitive opportunities for Community investment firms. The Council shall act by a qualified majority.

5. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 3 or on the basis of other information, that Community investment firms in a third country are not granted national treatment affording the same competitive opportunities as are available to domestic investment firms and that the conditions of effective market access are not fulfilled, the Commission may initiate negotiations in order to remedy the situation.

In the circumstances described in the first subparagraph it may also be decided, at any time and in addition to the initiation of negotiations, in accordance with the procedure to be laid down in the Directive by which the Council will set up the committee referred to in paragraph 1, that the competent authorities of the Member States must limit or suspend their decisions regarding requests pending or future requests for authorization and the acquisition of holdings by direct or indirect parent undertakings governed by the law of the third country in question. The duration of such measures may not exceed three months.

Before the end of that three-month period and in the light of the results of the negotiations the Council may, acting on a proposal from the Commission, decide by a qualified majority whether the measures shall be continued.

Such limitations or suspensions may not be applied to the setting up of subsidiaries by investment firms duly authorized in the Community or by their subsidiaries, or to the acquisition of holdings in Community investment firms by such firms or subsidiaries.

6. Whenever it appears to the Commission that one of the situations described in paragraphs 4 and 5 obtains, the Member States shall inform it at its request:

(a) of any application for the authorization of any firm which is the direct or indirect subsidiary of a parent undertaking governed by the law of the third country in question;

(b) whenever they are informed in accordance with Article 10 that such a parent undertaking proposes to acquire a holding in a Community investment firm such that the latter would become its subsidiary.

This obligation to provide information shall lapse whenever agreement is reached with the third country referred to in paragraph 4 or 5 or when the measures referred to in the second and third subparagraphs of paragraph 5 cease to apply.

7. Measures taken under this Article shall comply with the Community's obligations under any international agreements, bilateral or multilateral, governing the taking up or pursuit of the business of investment firms.

TITLE IV

Operating conditions

Article 8

1. The competent authorities of the home Member States shall require that an investment firm which they have authorized comply at all times with the conditions imposed in Article 3 (3).

2. The competent authorities of the home Member State shall require that an investment firm which they have authorized comply with the rules laid down in Directive 93/6/EEC.

3. The prudential supervision of an investment firm shall be the responsibility of the competent authorities of the home Member State whether the investment firm establishes a branch or provides services in another Member State or not, without prejudice to those provisions of this Directive which give responsibility to the authorities of the host Member State.

Article 9

1. Member States shall require any person who proposes to acquire, directly or indirectly, a qualifying holding in an investment firm first to inform the competent authorities, telling them of the size of his intended holding. Such a person shall likewise inform the competent authorities if he proposes to increase his qualifying holding so that the proportion of the voting rights or of the capital that he holds would reach or exceed 20, 33, or 50 % or so that the investment firm would become his subsidiary.

Without prejudice to paragraph 2, the competent authorities shall have up to three months from the date of the notification provided for in the first subparagraph to oppose such a plan if, in view of the need to ensure sound and prudent management of the investment firm, they are not satisfied as to the suitability of the person referred to in the first subparagraph. If they do not oppose the plan, they may fix a deadline for its implementation.

2. If the acquirer of the holding referred to in paragraph 1 is an investment firm authorized in another Member State or the parent undertaking of an investment firm authorized in another Member State or a person controlling an investment firm authorized in another Member State and if, as a result of that acquisition, the firm in which the acquirer proposes to acquire a holding would become the acquirer's subsidiary or come under his control, the assessment of the acquisition must be the subject of the prior consultation provided for in Article 6.

3. Member States shall require any person who proposes to dispose, directly or indirectly, of a qualifying holding in an investment firm first to inform the competent authorities, telling them of the size of his holding. Such a person shall likewise inform the competent authorities if he proposes to reduce his qualifying holding so that the proportion of the voting rights or of the capital held by him would fall below 20, 33 or 50 % or so that the investment firm would cease to be his subsidiary.

4. On becoming aware of them, investment firms shall inform the competent authorities of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below any of the thresholds referred to in paragraphs 1 and 3.

At least once a year they shall also inform the competent authorities of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at annual general meetings of shareholders and members or as a result of compliance with the regulations applicable to companies listed on stock exchanges.

5. Member States shall require that, where the influence exercised by the persons referred to in paragraph 1 is likely to be prejudicial to the sound and prudent management of an investment firm, the competent authorities take appropriate measures to put an end to that situation. Such measures may consist, for example, in injunctions, sanctions against directors and those responsible for management or suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.

Similar measures shall apply to persons failing to comply with the obligation to provide prior information imposed in paragraph 1. If a holding is acquired despite the opposition of the competent authorities, the Member States shall, regardless of any other sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended, for the nullity of the votes cast or for the possibility of their annulment.

Article 10

Each home Member State shall draw up prudential rules which investment firms shall observe at all times. In particular, such rules shall require that each investment firm:

— have sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing, and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees,

— make adequate arrangements for instruments belonging to investors with a view to safeguarding the latter's ownership rights, especially in the event of the investment firm's instruments for its own account except with the investors' express consent,

— make adequate arrangements for funds belonging to investors with a view to safeguarding the latter's rights and, except in the case of credit institutions, preventing the investment firm's using investors' funds for its own account,

— arrange for records to be kept of transactions executed which shall at least be sufficient to enable the home Member State's authorities to monitor compliance with the prudential rules which they are responsible for applying; such records shall be retained for periods to be laid down by the competent authorities,

— be structured and organized in such a way as to minimize the risk of clients' interests being prejudiced by conflicts of interest between the firm and its clients or between one of its clients and another. Nevertheless, where a branch is set up the organizational arrangements may not conflict with the rules of conduct laid down by the host Member State to cover conflicts of interest.

Article 11

1. Member States shall draw up rules of conduct which investment firms shall observe at all times. Such rules must implement at least the principles set out in the following indents and must be applied in such a way as to take account of the professional nature of the person for whom the service is provided. The Member States shall also apply these rules where appropriate to the non-core services listed in Section C of the Annex. These principles shall ensure that an investment firm:

— acts honestly and fairly in conducting its business activities in the best interests of its clients and the integrity of the market,

— acts with due skill, care and diligence, in the best interests of its clients and the integrity of the market,

— has and employs effectively the resources and procedures that are necessary for the proper performance of its business activities,

— seeks from its clients information regarding their financial situations, investment experience and objectives as regards the services requested,

— makes adequate disclosure of relevant material information in its dealings with its clients,

— tries to avoid conflicts of interests and, when they cannot be avoided, ensures that its clients are fairly treated, and

— complies with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its clients and the integrity of the market.

2. Without prejudice to any decisions to be taken in the context of the harmonization of the rules of conduct, their implementation and the supervision of compliance with them shall remain the responsibility of the Member State in which a service is provided.

3. Where an investment firm executes an order, for the purposes of applying the rules referred to in paragraph 1 the professional nature of the investor shall be assessed with respect to the investor from whom the order originates, regardless of whether the order was placed directly by the investor himself or indirectly through an investment firm providing the service referred to in Section A (1) (a) of the Annex.

Article 12

Before doing business with them, a firm shall inform investors which compensation fund or equivalent protection will apply in respect of the transactions envisaged, what cover is offered by whichever system applies, or if there is no fund or compensation.

The Council notes the Commission's statement to the effect that it will submit proposals on the harmonization of compensation systems covering transactions by investment firms by 31 July 1993 at the latest. The Council will act on those proposals within the shortest possible time with the aim of bringing the systems proposed into effect on the same date as this Directive.

Article 13

This Directive shall not prevent investment firms authorized in other Member States from advertising their services through all available means of communication in their host Member States, subject to any rules governing the form and the content of such advertising adopted in the interest of the general good.

TITLE V

The right of establishment and the freedom to provide services

Article 14

1. Member States shall ensure that investment services and the other services listed in Section C of the Annex may be provided within their territories in accordance with Articles 17, 18 and 19 either by the establishment of a branch or under the freedom to provide services by any investment firm authorized and supervised by the competent authorities of another Member State in accordance with this Directive, provided that such services are covered by the authorization.

This Directive shall not affect the powers of host Member States in respect of the units of collective investment undertakings to which Directive 85/611/EEC [1] does not apply.

[1] OJ No L 375, 31. 12. 1985, p. 3. Directive last amended by Directive 88/220/EEC (OJ No L 100, 19. 4. 1988, p. 31).

2. Member States may not make the establishment of a branch or the provision of services referred to in paragraph 1 subject to any authorization requirement, to any requirement to provide endowment capital or to any other measure having equivalent effect.

3. A Member State may require that transactions relating to the services referred to in paragraph 1 must, where they satisfy all the following criteria, be carried out on a regulated market:

— the investor must be habitually resident or established in that Member State,

— the investment firm must carry out such transactions through a main establishment, through a branch situated in that Member State or under the freedom to provide services in that Member State,

— the transaction must involve a instrument dealt in on a regulated market in that Member State.

4. Where a Member State applies paragraph 3 it shall give investors habitually resident or established in that Member State the right not to comply with the obligation imposed in paragraph 3 and have the transactions referred to in paragraph 3 carried out away from a regulated market. Member States may make the exercise of this right subject to express authorization, taking into account investors' differing needs for protection and in particular the ability of professional and institutional investors to act in their own best interests. It must in any case be possible for such authorization to be given in conditions that do not jeopardize the prompt execution of investors' orders.

5. The Commission shall report on the operation of paragraphs 3 and 4 not later than 31 December 1998 and shall, if appropriate, propose amendments thereto.

Article 15

1. Without prejudice to the exercise of the right of establishment or the freedom to provide services referred to in Article 14, host Member States shall ensure that investment firms which are authorized by the competent authorities of their home Member States to provide the services referred to in Section A (1) (b) and (2) of the Annex can, either directly or indirectly, become members of or have access to the regulated markets in their host Member States where similar services are provided and also become members of or have access to the clearing and settlement systems which are provided for the members of such regulated markets there.

Member States shall abolish any national rules or laws or rules of regulated markets which limit the number of persons allowed access thereto. If, by virtue of its legal structure or its technical capacity, access to a regulated market is limited, the Member State concerned shall ensure that its structure and capacity are regularly adjusted.

2. Membership of or access to a regulated market shall be conditional on investment firms' complying with capital adequacy requirements and home Member States' supervising such compliance in accordance with Directive 93/6/EEC.

Host Member States shall be entitled to impose additional capital requirements only in respect of matters not covered by that Directive.

Access to a regulated market, admission to membership thereof and continued access or membership shall be subject to compliance with the rules of the regulated market in relation to the constitution and administration of the regulated market and to compliance with the rules relating to transactions on the market, with the professional standards imposed on staff operating on and in conjunction with the market, and with the rules and procedures for clearing and settlement. The detailed arrangements for implementing these rules and procedures may be adapted as appropriate, *inter alia* to ensure fulfilment of the ensuing obligations, provided, however, that Article 28 is complied with.

3. In order to meet the obligation imposed in paragraph 1, host Member States shall offer the investment firms referred to in that paragraph the choice of becoming members of or of having access to their regulated markets either:

— directly, by setting up branches in the host Member States, or

— indirectly, by setting up subsidiaries in the host Member States or by acquiring firms in the host Member States that are already members of their regulated markets or already have access thereto.

However, those Member States which, when this Directive is adopted, apply laws which do not permit credit institutions to become members of or have access to regulated markets unless they have specialized subsidiaries may continue until 31 December 1996 to apply the same obligation in a non-discriminatory way to credit institutions from other Member States for purposes of access to those regulated markets.

The Kingdom of Spain, the Hellenic Republic and the Portuguese Republic may extend that period until 31 December 1999. One year before that date the Commission shall draw up a report, taking into account the experience acquired in applying this Article and shall if appropriate, submit a proposal. The Council may, acting by qualified majority on the basis of that proposal, decide to review those arrangements.

4. Subject to paragraphs 1, 2 and 3, where the regulated market of the host Member State operates without any requirement for a physical presence the investment firms referred to in paragraph 1 may become members of or have access to it on the same basis without having to be established in the host Member State. In order to enable their investment firms to become members of or have access to host Member States' regulated markets in accordance with this paragraph home Member States shall allow those host Member States' regulated markets to provide appropriate facilities within the home Member States' territories.

5. This Article shall not affect the Member States' right to authorize or prohibit the creation of new markets within their territories.

6. This Article shall have no effect:

— in the Federal Republic of Germany, on the regulation of the activities of *Kursmakler*, or

— in the Netherlands, on the regulation of the activities of *hoekmannen*.

Article 16

For the purposes of mutual recognition and the application of this Directive, it shall be for each Member State to draw up a list of the regulated markets for which it is the home Member State and which comply with its regulations, and to forward that list for information, together with the relevant rules of procedures and operation of those regulated markets, to the other Member States and the Commission. A similar communication shall be effected in respect of each change to the aforementioned list or rules. The Commission shall publish the lists of regulated markets and updates thereto in the *Official Journal of the European Communities* at least once a year.

No later than 31 December 1996 the Commission shall report on the information thus received and, where appropriate, propose amendments to the definition of regulated market for the purposes of this Directive.

Article 17

1. In addition to meeting the conditions imposed in Article 3, any investment firm wishing to establish a branch within the territory of another Member State shall notify the competent authorities of its home Member State.

2. Member States shall require every investment firm wishing to establish a branch within the territory of another Member State to provide the following information when effecting the notification provided for in paragraph 1:

(a) the Member State within the territory of which it plans to establish a branch;

(b) a programme of operations setting out *inter alia* the types of business envisaged and the organizational structure of the branch;

(c) the address in the host Member State from which documents may be obtained;

(d) the names of those responsible for the management of the branch.

3. Unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of an investment firm, taking into account the activities envisaged, they shall, within three months of receiving all the information referred to in paragraph 2, communicate that information to the competent authorities of the host Member State and shall inform the investment firm concerned accordingly.

They shall also communicate details of any compensation scheme intended to protect the branch's investors.

Where the competent authorities of the home Member State refuse to communicate the information referred to in paragraph 2 to the competent authorities of the host Member State, they shall give reasons for their refusal to the investment firm concerned within three months of receiving all the information. That refusal or failure to reply shall be subject to the right to apply to the courts in the home Member States.

4. Before the branch of an investment firm commences business the competent authorities of the host Member State shall, within two months of receiving the information referred to in paragraph 3, prepare for the supervision of the investment firm in accordance with Article 19 and, if necessary, indicate the conditions, including the rules of conduct, under which, in the interest of the general good, that business must be carried on in the host Member State.

5. On receipt of a communication from the competent authorities of the host Member State or on the expiry of the period provided for in paragraph 4 without receipt of any communication from those authorities, the branch may be established and commence business.

6. In the event of a change in any of the particulars communicated in accordance with paragraph 2 (b), (c) or (d), an investment firm shall give written notice of that change to the competent authorities of the home and host Member States at least one month before implementing the change so that the competent authorities of the home Member State may take a decision on the change under paragraph 3 and the competent authorities of the host Member State may do so under paragraph 4.

7. In the event of a change in the particulars communicated in accordance with the second subparagraph of paragraph 3, the authorities of the home Member State shall inform the authorities of the host Member State accordingly.

Article 18

1. Any investment firm wishing to carry on business within the territory of another Member State for the first time under the freedom to provide services shall communicate the following information to the competent authorities of its home Member State:

— the Member State in which it intends to operate,

— a programme of operations stating in particular the investment service or services which it intends to provide.

2. The competent authorities of the home Member State shall, within one month of receiving the information referred to in paragraph 1, forward it to the competent authorities of the host Member State. The investment firm may then start to provide the investment service or services in question in the host Member State.

Where appropriate, the competent authorities of the host Member State shall, on receipt of the information referred to in paragraph 1, indicate to the investment firm the conditions, including the rules of conduct, with which, in the interest of the general good, the providers of the investment services in question must comply in the host Member State.

3. Should the content of the information communicated in accordance with the second indent of paragraph 1 be amended, the investment firm shall give notice of the amendment in writing to the competent authorities of the home Member State and of the host Member State before implementing the change, so that the competent authorities of the host Member State may, if necessary, inform the firm of any change or addition to be made to the information communicated under paragraph 2.

Article 19

1. Host Member States may, for statistical purposes, require all investment firms with branches within their territories to report periodically on their activities in those host Member States to the competent authorities of those host Member States.

In discharging their responsibilities in the conduct of monetary policy, without prejudice to the measures necessary for the strengthening of the European Monetary System, host Member States may within their territories require all branches of investment firms originating in other Member States to provide the same particulars as national investment firms for that purpose.

2. In discharging their responsibilities under this Directive, host Member States may require branches of investment firms to provide the same particulars as national firms for that purpose.

Host Member States may require investment firms carrying on business within their territories under the freedom to provide services to provide the information necessary for the monitoring of their compliance with the standards set by the host Member State that apply to them, although those requirements may not be more stringent than those which the same Member State imposes on established firms for the monitoring of their compliance with the same standards.

3. Where the competent authorities of a host Member State ascertain that an investment firm that has a branch or provides services within its territory is in breach of the legal or regulatory provisions adopted in that State pursuant to those provisions of this Directive which confer powers on the host Member State's competent authorities, those authorities shall require the investment firm concerned to put an end to its irregular situation.

4. If the investment firm concerned fails to take the necessary steps, the competent authorities of the host Member State shall inform the competent authorities of the home Member State accordingly. The latter shall, at the earliest opportunity, take all appropriate measures to ensure that the investment firm concerned puts an end to its irregular situation. The nature of those measures shall be communicated to the competent authorities of the host Member State.

5. If, despite the measures taken by the home Member State or because such measures prove inadequate or are not available in the State in question, the investment firm persists in violating the legal or regulatory provisions referred to in paragraph 2 in force in the host Member State, the latter may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to penalize further irregularities and, in so far as necessary, to prevent that investment firm from initiating any further transactions within its territory. The Member States shall ensure that within their territories it is possible to serve the legal documents necessary for those measures on investment firms.

6. The foregoing provisions shall not affect the powers of host Member States to take appropriate measures to prevent or to penalize irregularities committed within their territories which are contrary to the rules of conduct introduced pursuant to Article 11 as well as to other legal or regulatory provisions adopted in the interest of the general good. This shall include the possibility of preventing offending investment firms from initiating any further transactions within their territories.

7. Any measure adopted pursuant to paragraphs 4, 5 or 6 involving penalties or restrictions on the activities of an investment firm must be properly justified and communicated to the investment firm concerned. Every

such measure shall be subject to the right to apply to the courts in the Member State which adopted it.

8. Before following the procedure laid down in paragraphs 3, 4 or 5 the competent authorities of the host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of investors and others for whom services are provided. The Commission and the competent authorities of the other Member States concerned must be informed of such measures at the earliest opportunity.

After consulting the competent authorities of the Member States concerned, the Commission may decide that the Member State in question must amend or abolish those measures.

9. In the event of the withdrawal of authorization, the competent authorities of the host Member State shall be informed and shall take appropriate measures to prevent the investment firm concerned from initiating any further transactions within its territory and to safeguard investors' interests. Every two years the Commission shall submit a report on such cases to the committee set up at a later stage in the securities field.

10. The Member States shall inform the Commission of the number and type of cases in which there have been refusals pursuant to Article 17 or measures have been taken in accordance with paragraph 5. Every two years the Commission shall submit a report on such cases to the committee set up at a later date in the securities field.

Article 20

1. In order to ensure that the authorities responsible for the markets and for supervision have access to the information necessary for the performance of their duties, home Member States shall at least require:

(a) without prejudice to steps taken in implementation of Article 10, that investment firms keep at the disposal of the authorities for at least five years the relevant data on transactions relating to the services referred to in Article 14 (1) which they have carried out in instruments dealt in on a regulated market, whether such transactions were carried out on a regulated market or not;

(b) that investment firms report to competent authorities in their home Member States all the transactions referred to in (a) where those transactions cover:

— shares or other instruments giving access to capital,

— bonds and other forms of securitized debt,

— standardized forward contracts relating to shares or

— standardized options on shares.

Such reports must be made available to the relevant authority at the earliest opportunity. The time limit shall be fixed by that authority. It may be extended to the end of the following working day where operational or practical reasons so dictate but in no circumstances may it exceed that limit.

Such reports must, in particular, include details of the names and numbers of the instruments bought or sold, the dates and times of the transactions, the transaction prices and means of identifying the investment firms concerned.

Home Member States may provide that the obligation imposed in (b) shall, in the case of bonds and other forms of securitized debt, apply only to aggregated transactions in the same instrument.

2. Where an investment firm carries out a transaction on a regulated market in its host Member State, the home Member State may waive its own requirements as regards reporting if the investment firm is subject to equivalent requirements to report the transaction in question to the authorities in charge of that market.

3. Member States shall provide that the report referred to in paragraph 1 (b) shall be made either by the investment firm itself or by a trade-matching system, or through stock-exchange authorities or those of another regulated market.

4. Member States shall ensure that the information available in accordance with this Article is also available for the proper application of Article 23.

5. Each Member State may, in a non-discriminatory manner, adopt or maintain provisions more stringent in the field governed by this Article with regard to substance and form in respect of the conservation and reporting of data relating to transactions:

— carried out on a regulated market of which it is the home Member State or

— carried out by investment firms of which it is the home Member State.

Article 21

1. In order to enable investors to assess at any time the terms of a transaction they are considering and to verify afterwards the conditions in which it has been carried out, each competent authority shall, for each of the regulated markets which it has entered on the list provided for in Article 16, take measures to provide

investors with the information referred to in paragraph 2. In accordance with the requirements imposed in paragraph 2, the competent authorities shall determine the form in which and the precise time within which the information is to be provided, as well as the means by which it is to be made available, having regard to the nature, size and needs of the market concerned and of the investors operating on that market.

2. The competent authorities shall require for each instrument at least:

(a) publication at the start of each day's trading on the market of the weighted average price, the highest and the lowest prices and the volume dealt in on the regulated market in question for the whole of the preceding day's trading;

(b) in addition, for continuous order-driven and quote-driven markets, publication:

— at the end of each hour's trading on the market, of the weighted average price and the volume dealt in on the regulated market in question for a six-hour trading period ending so as to leave two hours' trading on the market before publication, and

— every 20 minutes, of the weighted average price and the highest and lowest prices on the regulated market in question for a two-hour trading period ending so as to leave one hour's trading on the market before publication.

Where investors have prior access to information on the prices and quantities for which transactions may be undertaken:

(i) such information shall be available at all times during market trading hours;

(ii) the terms announced for a given price and quantity shall be terms on which it is possible for an investor to carry out such a transaction.

The competent authorities may delay or suspend publication where that proves to be justified by exceptional market conditions or, in the case of small markets, to preserve the anonymity of firms and investors. The competent authorities may apply special provisions in the case of exceptional transactions that are very large in scale compared with average transactions in the security in question on that market and in the case of highly illiquid securities defined by means of objective criteria and made public. The competent authorities may also apply more flexible provisions, particularly as regards publication deadlines, for transactions concerning bonds and other forms of securitized debt.

3. In the field governed by this Article each Member State may adopt or maintain more stringent provisions or additional provisions with regard to the substance and form in which information must be made available to investors concerning transactions carried out on regulated markets of which it is the home Member State, provided that those provisions apply regardless of the Member State in which the issuer of the financial instrument is located or of the Member State on the regulated market of which the instrument was listed for the first time.

4. The Commission shall report on the application of this Article no later than 31 December 1997; the Council may, on a proposal from the Commission, decide by a qualified majority to amend this Article.

TITLE VI

Authorities responsible for authorization and supervision

Article 22

1. Member States shall designate the competent authorities which are to carry out the duties provided for in this Directive. They shall inform the Commission thereof, indicating any division of those duties.

2. The authorities referred to in paragraph 1 must be either public authorities, bodies recognized by national law or bodies recognized by public authorities expressly empowered for that purpose by national law.

3. The authorities concerned must have all the powers necessary for the performance of their functions.

Article 23

1. Where there are two or more competent authorities in the same Member State, they shall collaborate closely in supervising the activities of investment firms operating in that Member State.

2. Member States shall ensure that such collaboration takes place between such competent authorities and the public authorities responsible for the supervision of financial markets, credit and other financial institutions and insurance undertakings, as regards the entities which those authorities supervise.

3. Where, through the provision of services or by the establishment of branches, an investment firm operates in one or more Member States other than its home Member State the competent authorities of all the Member States concerned shall collaborate closely in order more effectively to discharge their respective responsibilities in the area covered by this Directive.

They shall supply one another on request with all the information concerning the management and ownership of such investment firms that is likely to facilitate their supervision and all information likely to facilitate the monitoring of such firms. In particular, the authorities of the home Member State shall cooperate to ensure that the authorities of the host Member State collect the particulars referred to in Article 19 (2).

In so far as it is necessary for the purpose of exercising their powers of supervision, the competent authorities of the home Member State shall be informed by the competent authorities of the host Member State of any measures taken by the host Member State pursuant to Article 19 (6) which involve penalties imposed on an investment firm or restrictions on an investment firm's activities.

Article 24

1. Each host Member State shall ensure that, where an investment firm authorized in another Member State carries on business within its territory through a branch, the competent authorities of the home Member State may, after informing the competent authorities of the host Member State, themselves or through the intermediary of persons they instruct for the purpose carry out on-the-spot verification of the information referred to in Article 23 (3).

2. The competent authorities of the home Member State may also ask the competent authorities of the host Member State to have such verification carried out. Authorities which receive such requests must, within the framework of their powers, act upon them by carrying out the verifications themselves, by allowing the authorities who have requested them to carry them out or by allowing auditors or experts to do so.

3. This Article shall not affect the right of the competent authorities of a host Member State, in discharging their responsibilities under this Directive, to carry out on-the-spot verifications of branches established within their territory.

Article 25

1. Member States shall provide that all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, shall be bound by the obligation of professional secrecy. Accordingly no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form such that individual investment firms cannot be identified, without prejudice to cases covered by criminal law.

Nevertheless, where an investment firm has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that investment firm may be divulged in civil or commercial proceedings.

2. Paragraph 1 shall not prevent the competent authorities of different Member States from exchanging information in accordance with this Directive or other Directives applicable to investment firms. That information shall be subject to the conditions of professional secrecy imposed in paragraph 1.

3. Member States may conclude cooperation agreements providing for exchanges of information with the competent authorities of third countries only if the information disclosed is covered by guarantees of professional secrecy at least equivalent to those provided for in this Article.

4. Competent authorities receiving confidential information under paragraph 1 or 2 may use it only in the course of their duties:

— to check that the conditions governing the taking up of the business of investment firms are met and to facilitate the monitoring, on a non-consolidated or consolidated basis, of the conduct of that business, especially with regard to the capital adequacy requirements imposed in Directive 93/6/EEC, administrative and accounting procedures and internal-control mechanisms,

— to impose sanctions,

— in administrative appeals against decisions by the competent authorities, or

— in court proceedings initiated under Article 26.

5. Paragraphs 1 and 4 shall not preclude the exchange of information:

(a) within a Member State, where there are two or more competent authorities, or

(b) within a Member State or between Member States, between competent authorities and

— authorities responsible for the supervision of credit institutions, other financial organizations and insurance undertakings and the authorities responsible for the supervision of financial markets,

— bodies responsible for the liquidation and bankruptcy of investment firms and other similar procedures and

— persons responsible for carrying out statutory audits of the accounts of investment firms and other financial institutions,

in the performance of their supervisory functions, or the disclosure to bodies which administer compensation schemes of information necessary for the performance of their functions. Such information shall be subject to the conditions of professional secrecy imposed in paragraph 1.

6. This Article shall not prevent a competent authority from disclosing to those central banks which do not supervise credit institutions or investment firms individually such information as they may need to act as monetary authorities. Information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1.

7. This Article shall not prevent the competent authorities from communicating the information referred to in paragraphs 1 to 4 to a clearing house or other similar body recognized under national law for the provision of clearing or settlement services for one of their Member State's markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received shall be subject to the conditions of professional secrecy imposed in paragraph 1. The Member States shall, however, ensure that information received under paragraph 2 may not be disclosed in the circumstances referred to in this paragraph without the express consent of the competent authorities which disclosed it.

8. In addition, notwithstanding the provisions referred to in paragraphs 1 and 4, Member States may, by virtue of provisions laid down by law, authorize the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment firms and insurance undertakings and to inspectors instructed by those departments.

Such disclosures may, however, be made only where necessary for reasons of prudential control.

Member States shall, however, provide that information received under paragraphs 2 and 5 and that obtained by means of the on-the-spot verifications referred to in Article 24 may never be disclosed in the cases referred to in this paragraph except with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which the on-the-spot verification was carried out.

9. If, at the time of the adoption of this Directive, a Member State provides for the exchange of information between authorities in order to check compliance with the laws on prudential supervision, on the organization, operation and conduct of commercial companies and on the regulation of financial markets, that Member State may continue to authorize the forwarding of such information pending coordination of all the provisions governing the exchange of information between authorities for the entire financial sector but not in any case after 1 July 1996.

Member States shall, however, ensure that, where information comes from another Member State, it may not be disclosed in the circumstances referred to in the first subparagraph without the express consent of the competent authorities which disclosed it and it may be used only for the purposes for which those authorities gave their agreement.

The Council shall effect the coordination referred to in the first subparagraph on the basis of a Commission proposal. The Council notes the Commission's statement to the effect that it will submit proposals by 31 July 1993 at the latest. The Council will act on those proposals within the shortest possible time with the intention of bringing the rules proposed into effect on the same date as this Directive.

Article 26

Member States shall ensure that decisions taken in respect of an investment firm under laws, regulations and administrative provisions adopted in accordance with this Directive are subject to the right to apply to the courts; the same shall apply where no decision is taken within six months of its submission in respect of an application for authorization which provides all the information required under the provisions in force.

Article 27

Without prejudice to the procedures for the withdrawal of authorization or to the provisions of criminal law, Member States shall provide that their respective competent authorities may, with regard to investment firms or those who effectively control the business of such firms that infringe laws, regulations or administrative provisions concerning the supervision or carrying on of their activities, adopt or impose in respect of them measures or penalties aimed specifically at ending observed breaches or the causes of such breaches.

Article 28

Member States shall ensure that this Directive is implemented without discrimination.

TITLE VII

Final provisions

Article 29

Pending the adoption of a further Directive laying down provisions adapting this Directive to technical progress in the areas specified below, the Council shall, in accordance with Decision 87/373/EEC [1],20acting by a qualified majority on a proposal from the Commission, adopt any adaptations which may be necessary, as follows:

— expansion of the list in Section C of the Annex,

— adaptation of the terminology of the lists in the Annex to take account of developments on financial markets,

— the areas in which the competent authorities must exchange information as listed in Article 23;

— clarification of the definitions in order to ensure uniform application of this Directive in the Community,

— clarification of the definitions in order to take account in the implementation of this Directive of developments on financial markets,

— the alignment of terminology and the framing of definitions in accordance with subsequent measures on investment firms and related matters,

— the other tasks provided for in Article 7 (5).

Article 30

1. Investment firms already authorized in their home Member States to provide investment services before 31 December 1995 shall be deemed to be so authorized for the purpose of this Directive, if the laws of those Member States provide that to take up such activities they must comply with conditions equivalent to those imposed in Articles 3 (3) and 4.

2. Investment firms which are already carrying on business on 31 December 1995 and are not included among those referred to in paragraph 1 may continue their activities profided that, no later than 31 December 1996 and pursuant to the provisions of their home Member States, they obtain authorization to continue such activities in accordance with the provisions adopted in implementation of this Directive.

Only the grant of such authorization shall enable such firms to qualify under the provisions of this Directive on the right of establishment and the freedom to provide services.

3. Where before the date of the adoption of this Directive investment firms have commenced business in other Member States either through branches or under the freedom to provide services, the authorities of each home Member State shall, between 1 July and 31 December 1995, communicate, for the purposes of Articles 17 (1) and (2) and 18, to the authorities of each of the other Member States concerned the list of firms that comply with this Directive and operate in those States, indicating the business carried on.

4. Natural persons authorized in a Member State on the date of the adoption of this Directive to offer investment services shall be deemed to be authorized under this Directive, provided that they fulfil the requirements imposed in Article 1 (2), second subparagraph, second indent, and third subparagraph, all four indents.

Article 31

No later than 1 July 1995 Member States shall adopt the laws, regulations and administrative provisions necessary for them to comply with this Directive.

These provisions shall enter into force no later than 31 December 1995. The Member States shall forthwith inform the Commission thereof.

When Member States adopt the provisions referred to in the first paragraph they shall include a reference to this Directive or accompany them with such a reference on the occasion of their official publication. The manner in which such references are to be made shall be laid down by the Member States.

Article 32

This Directive is addressed to the Member States.

Done at Brussels, 10 May 1993.

For the Council

The President

N. HELVEG PETERSEN

[1] OJ No L 197, 18. 7. 1987, p. 33.

ANNEX

SECTION A

Services

1. (a) Reception and transmission, on behalf of investors, of orders in relation to one or more of the instruments listed in Section B.

   (b) Execution of such orders other than for own account.

2. Dealing in any of the instruments listed in Section B for own account.

3. Managing portfolios of investments in accordance with mandates given by investors on a discriminatory, client-by-client basis where such portfolios include one or more of the instruments listed in Section B.

4. Underwriting in respect of issues of any of the instruments listed in Section B and/or the placing of such issues.

SECTION B

Instruments

1. (a) Transferable securities.

   (b) Units in collective investment undertakings.

2. Money-market instruments.

3. Financial-futures contracts, including equivalent cash-settled instruments.

4. Forward interest-rate agreements (FRAs).

5. Interest-rate, currency and equity swaps.

6. Options to acquire or dispose of any instruments falling within this section of the Annex, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates.

SECTION C

Non-core services

1. Safekeeping and administration in relation to one or more of the instruments listed in Section B.

2. Safe custody services.

3. Granting credits or loans to an investor to allow him to carry out a transaction in one or more of the instruments listed in Section B, where the firm granting the credit or loan is involved in the transaction.

4. Advice to undertakings on capital structure, industrial strategy and related matters and advice and service relating to mergers and the purchase of undertakings.

5. Services related to underwriting.

6. Investment advice concerning one or more of the instruments listed in Section B.

7. Foreign-exchange service where these are connected with the provision of investment services.