Financial Regulator
Rialtóir Airgeadais

Implementation of the CRD

Part A: Explicit and Implicit Discretions

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1 Introduction

This part of the Financial Regulator's consultation on the Capital Requirements Directive (CRD) presents its proposals on areas of implementation where the Financial Regulator must or can exercise discretion.

There are three aspects to this. The first is in respect of the 100+ explicit national discretions contained in the CRD that are aimed at competent authorities. In a few instances, the choice is either one approach or another, but in most cases the discretion boils down to whether the competent authority will apply a concessionary treatment, either permanently or for a fixed period of time (transitional provisions).

The second aspect concerns implicit discretions. These are cases where, through its interpretation of a Directive provision, the Financial Regulator will be exercising judgement of some kind. An example would be where the Directive uses a term like 'significant' and the Financial Regulator seeks to define more precisely what this means in practice. The final aspect is in respect of areas where the Financial Regulator proposes to go beyond the provisions of the Directive, by imposing more stringent requirements in the limited instances where it believes such an approach is warranted.

The provisions in this part of the consultation apply to both credit institutions and investment firms (collectively referred to as 'institutions') unless explicitly addressed to one or the other.

2 How this paper is organised

Chapter 3 presents the principles that the Financial Regulator has used in determining positions on the explicit national discretions in the CRD (the discretions themselves are presented in Appendix 1). Chapter 4 presents some guidance around provisions in the CRD that could be deemed transitional arrangements; the option to remain on the pre-CRD rules until the end of 2007 and the operation of the Directive's in-built capital floors between 2007-09. The rest of the paper is organised according to the structure of the CRD. Chapter 5 sets out additional clarification and guidance, beyond the Directive and CEBS, on the revised definition of capital and scope of application rules. Chapters 6-10 present similar guidance in respect of the various Pillar 1 aspects of the new proposals. Chapter 11 deals briefly with Pillar 2[1] and Chapter 12 covers institutions' disclosure requirements under Pillar 3.

[1] The Financial Regulator's proposals in this regard are set out more fully in Part C of this consultation, entitled "The ICAAP submission portal".

3 The Explicit National Discretions

There are well over one hundred explicit national discretions in the CRD. Some of these are aimed at Member States. In this regard, the Department of Finance has set out the approach it intends to take to these discretions in its consultation on the draft Statutory Instruments. The majority of the discretions, however, are aimed at competent authorities; in Ireland this is the Financial Regulator. The Financial Regulator's proposals on all such discretions are presented in Appendix 1. There are two parts to this. The first is in respect of those discretions (Type A) in the CRD that are either new or significantly different to pre-CRD discretions. The second is in respect of discretions (Type B) in the existing Directives that map over into the CRD without significant change.

In considering its position on the CRD discretions, the Financial Regulator has been guided by the following principles.

1. **To take a prudent approach, in the absence of data.** Thus, on a case-by-case basis, if the Directive presents a choice of two approaches, one of which delivers less capital than the other, the more conservative option will be chosen unless there is data to suggest that the lower capital requirement is justified on the grounds of lower risk. This is particularly true for discretions that represent concessions for certain countries, sectors or institutions.
2. **To choose the more risk sensitive option,** where one presents itself and to do so would not be in direct conflict with (1) above.
3. Not to adopt discretions which are of little or no **consequence** to Irish institutions or the Irish market.
4. As a general rule, to adopt the principle of '**mutual recognition'** of discretions exercised by other Member States or competent authorities, in order to preserve competitive equality. Such discretions are more to do with local market conditions than differences of opinion between regulators as to the appropriate approach.

5. **To maintain the status quo.** In other words, to continue to exercise discretions that are already taken and not to introduce discretions that have not already been adopted. This is relevant to the Type B discretions.
6. **To be proportionate.** Some of the discretions are important to prevent a disproportionately large impact on the capital requirements of certain types of institution or sectors. This is particularly true for investment firms.
7. **To be cognisant of the approach taken by other Member States and competent authorities.** Unless there is good reason, and taken in the round, it is not expected that Ireland will be an outlier among other Member States in its choice of national discretions.
8. **To be sensitive to commercial reality,** for example to avoid, wherever possible, outcomes where institutions have to run parallel regulatory and internal systems.
9. To be **consistent** and **transparent** in the intended approach, and the reasoning behind it.

It will be apparent that, in some cases, some of the principles run counter to one another, and cannot be satisfied at the same time. In such cases, a 'balance of principles' approach has been adopted.

Where it is flagged that a Type A discretion will be exercised on a case-by-case basis, the onus is on the institution to apply for the discretion, or to reapply for its continued application if the conditions attaching to it have changed. In the majority of cases, this will form part of an institution's application for use of an internal models approach, although there are some discretions that are independent of this. Institutions must apply separately for these. If the discretion relates to provisions that come into force automatically from 1 January 2007 (see section 4.1 below) institutions should apply for the use of any discretion as soon as possible, and in any case no later than 31 October 2006. Otherwise institutions should apply for discretions at the same time as submitting a Pillar 1 model application pack, or six months before the date of their intended switch over to CRD.

To be clear, for Type A discretions, failure to apply for the use or continued use of a discretion by the dates specified above will debar institutions from adopting that

treatment. So-called 'grand-fathering'[2] of Type A discretions will not be permitted. Type B discretions will effectively be grandfathered, as the conditions attaching to them are unchanged.

[2] A ‘grandfather clause’ is an exception that allows a pre-existing rule or dispensation to remain as it is despite a change in the rules applied to new transactions or institutions.

4 Transitional Arrangements

4.1 Date of Implementation

The CRD comes into effect from 1 January 2007. However, under the provisions of Article 152(8), institutions have the option of continuing to use many of the provisions of the existing Directives (henceforth known as the "pre-CRD Directive") until 31 December 2007. Institutions are free to exercise this option at their discretion, subject to two conditions that the Financial Regulator proposes to add:

- Partial use will not be permitted. That is to say that the institution must either remain entirely on the existing regime or move all its exposures to the new regime.
- Institutions should notify the Financial Regulator as soon as possible and in any case no later than 31 December 2006 of their intended 'switch-over' date. Failure to do so will mean that an institution will not be permitted to switch-over to the new regime before 1 January 2008.

The legal form of Article 152(8) is to disapply most, but not all, of the provisions of the new framework until such time as the institution moves to the new regime. By default, this means that any provision in the new Directive which is not explicitly mentioned in Article 152 will be applied from 1 January 2007 regardless of the choice of approach adopted by the institution. Institutions should refer to the provisions of Article 152(8-14) and study carefully the impact in terms of applicable and non-applicable provisions. The following general guide may, however, prove useful. Please note that this list does not purport to be exhaustive.

Provisions that will NOT apply (if the option to remain on the 'existing approach' is adopted)

- The revised standardised or IRB approaches to credit risk;
- The requirement to calculate operational risk;
- The revised rules on securitisation
- The revised rules on credit risk mitigation;
- The updated provisions on large exposures;

- The new approaches for settlement and counterparty risk in the trading book;
- Pillar 2, including the need for an ICAAP;
- Pillar 3.

Provisions that WILL apply from 1 January 2007 regardless of the choice of approach adopted by the institution

- The revised rules on the definition of capital, in particular:
  - the requirement to deduct certain items 50% from Tier 1 and 50% from Tier 2 own funds;
  - The prudential filter provisions of Article 64(4)[3];
- The revised rules on scope of application and consolidation. The key change here is in respect of the requirements for 'amended solo' treatment (see section 5.2 below);
- The revised capital requirements for 'free deliveries' in the trading book under Directive 2006/49 Annex 2 paragraph 2;
- The updated and revised definition of the trading book;
- All the changes to the rules on position risk as introduced in Directive 2006/49, including credit derivatives and CIUs;
- The counterparty credit risk treatment of credit derivatives;
- The revised treatment of foreign exchange risk in CIUs as per para 2.1 of Annex III to Directive 2006/49.

4.2 The operation of the capital floors

Article 152 paragraphs 1-6 of Directive 2006/48/EC sets out capital floors for the period 2007-2009. These apply only to those institutions which adopt (for all or part of their portfolios) an IRB approach for credit risk and/or the Advanced Measurement Approach (AMA) for operational risk. The floors (which apply at both a consolidated and individual institution basis) are based upon a percentage of what an institution's capital requirements would have been as calculated under the pre-CRD Directive.

[3] These are changes brought about by the introduction of new accounting standards in respect of the fair valuing of financial contracts.

This percentage varies by calendar year as follows:

2007 - 95%

2008 - 90%

2009 - 80%

During these years, institutions must compare on an ongoing basis their capital requirements under the CRD with what their capital requirements would have been pre-CRD. This means that, from a systems' perspective, institutions must retain the capability to calculate capital requirements under the basis of the pre-CRD Directive until the end of 2009.

The operation of the floors is quite complex, given changes to the definition of capital and scope of application that the new provisions will introduce. A simplified example may serve to clarify matters.

Operation of the floors

Assume, for example, that an institution adopts the foundation or retail IRB approach for all its exposures as at 1 January 2007. As at the end of March 2007, it calculates its new pillar 1 capital requirement at €5bn. As it must, it also compares the sum of any value adjustments and provisions to the sum of expected losses under the IRB calculations. Assume that provisions are €250m and expected losses are €150m. This gives a surplus of €100m which is added to the institution's available capital. For the purpose of the floor calculation, this is the equivalent of a reduction in the pillar 1 minimum capital requirement; hence the net requirement (Cap_a) is €4.9bn.

The institution must then calculate what its capital requirement would have been under the pre-CRD requirements. It calculates this as €6bn. In order to obtain a like-for-like comparison of capital resources it must also determine what its eligible general provisions would be on the basis of the existing rules. Assume these are €150m, giving a net capital requirement under the existing rules of €5.85bn. The institution must then apply the floor percentage (in this case 95%) to this amount to derive a minimum capital requirement (Cap_b)of €5.56bn. The institution must then compare Cap_a and Cap_b. In this case, as Cap_b is greater than Cap_a, the institution's capital requirements are determined as Cap_b i.e €5.56bn. Had Cap_a been greater than Cap_b the institution's required capital would be determined under the new rules.

4.3 Capital floors post 2009

While the floors in the CRD will cease to apply from 2009, the Financial Regulator will review in the latter half of that year the operation of the new framework, both in Ireland and across the EU. Subject to the findings of that review, the Financial Regulator may consider there is a need to continue with some form of capital floor or floors for a period of time, either across the board or on a case-by-case basis. As such an action would be super-equivalent to the Directive, the Financial Regulator will discuss any such proposal with the industry or individual institutions. It is not possible to outline now the circumstances in respect of which the Financial Regulator would deem such action appropriate, although paragraphs 48 and 49 of the revised Basel Accord provides some guidance that may inform the choice of approach.

5 Capital and Scope of Application

The CRD contains numerous references to the definition of capital, deductions from capital and the scope of application of the revised framework. In many respects, these are similar to existing provisions, although some changes have been made. The paragraphs below present those changes where the Financial Regulator is exercising discretion of some form.

5.1 Deductions from Own Funds

Article 66(2) of Directive 2006/48/EC clarifies that, while certain deductions from own funds remain from Tier 1, other deductions should now be made 50% from Tier 1 and 50% from Tier 2. This is for presentation of the Tier 1 ratio only; the limits on Tier 2 capital as a percentage of total capital and lower Tier 2 capital as a percentage of total Tier 2 capital are not affected by this change.

Discretion exists within Directive 2006/48/EC (Article 154 (4)) for competent authorities to allow institutions to continue to deduct participations in insurance and reinsurance undertakings from total capital until 31 December 2012. The Financial Regulator proposes to exercise this discretion. This issue is closely tied to the treatment of embedded value in insurance undertakings. Adoption of this transitional provision allows the European Commission to conclude its review and finalise its proposals in respect of amendments to the definition of own funds, including the treatment of embedded value. The adoption of the discretion on deduction will be reviewed at this time. To be clear, while the Financial Regulator will adopt the discretion on deduction from 1 January 2007, it is not proposing to review its treatment of embedded value until the review at EU level has been completed.

5.2 'Amended Solo' Requirement

Article 70 of Directive 2006/48/EC concerns the ability of institutions to calculate an 'amended solo' requirement. This provision, which is a national discretion, provides for institutions to include some non-authorised subsidiaries in their individual prudential returns, in effect treating such subsidiaries as akin to divisions of the parent institution rather than separate entities in their own right. Institutions can avail of this discretion only if the relevant criteria are met. One of these is that there are no

legal or practical impediments, and none are foreseen, to the repayment of capital or funds from the consolidated subsidiary to the parent. The Directive explicitly requires national supervisors under paragraph 1(c) to disclose publicly the criteria it applies to determine that there are no current or foreseen practical or legal impediments to the prompt transfer of own funds or repayment of liabilities.

The Financial Regulator will continue to exercise this discretion on a case-by-case basis. However, as this is a Type A discretion which applies automatically from 1 January 2007, the provisions of Chapter 3 apply; if they have not already done so, institutions must either re-apply or apply for use of the discretion immediately, or in any case no later than 31 October 2006. Current use of the discretion will not be grandfathered in the absence of a formal application.

In submitting an application, institutions must demonstrate that the criteria below are met.

> (i) The risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary. In practice, this means that credit, market, operational and liquidity risk are centrally managed.
>
> (ii) That, by virtue of its shareholding in the subsidiary, and the voting rights attached to such, the subsidiary is under the effective control of the parent. This means in particular that the parent can exercise the right to appoint or remove a majority of the members of the Board of the subsidiary, and/or pass a resolution to wind up the company. Under Irish company law this will typically require a special resolution to be passed. As such the Financial Regulator is proposing that the parent controls at least 75% of the voting shares. This is super-equivalent to the Directive, which requires more than 50% only. However the Financial Regulator believes that a 75% or higher holding of voting shares is required to exercise effective control.
>
> (iii) The subsidiary's material exposures or material liabilities are to the parent institution. In practice, this means that the subsidiary is either fully funded by the parent or places all its surplus funds with the parent.

(iv) That there are no current or foreseen practical or legal impediments to the repayment of capital or funds to the parent. The Financial Regulator interprets this to mean conditions (i - iii) above. In addition, in the majority of cases it will mean that both the parent and the subsidiary should be located in the Republic of Ireland. This avoids the very real practical and legal impediments that may arise due to different regulatory, tax and insolvency regimes between different countries. If an institution wishes to include in its amended solo requirement a subsidiary located in another country, the onus will be on that institution to demonstrate to the Financial Regulator that there are no current or foreseen practical or legal impediments to the repayment of capital or the transfer of funds to the parent. This must be supported by an external legal opinion.

5.3 Intra-Group Lending

The Financial Regulator is proposing to avail of the discretion under Article 80(7) to apply under the standardised approach a zero risk weight to exposures within a consolidated group (intra-group exposures). As with the amended solo discretion, this discretion will be applied on a case-by-case basis, although it does not switch on until such time as an institution moves to the CRD. Institutions wishing to use this discretion are requested to write to the Financial Regulator no later than six months before their intended switch-over, or at the time of submitting their model application. In doing so, they should set out the entities to which they wish this treatment to apply and how, in each case, the relevant criteria in the Directive are met. The relevant criteria (per the Directive) are:

(a) The counterparty is an institution or a financial holding company, financial institution, asset management company or ancillary services undertaking subject to appropriate prudential requirements.

(b) The counterparty is included in the same consolidation as the institution on a full basis.

(c) The counterparty is subject to the same risk evaluation, measurement and control procedures of the institution (in practice this means risk management

is undertaken centrally and that a centralised, integrated approach is taken to the measurement, management and reporting of intra-group borrowing and lending flows).

(d) The counterparty is established in the same member state as the institution.

(e) There are no current or foreseen practical or legal impediments to the prompt transfer of funds or the repayment of liabilities from the counterparty to the institution.

As can be seen, condition (d) states that the counterparty must be established in the same member state as the institution in order to avail of the zero weighting. As this is a Directive requirement, the Financial Regulator has no choice but to adopt it and to do so without grandfathering.

6 Credit Risk – The Standardised Approach

The standardised approach to credit risk is the default option under the CRD for those institutions either not wishing to use the internal ratings based (IRB) approach or not receiving approval from the Financial Regulator to do so. Even if an institution is on an IRB approach for most of its exposures, it is likely that this approach will be of at least some relevance for all institutions that have significant credit exposures.

Many of the explicit national discretions in the Directive relate to the standardised approach. These are set out in Appendix 1. There are, however, a few aspects of the standardised approach which merit further discussion.

6.1 Exposures to Regional Governments or Local Authorities

Under Annex VI, Part 1, paragraph 8 of Directive 2006/48/EC, exposures to regional governments and local authorities shall be risk weighted as exposures to institutions. Competent authorities are then given the discretion to adopt either Method 1 ('sovereign plus one) or Method 2 (rating of institution) to these exposures and the choice in this regard need not be the same as for institutions in general. The Financial Regulator proposes to adopt the 'Sovereign plus one' approach for risk weighting exposures to regional governments and local authorities. In consequence, exposures to all such entities in Ireland shall, unless specified otherwise, attract a risk weighting of 20%.

Paragraph 9 of the same section states that exposures to certain regional governments and local authorities shall be treated as exposures to the central government in whose jurisdiction they are established. For this to be the case, specific institutional arrangements must be in place to render the economic risk of the exposure in effect the same as that of an exposure to the central government. As no local authority in Ireland meets the criteria specified in this section, no list will be published and all local authorities will be weighted at 20%. In respect of regional governments and local authorities located in other jurisdictions, the Financial Regulator will follow the principle of mutual recognition in recognising the risk weight conveyed on such entities by the local regulator.

6.2 Public Sector Enterprises (PSEs)

The Financial Regulator proposes to exercise the discretion in Directive 2006/48 Annex VI paragraph 14 to risk weight exposures to PSEs as exposures to institutions. This treatment is independent of how the discretion regarding the risk weighting of institutions is exercised. The Financial Regulator proposes to adopt the 'Sovereign plus one' approach for risk weighting exposures to PSEs. In consequence, exposures to PSEs located in Ireland shall, unless specified otherwise, attract a risk weighting of 20%.

An alternative to this treatment is that exposures to PSEs may be treated in the same way as exposures to the central government where there is no difference in risk between such exposures. The Directive states that an appropriate guarantee must be in place – which should be unconditional, irrevocable and evidenced in writing. In the absence of such a guarantee, the onus will be on the institution to demonstrate that the arrangements in place secure an equivalent degree of protection. Institutions seeking to avail of this provision must seek the permission of the Financial Regulator before applying a risk weight other than 20% to any PSE exposure. In respect of PSEs located in other jurisdictions, the Financial Regulator will follow the principle of mutual recognition in recognising the risk weight conveyed on such entities by the local regulator.

6.3 Definitions and the publication of lists

There are no regional governments in Ireland. Local authorities will be defined (as now) as the County, City and Urban District Councils. In terms of PSEs, the Financial Regulator has decided to adopt a criteria-based definition rather than producing lists of such entities. Counterparties that meet certain criteria will qualify for the preferential treatment and the onus is on the institution to evaluate any given counterparty against the criteria. Bodies that may be classified as PSEs are:

- Bodies owned by the central government or local authorities which perform regulatory or other non-commercial functions; and
- Bodies that carry out non-commercial functions on behalf of, and are responsible to, central government or local authorities. The key test here is that such entities are not in competition with private sector suppliers.

6.4 The treatment of Residential and Commercial Real Estate

The CRD contains a number of explicit and implicit discretions in relation to the treatment in the standardised approach of exposures secured by residential real estate (RRE) and commercial real estate (CRE). Consistent with one of the main objectives of the CRD, the Financial Regulator's approach to these discretions has been forged by a desire to increase the risk sensitivity of capital requirements in respect of such exposures. The CRD provides mechanisms to increase capital requirements for exposures with greater than average levels of risk, and in other instances to reduce capital requirements where risk is lower than average. The Financial Regulator proposes to implement the discretions in respect of RRE and CRE in such a way as to achieve this greater risk sensitivity. It will do so in way that also reflects current market conditions and the significant and increasing proportion of RRE and CRE-backed lending in the balance sheets of credit institutions.

The approaches outlined below apply to lending secured on Irish properties only. Under the principle of mutual recognition, institutions will be free to adopt the treatment of the local regulator for overseas property-based lending.

The Financial Regulator will review its approach to these discretions in July 2008, or earlier if we believe market conditions warrant.

6.4.1 Residential Real Estate

Under the CRD standardised approach, the risk weight for residential mortgage lending falls from 50% to 35% provided the following conditions are met:

- The loan is secured by a 'substantial margin';
- The risk of the borrower is not materially dependent upon the performance of the property, but rather the capacity of the borrower to repay the debt from other sources. As such, repayment of the facility does not materially depend on any cash-flow generated by the underlying property serving as collateral (the "cash-flow" condition).

The first condition requires the Financial Regulator to define what we mean by a 'substantial margin'. We propose to reference this to an exposure's current (as opposed to original) loan-to-value (LTV) ratio. Loans with an LTV no higher than 75% will attract a 35% risk weight. The amount of any exposure above 75% LTV will attract a risk weight of 75% if the exposure meets the definition of the retail exposure class under Article 79(2) of Directive 2006/48. Otherwise a 100% risk weight will apply.

In respect of the second condition, competent authorities can waive this requirement in certain circumstances. In accordance with the first national discretion principle, the Financial Regulator believes this is not appropriate at the present time. As such, this discretion will not be exercised and the 'cash-flow' condition will remain in place.

There is a need to operationalise this decision in a way that achieves the Financial Regulator's policy objectives but at the same time does not impose a disproportionate burden on institutions in terms of their classification of exposures. The Financial Regulator believes that this can best be done by disapplying the 35% risk weight to all exposures secured by properties that are not or will not be occupied by the borrower. This includes residential investment properties and some second homes. Such exposures will be weighted at 75% if the definition of the retail exposure class under Article 79(2) of Directive 2006/48 is met. Otherwise, a 100% risk weight will apply.

6.4.2 Commercial Real Estate ('CRE')

The CRD contains a number of discretions that allow competent authorities to grant a favourable treatment to exposures secured by commercial real estate (CRE). Many of these discretions exist in the current Directive, in particular, the discretion to permit exposures secured by CRE to be risk-weighted at 50% rather than 100%. In line with its existing treatment, the Financial Regulator will not exercise this discretion for CRE lending in Ireland.

Furthermore, under Annex VI, Part 1 paragraph 66 of Directive 2006/48, competent authorities have discretion within the standardised approach to populate a category of exposures which attract a 150% risk weight. They can do so where they believe such exposures represent "higher than average" levels of risk.

There are certain types of CRE lending in Ireland that are of a more speculative and therefore higher risk nature than other forms of CRE lending. This includes the acquisition, development and construction stages of land and commercial property transactions that are not pre-sold or pre-let.[4] The Financial Regulator believes that these types of transactions represent "higher than average" levels of risk, and as such should be considered for inclusion in the 150% risk weight category.

The Financial Regulator's approach will be conscious of any additional features built into such contracts that serve to mitigate the level of risk, for example a first legal charge on a high quality asset. The Financial Regulator is inviting industry views on how this proposal can be operationalised.

6.5 Recognition of External Credit Assessment Institutions [ECAIs]

Under the standardised approach, institutions can slot their corporate, bank and sovereign exposures into a series of risk buckets based upon the assessments of eligible external credit assessment institutions, or ECAIs. CEBS recently finalised its guidance in this regard, both in terms of how the recognition process will work and how the assessments of ECAIs will map into the risk weight buckets.

The Financial Regulator believes that the joint assessment process, in which competent authorities across Europe reached a shared view on Fitch Ratings, Standard & Poor's Ratings Services and Moody's Investor Services eligibility for regulatory capital purposes and on the mapping of their credit assessments, is sufficient to cover all ECAIs, which are or may be relevant in the Irish market. Furthermore, the Financial Regulator will adopt indirect (mutual) recognition of ECAIs recognised by other Member States. Beyond this, the Financial Regulator sees no demand for additional ECAI recognition and we do not propose to implement CEBS' proposals to allow individual institutions the option of submitting an application in respect of ECAI recognition.

Three of the largest international rating agencies - Standard and Poors Rating Services, Moodys Investor Services and Fitch Ratings – sought recognition in all

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[4] In some respects, this is similar to the concept of High-Volatility Commercial Real Estate (HVCRE) under the revised Basel Accord (see ref).

Member States. On 4th August 2006, CEBS issued a press release stating that competent authorities across Europe had reached a shared view on these entities and based on the information they provided, that all competent authorities shared the view that their institutions could use the ratings of all three agencies for determining the risk weight of their exposures. Competent authorities had also reached agreement regarding the mapping of the agencies ratings into the credit quality scales provided in the CRD.

On the basis of the data that was submitted by each of the agencies, the following mapping of the ratings into the credit quality scales as provided in the CRD is proposed. It should be noted that the proposed mapping, conforms to the suggested mapping as outlined in the Basel II Accord. Institutions that intend to use the Standardised Approach and make use of the ECAI ratings for the determination of their risk weights should assign the credit assessments as outlined in the following tables. Institutions that choose not to make use of ECAI ratings should use the risk weighting that is reserved for unrated entities as outlined in Annex VI of the CRD.

Standard & Poors Rating Services:

Credit Quality Step	S&P's Assessment	Corporate	Institution (includes banks)	Institution (includes banks)	Institution (includes banks)	Sovereign
			Sovereign Method	Credit Assessment Method	Credit Assessment Method	
				Maturity > 3 months	Maturity 3 months or less	
1	AAA to AA-	20%	20%	20%	20%	0%
2	A+ to A-	50%	50%	50%	20%	20%
3	BBB+ to BBB-	100%	100%	50%	20%	50%
4	BB+ to BB-	100%	100%	100%	50%	100%
5	B+ to B-	150%	100%	100%	50%	100%
6	CCC+ and below	150%	150%	150%	150%	150%

Moodys Investor Services:

Credit Quality Assessment	Moody's Assessment	Corporate	Institution (includes banks)	Institution (includes banks)	Institution (includes banks)	Sovereign
				Credit Assessment Method	Credit Assessment Method	
				Maturity > 3 months	Maturity 3 months or less	
1	Aaa to Aa3	20%	20%	20%	20%	0%
2	A1 to A3	50%	50%	50%	20%	20%
3	Baa1 to Baa3	100%	100%	50%	20%	50%
4	Ba1 to Ba3	100%	100%	100%	50%	100%
5	B1 to B3	150%	100%	100%	50%	100%
6	Caa1 and below	150%	150%	150%	150%	150%

Fitch Ratings:

Credit Quality Step	Fitch's Assessment	Corporate	Institution (includes banks)	Institution (includes banks)	Institution (includes banks)	Sovereign
			Sovereign Method	Credit Assessment Method	Credit Assessment Method	
				Maturity > 3 months	Maturity 3 months or less	
1	AAA to AA-	20%	20%	20%	20%	0%
2	A+ to A-	50%	50%	50%	20%	20%
3	BBB+ to BBB-	100%	100%	50%	20%	50%
4	BB+ to BB-	100%	100%	100%	50%	100%
5	B+ to B-	150%	100%	100%	50%	100%
6	CCC+ and below	150%	150%	150%	150%	150%

Short term Mapping [Standardised approach]

Credit Quality Step	Fitch	Moody's	S & P	Risk Weight
1	F1+, F1	P-1	A-1+, A-1	20%
2	F2	P-2	A-2	50%
3	F3	P-3	A-3	100%
4	Below F3	NP	All short-term ratings below A-3	150%
5				150%
6				150%

6.6 Definition of Retail

The Capital Requirements Directive introduces a new category of exposure - retail - to which a 75% risk weighting applies. The Financial Regulator does not propose additional guidance in this area. Instead, it expects institutions to adopt a 'common sense' approach, and to consider these issues in the context of their internal management practices. The Financial Regulator will not be asking standardised institutions ex ante to provide their own definitions of what constitutes a retail exposure; these will be picked up instead as part of the Financial Regulator's ongoing supervision under SREP.

6.7 Past-Due Exposures

Annex VI, paragraph 61 of Directive 2006/48/EC imposes an obligation on the Financial Regulator to define a materiality threshold for exposures which are past due for more than 90 days and by dint of this fall into either the 150% or 100% risk bucket. This threshold should represent "a reasonable level of risk". The Financial Regulator has decided to set the threshold at €100 or 0.5% of the gross value of the exposure, which ever is higher. Thus, for example, in respect of a €1m exposure to a corporate borrower, if €5,000 or more were outstanding for more than 90 days, the exposure would be regarded as past due and assigned to the higher risk weight buckets.

7 Credit Risk – The Internal Ratings Based Approach

The CRD allows institutions to apply to their competent authority to use an internal ratings based approach (IRB) to capital requirements for credit risk. CEBS GL10 provides a suite of guidance in this regard, ranging from the definitions of exposure classes to interpretations of the minimum standards and the means by which institutions should apply to their competent authorities for use of such approaches. In accordance with its general approach, the Financial Regulator intends to follow this guidance. Further detail on these and many other aspects of IRB is presented in Part B of this consultation package. There are, however, a number of 'definitional' issues surrounding internal ratings. The Financial Regulator's position on these is set out below.

7.1 Definition of Default – Materiality Threshold

Annex VII, Part 4, paragraph 44 of Directive 2006/48/EC sets out the definition of default to be observed across exposure classes. There are two legs to this. The first is if the institution deems the borrower unlikely to repay. There are a number of factors outlined in paragraph 45 that the institution must, at a minimum, monitor as indicators of unlikeliness to pay. The second leg is a backstop in that, regardless of the first leg, if the obligor is past due more than 90 days on any material credit obligation to the institution, this obligation must be deemed in default.

The Financial Regulator is not proposing to exercise its discretion to change the 90 days definition to any number between 90 and 180 days for any exposure classes. It believes that 90 days is an appropriate backstop definition of default across all exposure classes. As regards what constitutes a 'material credit obligation', the Financial Regulator is aware of the difficulties that could arise in trying to frame a definition around a single quantitative threshold. Instead, it is proposing to leverage off institutions' own internal policies in this regard. These will be reviewed on a case-by-case basis as part of an institution's application to use an IRB approach. The Financial Regulator expects an institution's policies in this regard to be clearly documented, and the rationale for setting a materiality threshold or thresholds should be clearly explained and justified. Thresholds chosen must be reasonable in the

context of the portfolio and the borrower or transaction, and be consistent with internal practice. The Financial Regulator does not expect to see thresholds set significantly above zero, given in particular that institutions have 90 days to resolve any so-called ‘technical’ defaults. The Financial Regulator will review its position in respect of this provision in light of experience.

7.2 Counting the Number of Days Past Due

The Financial Regulator proposes to be flexible in terms of the counting of days past due, particularly in respect of how full or part payments subsequent to a missed payment serve to extinguish debt. Specifically, an obligation can be defined as a specific payment, but it can also be defined as an amount. Thus, for example, under a mortgage obligation, if repayment on 1 January was missed, but repayments were made in February and March, the obligation need not be called in default on 1 April (90 days down). Instead, February's repayment can be seen as extinguishing January's repayment, March's repayment extinguishing February's, etc. So, in this case, the obligation is a rolling 30 days down.

Taking this example further, if April’s payment is missed, but May's is made, the obligation may only be in default if June's payment is missed. A similar approach can be taken with part payments; so long as money is incoming always and everywhere to extinguish a debt before it becomes 90 days past due, an institution is free to record this in its systems as delinquent rather than in default.

That being said, the crucial thing in this regard is that whatever definition the institution uses for regulatory capital purposes should be the same as it uses internally. Thus, for example, the Financial Regulator would not be prepared to see an institution claim an exposure was only technically (say) 70 days down when in reality it had transferred the debt to its recoveries department. The definition used should be entirely consistent with internal practice.

As stated, the flexibility in treatment outlined above is in recognition of the fact that to impose a rigid definition in this regard at this stage of the implementation process could invalidate banks' internal loss data sets. Going forward, however, the Financial

Regulator is keen to explore with the industry whether a harmonised definition of delinquency and re-aging could be agreed upon, as an aid to consistency.

7.3 Short-Term Exposures

Annex VII, Part 2, paragraph 13 of Directive 2006/48/EC2000/12 deals with situations where institutions may use a value for maturity of less than one year . Three types of transaction are listed:

- Fully or nearly-fully collateralised derivative instruments listed in Annex IV;
- Fully or nearly-fully collateralised margin lending transactions; and
- Repurchase transactions, securities or commodities lending or borrowing transactions.

In addition, the competent authorities may specify other types of transaction where the one-year floor for maturity may be waived. These must not be part of the ongoing finance of the borrower but must be one-off or self-liquidating transactions. The Financial Regulator proposes to adopt this treatment for the following additional types of exposure:

- Short-term (less than one year), self-liquidating letters of credit;
- Short-term exposures arising from settling securities purchases and sales, including overdrafts arising from failed transactions that do not continue for more than 7 working days;
- Short-term exposures arising from cash settlements by wire transfer, including overdrafts arising from failed transactions that do not continue for more than 7 working days;
- Exposures to institutions arising from foreign exchange settlements.

The Financial Regulator is open to considering requests for additional transactions to benefit from the removal of the one-year maturity floor. However, a key consideration will be the extent to which any extension beyond the list of transactions above gives rise to the possibility of gaming through the manipulation of maturity, roll-over of short-term contracts, etc.

7.4 RRE and CRE – The Internal Ratings Based Approach

Section 6.4 above presents proposals for the treatment of residential real estate (RRE) and commercial real estate (CRE) under the standardised approach of the CRD. As with other exposure types, institutions can apply to use an IRB approach to their RRE and CRE exposures, subject to supervisory approval. The question therefore arises as to whether, and if so how, the standardised approach proposals for RRE and CRE approach should be replicated in the IRB approach.

For both RRE and CRE, the Financial Regulator believes that the objective under the IRB approach should be the same as under the standardised approach; this is to increase the risk sensitivity of capital requirements. To a certain degree, the IRB approach itself provides this, as an institution's calculation of required capital is built off a more granular and loss-based assessment of risk. But questions arise as to whether institutions have sufficient data to be able credibly and reliably (and in a consistent fashion) to produce estimates of PD and LGD over a complete economic cycle. Even where they can produce robust estimates of loss, is the means by which these are transformed into risk weights (the risk weight functions for RRE and CRE) appropriate in the context of the Irish property market? Given these concerns, the Financial Regulator believes that some degree of intervention into the workings of the IRB approach is necessary to prevent a significant reduction in capital required to support RRE and CRE lending.

The Financial Regulator believes that it is premature at this stage to set out definitive proposals for the IRB treatment of RRE and CRE. The reason for this is that the proposals on the treatment of such exposures in the standardised approach are open for consultation. It is important, however, to give a flavour of some of the tools the Financial Regulator is considering. The box below presents some of the options under consideration. The Financial Regulator proposes to discuss these further with the industry during the consultation period.

Options for the treatment of RRE and CRE under the IRB approach

There are a number of broad options available to the Financial Regulator. These are not mutually exclusive and the choice of approach may vary over time. The Financial Regulator is not at this stage expressing a preferred approach.

A: Floors on Outputs
In addition to the global floors built into the CRD in 2007-2009, additional, portfolio-specific floors could be contemplated which would seek to limit the reduction in capital requirements on specific portfolios. This could be done in relation to capital requirements under the pre-CRD rules or alternatively could be referenced to the treatment under the CRD standardised approach.

B: Floors on Inputs
This approach would seek to impose floors on banks' estimates of PD and LGD.[5]

C: Multipliers
Such an approach would seek to scale-up an institution's estimate of its required capital by a certain factor or factors.

D: ***Adjustments to the risk weight function***
This approach would seek to adjust the correlation estimate in the risk weight functions for RRE and CRE to reflect more appropriately the degree of loss-rate volatility in the Irish property market. The effect of this would be to produce higher capital requirements for given estimates of PD and LGD.

7.5 Specialised Lending

Article 86(6) of Directive 2006/48/EC outlines a sub-section of the corporate exposure class, specialised lending, for institutions adopting the IRB approach. This category of exposure does not arise under the standardised approach. Specialised lending exposures are exposures that possess all of the following characteristics:

(a) They are to a Special Purpose Vehicle [SPV];

(b) The lender has a substantial degree of control over the assets and the income they generate; and

(c) The primary source of repayment is the income generated from the assets being financed.

Exposures generally regarded as specialised lending include project finance, certain forms of residential and commercial real estate transactions, commodities finance and object finance. However, such lending will only be deemed 'specialised' if it meets the criteria above. Therefore, development finance to a construction company to build a

[5] A floor on LGD of 10% already exists in the Directive for RRE exposures.

bridge will not be regarded as specialised lending, whereas similar finance to "Liffey Bridge Vehicle No 1" would. There may need to be some flexibility in this definition, as will become apparent below.

Risk weighting SL Exposures

While part of the corporate exposure class, Article 86(6) is clear in requiring institutions separately to identify specialised lending exposures. Institutions should have policies and procedures in place to do this. In terms of capital requirements, institutions can use the corporate risk weight curve if, and only if, they can meet the requirements for the estimation of probability of default (PD). Crucially, this means that their estimates of PD must be borrower specific, and not conflated with transaction specific factors. The simplest way of looking at this is if an institution has two asset-backed loans to the same borrower, out of which it derives two separate estimates of PD, it is conflating estimates of PD and loss given default (LGD) and cannot use the corporate risk weight. If the institution can meet the requirements for estimation of PD, it may use the foundation corporate approach or the advanced approach if it also meets the requirements for estimation of LGD.

If institutions cannot meet the requirements for estimation of PD, and the exposure is specialised, they must use the risk weight buckets outlined in Annex VII, Part 1 paragraph 5 of Directive 2006/48/EC . In assigning exposures to these risk buckets, institutions should refer to the 'supervisory slotting criteria' outlined in the revised Basel II Accord (Annex IV). The Financial Regulator will review the means by which institutions assign exposures to risk buckets as part of its overall assessment of a firm's application to use an IRB approach. The Financial Regulator has stated that it will adopt the discretion to permit specialised lending exposures to be assigned to preferential risk weight buckets if the underlying exposures and the institution's underwriting practices are sufficiently strong. Again, this will be reviewed as part of the institution's application for use of an IRB approach.

It was stated above that there may need to be some flexibility in the definition of specialised lending. Certainly, CEBS GL10 envisages this, stating that, while all three criteria should be met in substance, they need not necessarily be met in form. The reason for this is that, unless there is flexibility, some exposures may not have a home under the IRB framework. Take, for example, a company that embarks in project finance activities. If an institution has three separately collateralised exposures to this company, each tied to the underlying assets and the income they generate, the contractual arrangements of the loans may mean that one loan could default without the others also defaulting or being deemed to be in default. In this case, the institution may rate the transactions in such a way that estimates of PD and LGD are conflated. So it cannot use the corporate IRB approach. But it cannot use the supervisory slotting criteria approach either because, according to the definition,

such exposures are not specialised lending. The only alternative, in the absence of some flexibility over the definition, would be for these exposures to remain on the standardised approach. This defeats the purpose of increased risk sensitivity, particularly if the means by which the borrower rates such counterparties is sound and implemented with integrity. Thus, the Financial Regulator is willing to take a pragmatic approach. Institutions should set out the approach they have taken to the categorisation of their specialised lending exposures as part of their application for use of IRB.

8 Credit Risk Mitigation

Articles 90-93 and Annexes III and VIII of Directive 2006/48/EC set out the requirements in respect of credit risk mitigation (CRM), and there are a number of national discretions in this regard which are set out in Appendix 1. The Financial Regulator is not proposing additional rules or guidance in this area, with the exception of the following provisions:

8.1 Exposure to Central Counterparties

Paragraph 6, Part 2 of Annex III of 2006/48/EC permits competent authorities to determine additional transaction types that may benefit from a zero value counterparty credit risk charge where the borrower is deemed a 'central counterparty'. The Financial Regulator is not proposing to add to the list of contracts already set out in the Directive.

8.2 The Requirement for Insurance

Annex VIII, Part 2 (8d) and 10(i) of Directive 2006/48/EC require institutions to have procedures in place to monitor that any property or physical asset taken as collateral and recognised for capital adequacy purposes is adequately insured against damage. The Financial Regulator recognises that business practice is for institutions not to do this directly post-origination, but instead to operate a letter of indemnity process, whereby the insurer is obliged to inform the institution of any change to the status of the insurance. The Financial Regulator believes that such an arrangement is sufficient to discharge an institution’s obligations under this provision.

9 Operational Risk

For the first time, operational risk is separately identified in the recast Directives as an explicit risk category. Institutions must have appropriate systems and controls for the measurement and management of operational risk. Furthermore, an explicit capital charge for operational risk will be introduced. These issues are explored further below.

9.1 Operational Risk requirements for all institutions

All institutions and investment firms are required to have the following under the provisions of Article 22 and Annex V of Directive 2006/48/EC:

- Definition of operational risk;
- Implemented provisions to measure and manage operational risk;
- Contingency and business continuity plans;

The Financial Regulator does not intend to provide additional guidance on these issues. The onus is on senior management to satisfy itself that its operational risk management systems and controls are adequate and implemented with integrity. In this regard, they should be guided by the Basel Committee's sound practices in this area[6].

9.2 Capital for Operational Risk

Institutions have three approaches from which to choose for calculating capital requirements for operational risk; the Basic Indicator Approach [BIA], the Standardised Approach [TSA] and the Advanced Measurement Approach [AMA]. As with credit risk, the Financial Regulator will not mandate a choice of approach for institutions, nor will it link explicitly moving to the advanced approaches to credit risk with a requirement or an expectation to move to the AMA. At national discretion, competent authorities can make a fourth option available, the Alternative Standardised Approach (ASA). As referenced in Appendix 1, the Financial Regulator will not exercise this discretion, as it does not believe this approach provides a better proxy measure for operational risk than TSA.

[6] 'Sound Practices for the Management of Operational Risk', Basel Committee on Banking Supervision.

9.3 Definition of Gross Income

The calculation of the operational risk capital charge under the BIA and TSA is based on a three-year average of an institution's gross income. CEBS GL 10 states that the competent authority may permit institutions to use a different calculation method in exceptional circumstances, such as a major sale or acquisition. The Financial Regulator will examine such derogations from the calculation requirements upon application by an institution, on a case-by-case basis.

9.4 Treatment of the Standardised Approach [TSA]

The standardised approach to operational risk (TSA) requires gross income to be mapped to up to eight business lines. Annex X, Part 2, Paragraph 4 outlines some principles that institutions should follow when mapping their activities to these business lines. The Financial Regulator does not propose to issue further guidance on this, but it will review institutions' practices as part of its supervisory review and evaluation process (SREP).

Annex X, Part 2, paragraph 12 of Directive 2006/48/EC requires institutions proposing to adopt the TSA to meet certain qualifying criteria. The Financial Regulator will require all institutions to provide formal notification of their intention to use the TSA approach. This should be provided at least three months before the institution intends to use the approach for regulatory capital purposes. If your institution plans to move on to the new framework on 1st January 2007, you should inform the Financial Regulator of your intention to use the TSA as soon as possible and in any case no later than 31st October 2006. Institutions are required to complete a self-assessment to demonstrate compliance with the entry criteria prior to the three-month notification period. This documentation should be available for examination by the Financial Regulator. The notification should attest that the self-assessment was conducted and that the results indicated that the institution is compliant with the qualifying criteria. A department or party that is independent from those responsible for the development and implementation of the operational risk policy and procedures for the institution, as a whole must conduct the self-assessment. The Financial Regulator will not require that the results of the self-assessment to be submitted at the same time as the formal notification. The integrity of the self-assessment and the

implementation of the operational risk framework will be reviewed on an on-going basis under SREP.

9.5 Treatment of the Advanced Measurement Approach [AMA]

The Advanced Measurement Approach is the most sophisticated approach available for operational risk and will be available under the CRD from 1 January 2008. As it is our understanding that no institution for which the Financial Regulator is the consolidating supervisor is targeting the AMA from this date, we have deferred producing further guidance beyond that in CEBS GL 10, or in designing an AMA application pack, as we have done for IRB. We will keep this under review as the year progresses.

The Financial Regulator is aware that some institutions, which are subsidiaries of EU parent institutions, may be applying for AMA from 1 January 2008. Article 129 of the Directive, whereby a single application will be made to the consolidating supervisor and distributed to other relevant supervisors, will cover such applications. Areas of particular interest to the Financial Regulator when looking at the implementation of the AMA in the Irish subsidiary will be matters such as the use test, governance and capital allocation. While not bound by Article 129, the Financial Regulator envisages a similar process for applications from institutions with a third country parent. One of the primary concerns of the Financial Regulator is to ensure that each Irish authorised institution is adequately capitalised on a standalone basis. Institutions will be required to demonstrate that the capital allocation method proposed properly reflects the operational risk to which that institution is exposed. The Financial Regulator does not propose to add additional guidance beyond that contained in CEBS GL10.

10 Securitisation, Trading Book & Collective Investment Undertakings

10.1 Securitisation

The CRD sets out for the first time a treatment for securitisation exposures, from the perspective of both originators, investors and providers of ancillary services. Requirements are provided for both the standardised and IRB approaches in Articles 94-101 and Annex III and IX of 2006/48/EC. The Financial Regulator is not proposing any new additional rules or guidance beyond this, with the exception of the mapping of ECAI ratings to credit quality steps. This was conducted under the joint assessment process described in section 6.5 above. The relevant tables are as follows:

Long term mapping: Standardised Approach

Credit Quality Step	**Risk Weights**	**Fitch**	**Moody's**	**S&P**
1	20%	AAA to AA-	Aaa to Aa3	AAA to AA-
2	50%	A+ to A-	A1 to A3	A+ to A-
3	100%	BBB+ to BBB-	Baa1 to Baa3	BBB+ to BBB-
4	350%	BB+ to BB-	Ba1 to Ba3	BB+ to BB-
5	1250%	B+ and below	B1 and below	B+ and below

Long term mapping: IRB Approach

Credit Quality Step	Risk Weights			Credit Assessments		
	Most senior tranche	Base	Non-granular pool	Fitch	Moody's	S & P
1	7%	12%	20%	AAA	Aaa	AAA
2	8%	15%	25%	AA	Aa	AA
3	10%	18%	35%	A+	A1	A+
4	12%	20%	35%	A	A2	A
5	20%	35%	35%	A-	A3	A-
6	35%	50%	50%	BBB+	Baa1	BBB+
7	60%	75%	75%	BBB	Baa2	BBB
8	100%	100%	100%	BBB-	Baa3	BBB-
9	250%	250%	250%	BB+	Ba1	BB+
10	425%	425%	425%	BB	Ba2	BB
11	650%	650%	650%	BB-	Ba3	BB-
Below 11	1250%	1250%	1250%	Below BB-	Below Ba3	Below BB-

Short-term mapping: Standardised Approach

Credit Quality Step	Risk Weight	Fitch	Moody's	S & P
1	20%	F1+, F1	P-1	A-1+, A-1
2	50%	F2	P-2	A-2
3	100%	F3	P-3	A-3
All other credit assessments	1250%	Below F3	NP	All short term ratings below A-3

Short-term mapping: IRB Approach

Credit Quality Step	Risk Weights			Credit Assessments		
	Most Senior Tranche	Base	Non-granular Pool	Fitch	Moody's	S & P
1	7%	12%	20%	F1+, F1	P-1	A-1+, A-1
2	12%	20%	35%	F2	P-2	A-2
3	60%	75%	75%	F3	P-3	A-3
All other credit assessments	1250%	1250%	1250%	Below F3	All short term ratings below A3, P3 and F3	All short term ratings below A-3

10.2 Trading Book

The Capital Requirements Directive includes amendments to the calculation of trading book capital requirements, in particular the calculation of counterparty risk, the treatment of so-called 'double default' and the treatment of exposures with short-dated maturity. Some of these map over into the banking book. The Financial Regulator does not intend to issue further guidance on these provisions beyond the relevant guidance in CEBS GL10.

10.3 Collective Investment Undertakings [CIUs]

Under the joint assessment process described in Section 6.4, the mapping for CIUs is the same as the mapping for long-term fundamental credit ratings. Fitch and Moody's use the same rating scale for their Managed Funds Credit Quality Ratings as for their fundamental credit ratings, while S&P uses a slightly different rating scales for Principal Stability Fund Ratings and for Fund Credit Quality Ratings, the rating scales are identical in terms of number of rating categories.

Credit Quality Step	Risk Weights	Fitch	Moody’s	S&P Principal Stability Fund Ratings	S&P Fund Credit Quality Ratings
1	20%	AAA to AA-	Aaa to Aa3	AAA m to AA-m	AAA f to AA-f
2	50%	A+ to A-	A1 to A3	A+m to A-m	A+f to A-f
3	100%	BBB+ to BBB-	Baa1 to Baa3	BBB+m to BBB-m	BBB+f to BBB-f
4	100%	BB+ to BB-	Ba1 to Ba3	BB+m to BB-m	BB+f to BB-f
5	150%	B+ to B-	B1 to B3	B+m to B-m	B+f to B-f
6	150%	CCC+ and below	Caa1 and below	CCC+m and below	CCC+f and below

11 Pillar 2

11.1 Overview of Pillar 2

Pillar 2 can be described as a set of relationships between supervisory authorities and regulated institutions. The objective of these relationships is to ensure that institutions have adequate capital to cover their risks and to encourage the development and use of better risk management techniques. Fundamentally, Pillar 2 should foster an active dialogue between authorities and regulated institutions such that when deficiencies are identified, prompt and decisive action can be taken to reduce risk and restore capital.

Pillar 2 centres largely on two distinct but inter-related processes codified in Article 123 and Article 124 of the Directive 2006/48/EC. The first of these is the institution-driven Internal Capital Adequacy Assessment process (ICAAP). The second is the supervisor-driven Supervisory Review and Evaluation Process (SREP). CEBS GL 3 provides some guidance aimed at both institutions and competent authorities which serves to amplify the provisions of the Directive text.

The Financial Regulator's current thinking on these issues, consistent with and in some cases beyond the guidance of CEBS, can be found in Part C of this consultation.

12 Pillar 3

The purpose of Pillar 3 is to require sufficient public disclosure to allow external stakeholders better to understand the governance, risk management and financial and capital position of an institution. Therefore it will be the market that sets the standards for Pillar 3 and not the regulators. Nonetheless, the Directive does place some obligations on institutions and their supervisors in respect of Pillar 3. The paragraphs below set out the Financial Regulator's proposed requirements on this topic

12.1 Institution's Internal Policy

Article 145.3 requires an institution to have a policy statement articulating how it proposes to comply with the disclosure requirements. Institutions will be required to have this policy statement when they adopt the revised framework and in any case no later than 1 January 2008.

The Financial Regulator will not require institutions to submit the policy statement for approval, but will instead review the adequacy of the policy statement and the institutions' compliance with the requirements under SREP. The Financial Regulator will require institutions to certify to the Financial Regulator, on an annual basis, that they have complied with the disclosure requirements. This document should outline the location of the disclosures, areas in which summary information has been substituted for data deemed proprietary or confidential and the rationale for any non-disclosure.

12.2 Material Information

Article 146.1 permits institutions not to make one or more of the required disclosures specified in Annex XII, Part 2 if the information to be disclosed is not regarded as material. The Financial Regulator is of the opinion that the senior management of the institution, having regard to the provisions of the Directive and its knowledge of the business of the institution, is best placed to determine what information falls into this category.

12.3 Proprietary and Confidential

Article 146.2 similarly permits derogation from the disclosure requirements listed in Annex XII, Parts 2 and 3, if the information to be disclosed is regarded as proprietary or confidential. The Financial Regulator is of the opinion that senior management is best placed to determine, what if any, disclosures are to be regarded as proprietary or confidential. Institutions are reminded that summary disclosures, and the rationale for such summary disclosures coming under this derogation are required under Article 146.3.

12.4 Frequency and Method of Disclosure

The Financial Regulator will require institutions, under Annex XII, Part 1, paragraph 4, to assess the need to make some or all of the required disclosures more frequently than annually, taking into account the characteristics of the institution. However, the Financial Regulator does not propose, but reserves the right to, require institutions to publish their disclosures more frequently than annually; nor will we set hard and fast deadlines for the publication of such information. Institutions should be mindful to publish their disclosures on a timely basis and as soon as practicable. The Financial Regulator considers that it is for senior management to determine the specific media and location of the disclosures and ensure that such information is publicly available.

The Financial Regulator will require institutions to make disclosures on reporting dates that are six and twelve months after the date on which the institution first implements the new framework. Therefore if an institution adopts the new framework on 1 January 2007, the first reporting date of the disclosures will be 30 June 2007. Second and subsequent disclosure will be based on a reporting date of 31 December. Parallel requirements will be in place for institutions adopting the new framework from 1 January 2008. Thereafter the cycle will be on an annual basis.

12.5 Scope of Application

Article 72 states that institutions are required to make disclosures on a consolidated basis; however significant subsidiaries will also be required to disclose the information specified in Annex XII, Part 1, paragraph 5. The Financial Regulator will require subsidiaries of EU parent institutions that represent 5% or more of group

assets and/or have market share, in any sector or group of connected sectors which is greater than or equal to 20% to make the disclosures, on an individual basis specified in Annex XII, part 1, paragraph 5. The Financial Regulator proposes to exercise the discretion to require subsidiaries whose parent is in a third country jurisdiction to make certain disclosures bearing in mind the disclosures made by the parent institution on a case-by-case basis.

Appendix I: The National Discretions

Type A Discretions: Those introduced or amended by the CRD

N.B. All references are to Directive 2006/48/EC unless stated otherwise. Please refer to the CRD for legal text of the Directive.

REF.	DIRECTIVE REFERENCE	SUMMARY OF DIRECTIVE TEXT	NATURE	EXERCISE?	RATIONALE OR COMMENT
Qualifying Capital and Scope of Application					
1	Art 70.1	Amended solo requirement: "The competent authorities may allow on a case by case basis credit institutions to incorporate in the calculation of their requirement under Article 68 (1) subsidiaries which meet (certain conditions).	Case-by-case	Yes	See section 5.2 of the main body of the paper.
2	Art 154.4	Discretion until 31 December 2012 to continue to deduct investments and participations in insurance companies from total capital.	Generic	Yes	See section 5.1 of the main body of the paper.
3	Art 22 of 2006/49/EC	Waiver from application of consolidated capital adequacy requirements for investment groups	Case-by-case	Yes	This discretion already exists (albeit in a slightly different form) and is currently implemented. To avoid a disproportionate impact on the capital requirements of investment firms, we will continue to implement this discretion, but on a case-by-case basis (this is required by the Directive). It will be the responsibility of the firm to apply for this discretion, setting out how the relevant criteria are met. This provision will not be subject to any form of grandfathering arrangement.
Standardised Approach [excluding mortgage lending]					
4	Art 80-7	Zero-weighting of certain intra-group exposures.	Case-by-case	Yes	See section 5.3 in the main body of the text.
5	Art 80-7(a)	Zero weighting where the counterparties are part of the same inter-	Generic	No	We do not believe this is relevant in Ireland, as the relevant

		institutional protection scheme which meets certain specified conditions.			conditions for the deposit protection scheme are not met.
6	Art 81-3	Mutual recognition of ECAI within EU: "if an ECAI has been recognised as eligible by the competent authorities of a Member State, the competent authorities of other Member States may recognise that ECAI as eligible without carrying out their own evaluation process"	Generic	Yes	We will adopt this discretion, as it will reduce duplication of effort in the recognition process. See section 6.5 of the main body of the paper.
7	Art 82-2	Mutual recognition of mapping within EU: "when the competent authorities of a Member State have made a determination under § 1 (ECAI assessment associated with credit quality step), the competent authorities of other Member States may recognise that determination without carrying out their own determination process".	Generic	Yes	We will adopt this discretion, as it will reduce duplication of effort in the recognition process. See section 6.5 of the main body of the paper.
8	Art 83 (2)	Discretion to use unsolicited ratings	Generic	Yes	Such assessments can give valuable insights into the credit quality of counterparties. As such they will be recognised so long as the ECAI giving the unsolicited rating is recognised.
9	Art 154 (1)	Discretion to set, until December 2011, the definition of default (for the definition of 'past due' exposures for sovereign, PSE, corporate and retail exposures) any number of days up to 180 days. The specific number may vary across product lines	Generic	No	We do not propose to exercise this discretion. We feel 90 days is an appropriate definition of default across all exposure classes in the standardised approach. Exposures that are in default according to this definition must be risk weighted at either 150% or 100% according to paragraphs 61 to 65 of Part 1 of Annex VI.
10	154 (1) second para	Competent authorities which do not make use of the option in the first paragraph may set a higher number of days for exposures to counterparts situated in the territories of other member states that have exercised the discretion	Generic	Yes	For reasons of competitive equality, the Financial Regulator will allow credit institutions to use the number of days set by the Competent Authority of the member state in whose jurisdiction the

					exposure is located. Thus, for example, if France sets the definition of default for PSEs at 180 days, Irish institutions may use that definition for their exposures to French PSEs. Alternatively, institutions may choose, at consolidated level, to use 90 days for all exposures (regardless of location), if this is simpler from a systems' perspective.
Annex VI, Part 1: Risk Weight					
11	§5	Mutual recognition of third county treatment of sovereign exposure.	Generic	Yes	To preserve competitive equality.
12	§11	Mutual recognition of third country regional and local government exposure.	Generic	Yes	To preserve competitive equality.
13	§ 14	Subject to the discretion of competent authorities, exposures to PSEs may be treated as exposures to institutions	Generic	Yes	See section 6.2 of the main body of the text.
14	§ 15	In exceptional circumstances, exposures to PSEs may be treated as exposures to the central government in whose jurisdiction they are established	Generic	Yes	See section 6.2 of the main body of the text.
15	§16	Mutual recognition of another member state's treatment of PSEs	Generic	Yes	To preserve competitive equality.
16	§17	Mutual recognition of a third country's treatment of claims on PSEs as claims on institutions	Generic	Yes	To preserve competitive equality.
17	§ 37	Preferential risk weight for short-term exposures to institutions	Generic	No	We do not believe this treatment to be justified on the grounds of risk sensitivity.
18	§ 40	Discretion to weight exposures to institutions in the form of minimum reserves required by the ECB or the Central Bank of a Member State as direct exposures to the central bank of the Member State.	Generic	No	We do not believe this treatment to be relevant for Irish credit institutions, hence the discretion will not be exercised. To be clear, Annex VI Part 1 paragraph 1 provides for exposures to central banks to be treated as sovereign exposure and paragraph 3 provides for a 0% risk weight for exposures to the ECB.

19	§ 63	Discretion to adopt a more favourable treatment of past due items where non-eligible collateral has been taken	Generic	No	We see no reason to exercise this discretion; if collateral is not recognised elsewhere in the framework for performing loans, we see no reason why it should be recognised for non-performing loans.
20	§66	Discretion to risk weight certain items at 150%	Generic	Yes	For speculative commercial real estate only. See section 6.4 of main body of this paper.
21	§67	Discretion to adopt a lower risk weight for non past-due items in the 150% bucket where value adjustments have been made	Generic	Yes	This treatment is the more risk sensitive option given the existence of value adjustments.
22	§ 68 (e)	The competent authorities may recognise loans secured by commercial real estate as eligible where the Loan to Value ratio of 60% is exceeded up to a maximum level of 70% (under certain conditions	Generic	No	This discretion s is not consistent with existing covered bonds legislation. We will keep this under review in light of developments.
23	§ 78	Discretion to make use of another country's approval of a third country CIU.	Generic	Yes	To preserve competitive equality
Annex VI, Part 3: Use of ECAIs' credit assessments for the determination of risk weight					
24	§17	Discretion to allow credit assessment on certain Multilateral Development Banks' exposure on the basis of their domestic currency rating ('B' Loans)	Generic	Yes	We propose to exercise this discretion. We believe this treatment of so-called 'B' loans is risk sensitive, given the legal and economic characteristics of such exposures.
Internal ratings based approach [IRB]					
25	Art 84.1	Discretion to use IRB approaches	Case-by-case	Yes	Subject to the approval of the Financial Regulator. See Part B of this consultation.
26	Art 84. 2	Where an EU parent credit institution and its subsidiaries or an EU parent financial holding company and its subsidiaries use the IRB Approach on a unified basis, the competent authorities may allow [certain minimum requirements] to be met by the parent and its subsidiaries considered together	Case-by-case	Yes	See Part B of this consultation.

27	Art.85, 1+2	Roll-out of IRB across exposure classes over a period of time. Implementation of IRB may be carried out sequentially across the different exposure classes, within the same business unit, or across different business units in the same group. 85(2) requires that the implementation shall be carried out within a reasonable timeframe and subject to strict conditions imposed by the Competent Authority.	Case-by-case	Yes	See Part B of this consultation.
28	Art 87(9)	Discretion to use own estimates of LGD and conversion factors	Case-by-case	Yes	Subject to the approval of the Financial Regulator. See Part B of this consultation.
29	Art 89.1	Discretion to allow credit institutions to maintain some exposures permanently on the standardised approach. The exposures to which this permanent exemption applies are categorised below. The competent authority may select one or more (or all) of the categories to which it may apply the discretion	Case-by-case	Yes	Except where indicated otherwise (see sub-paragraphs below), the Financial Regulator is generally open, on a case-by-case basis, to exercising these discretions. See Part B of this consultation.
30	Art 89.1 (a)	Permanent Partial Use for sovereign exposures, where the number of counterparties is limited and it would be unduly burdensome for the credit institution to implement a rating system	Case-by-case	Yes	As for 29
31	Art 89.1(b)	Permanent partial use for exposures to institutions, where the number of counterparties is limited and it would be unduly burdensome for the credit institution to implement a rating system for these counterparties.	Case-by-case	Yes	As for 29
32	Art 89.1(c)	Permanent partial use for exposures in non-significant business units as well as exposure classes that are immaterial in terms of size and perceived risk profile.	Case-by-case	Yes	As for 29
33	Art 89.1(d)	Permanent partial use for exposures to the sovereign of incorporation, as well as regional governments, local authorities and	Case-by-case	Yes	As for 29

		administrative bodies meeting certain criteria.			
34	Art 89.1(e)	Permanent partial use for intra-group exposures	Case-by-case	Yes	As for 29
35	Art 89.1 (f)	Permanent partial use for equity exposures which qualify for a 0% risk weight in the standardised approach.	Case-by-case	Yes	As for 29
36	Art 89.1 (g)	Permanent partial use for equity exposures which are part of legislated programmes.	Generic	No	We do not propose separately to distinguish equity exposures that are part of legislated programmes, as we do not believe such a category to be material for any Irish institution. Any such holdings shall be considered as part of other equity holdings under Art 89(i)(c).
37	Art 89.1(h)	Permanent partial use for exposures which are required to be held as minimum reserves	Generic	No	This provision is not required as exposures to the ECB or the Central Bank are zero weighted.
38	Art 89.1(i)	Permanent partial use for State and State-reinsured guarantees subject to Annex VIII part 2 paragraph 18.	Generic	No	We do not believe this is relevant in Ireland.
39	Art 89 1. Last sentence	Discretion to recognise the standardised approach for equity exposures in other Member States (where those member states have exercised this discretion)	Generic	Yes	To preserve competitive equality
40	Art 154.2	Discretion to reduce the three-year's experience requirement to one year until 31 December 2009.	Case-by-case	Yes	See Part B of this consultation.
41	Art.154.3	For credit institutions applying for use of own estimates of LGDs and/or conversion factors, the three-year use requirement prescribed in Article 84 paragraph 4 may be reduced to two years until 31 December 2008.	Case-by-case	Yes	See Part B of this consultation.
42	Art 154(6)	Discretion to exempt from IRB until 31 December 2017 certain equity holdings	Generic	No	We do not believe this exemption is justified on a blanket basis. If there are specific cases, these can be considered in terms of the roll-out rules for equity exposures.
43	Art. 154 (7)	Discretion to use (until December 2011) a definition of default of greater than 90 days for	Generic	No	We will not exercise this discretion in respect of lending to counterparties in

		corporate exposures			Ireland. For exposures to counterparties located in other member states, institutions are free, at consolidated level, to choose 90 days or the specific number of days set by the local competent authority.
Annex VII, Part 1: Risk weighted exposure amounts and expected loss amounts					
44	§ 6	Preferential risk weights for certain specialised lending	Case-by-case	Yes	While we will adopt this discretion, the onus will be on the institution to demonstrate that its underwriting characteristics and other risk characteristics are substantially strong for the relevant category.
45	§ 13 [last sentence]	Definition of qualifying revolving retail exposures: By way of derogation to 13(b), competent authorities may waive the requirement that the exposure be unsecured in respect of collateralised credit facilities linked to a wage account.	Generic	No	We do not believe this discretion is justified in terms of the risk profile of such loans. QRRE portfolios are characterised as having high levels of expected loss but low levels of unexpected loss. We would be concerned that by linking the account to certain types of collateral, expected loss would fall but unexpected loss might increase, particularly if the risk of default of the borrower and loss in value of the collateral were correlated. Consequently we do not believe this discretion to be merited.
46	§18	Discretion to risk weight equity exposures to ancillary services undertakings according to the treatment of other non-credit obligations	Generic	No	This discretion allows for equity exposures to ancillary service undertakings to be treated as non-credit obligations (eg fixed assets) and risk weighted at 100%. We do not propose to exercise this discretion. If the equity participation should be deducted under the own funds / scope of application rules, then deduction shall apply.

					Alternatively, the asset should be treated like any other equity position under the IRB approach (and as such would be eligible to be considered immaterial under the provisions of Article 89.1(c), whereupon the standardised approach (100%) will apply.
Annex VII, Part 2: PD, LGD and maturity					
47	§ 5	For dilution risk, competent authorities may recognise as eligible unfunded protection providers other than those indicated in Annex VIII, Part 1.	Generic	No	We do not believe this to be justified on risk grounds; Protection providers should meet the same eligibility criteria as for default risk.
48	§ 7	For default risk in purchased receivables, competent authorities may recognise as eligible unfunded protection providers other than those indicated in Annex VIII, Part 1.	Generic	No	We do not believe this to be justified on risk grounds, Protection providers should meet the same eligibility criteria as for other aspects of the IRB framework; we see no reason to give receivables a more favourable treatment than other types of exposure.
49	§ 12	Competent authorities may require all credit institutions in their jurisdiction to use an explicit maturity adjustment for each exposure.	Generic	Yes	We believe this to be the more risk sensitive treatment. Evidence suggests that maturity, M, can be a significant driver of risk, particularly for low PD portfolios and we see no reason to link maturity with the ability to use own estimate of LGD and conversion factors (where use of M becomes mandatory). Institutions may use the duration based approach to maturity or the simpler, 'longest remaining maturity' approach according to paragraphs 13-14, Part 2, Annex VII of Directive 2006/48/EC.
50	§ 15	Carve out from explicit maturity for SME exposures	Generic	No	We do not believe this treatment adds to risk sensitivity and therefore believe that the exercise of this discretion is unwarranted.
51	§ 20	Ability under retail IRB	Generic	No	We do not believe this

		to recognise as eligible unfunded protection providers other than those indicated in Annex VIII, Part1			to be justified on risk grounds; Protection providers should meet the same eligibility criteria as for default risk.
Annex VII, Part 4: Minimum requirements for IRB approach					
52	§ 48	Requirement to set days past due definition of default for retail and PSE exposures	Generic	90 days for all	We will set 90 days for all forms of retail and PSE lending in Ireland. We believe this to be the most appropriate indicator of 'unlikely to repay', and is the definition around which most institutions have built their data sets. For exposures in other Member States, institutions are free, at consolidated level, to use 90 days or the number of days specified by the local competent authority.
53	§ 56	Flexibility in mapping to the definition of default for historic data.	Case-by-case	Yes	This discretion is important in order not to invalidate historic data sets. It will therefore be exercised. However, the onus will be on the institution to demonstrate the rigour of its mapping of its internal to the Directive definition of default.
54	paras 66, 71, 86 and 95	Transitional provisions in respect of data requirements.	Case-by-case	Yes	See Part B of this consultation.
55	§ 100	Discretion to recognise conditional guarantees.	Case-by-case	Yes	This is not so much a discretion, more a requirement to obtain the approval of the competent authority to recognise conditional guarantees. As stated in the Directive, the onus will be on the institution to demonstrate that the assignment criteria adequately address any potential reduction in the risk mitigation effect, given the existence of such conditionality.
CREDIT RISK MITIGATION					
Annex VIII, Part 1: Eligibility					
56	§20	Discretion to recognise as eligible collateral under IRB amounts receivable linked to a commercial	Generic	Yes	We believe this treatment adds to the risk sensitivity of the proposals.

		transaction			
57	§21	Recognition under IRB of certain types of physical collateral	Generic	Yes	While we will exercise this discretion, the onus will be on the institution to demonstrate that the minimum requirements (the existence of liquid markets and established market prices) are met in all instances.
Annex VIII, Part 3: Calculating the effects of credit risk mitigation					
58	§ 12	Recognition of internal models for calculation adjusted exposure amounts (E*) for repo-style transactions subject to a master netting agreement	Case-by-case	Yes	We will permit use of internal models-based approaches, subject to the relevant criteria being met and the approval of the Financial Regulator.
59	§ 19	Discretion to use empirical correlations.	Case-by-case	Yes	We believe this treatment to be risk sensitive, subject to the Directive conditions being met.
60	§ 43	When debt securities have a credit assessment from a recognised ECAI equivalent to investment grade or better, the competent authorities may allow institutions to calculate a volatility for each category of security".	Generic	Yes	We will permit use of these estimates, subject to the requirements being met.
61	§ 59	Mutual recognition of 0% volatility adjustment	Generic	Yes	To preserve competitive equality
62	§ 89	Discretion to look through sovereign guarantees and treat them as direct exposures	Generic	Yes	The key criterion is that the risk of the transaction is the same as that of a direct exposure to the central government. For this to be the case, a guarantee shall be in place, which must, at the least, be unconditional, irrevocable and evidenced in writing.
Large Exposures					
63	Article 113.3(q) (second part)	Discretion until 31 December 2011 to recognise 100% of the value of RRE collateral for large exposure purposes.	Generic	No	This treatment would not be consistent with the treatment for capital purposes.
64	Art. 114. 2	Allow Advanced IRB institutions to use own estimates of collateral effects in calculation of exposure amounts for purposes of LE limits	Case-by-case	Yes	This is consistent with the recognition of such techniques for risk weighting purposes.
65	Article 30.4	Discretion to treat claims	Case-by-case	Yes	This is consistent with

	(2006/49/EC)	on recognised third-country investment firms and recognised clearing houses and exchanges in financial instruments to be subject to the same treatment accorded to those institutions laid out in Articles 113(3)(i), 115(2) and116 of Directive 2006/48/EC .			the treatment of such counterparties for risk weighting purposes.
66	Article 45 (1) Directive 2006/49/EC,	Investment firms may be permitted to exceed large exposure limit requirements for certain derivative contracts until 31 December 2010	Generic	No	We do not believe such positions are material in an Irish context.
Mortgage Lending					
Annex VI, Part 1: Standardised Approach					
67	§ 49	Waiver of eligibility criterion in respect of residential real estate (RRE): "competent authorities may dispense with the condition contained in § 48(b) for exposures fully and completely secured by mortgages on residential property which is situated within their territory, if they have evidence that a well-developed and long-established residential real estate market in present in their territory with loss rates which are sufficiently low to justify such treatment".	Generic	No	See section 6.4 of the main paper.
68	§50	Mutual recognition of the treatment in §49 within EU.	Generic	Yes	To preserve competitive equality
69	§ 51	50% RW for commercial real estate (CRE): "subject to the discretion of the competent authorities, exposures fully and completely secured, to the satisfaction of the competent authorities by mortgages on offices or other commercial premises situated within their territory may be assigned a risk weight of 50%"	Generic	No	The ability to risk-weight commercial real estate at 50% exists within the current Directive and is not currently exercised in Ireland. We believe a 100% risk weight is closer to recognising an average level of risk in non-speculative CRE exposures.
70	§ 52	50% RW for Finnish Housing CRE	Generic	Yes	To preserve competitive equality.
71	§ 53	Discretion to risk-weight certain commercial property leases at 50%	Generic	No	This is consistent with our position on the risk weighting of exposures secured by commercial real estate.
72	§ 57	Discretion to recognise	Generic	Yes	To preserve

		another Member State's use of the discretions in paragraphs 51-53 above.			competitive equality.
73	§ 58	Ability to waive certain requirements for exposures secured by commercial real estate to secure a 50% weighting	Generic	No	Not applicable, given that we do not propose to allow a 50% risk weight for such exposures.
74	§ 60	Discretion to recognise another Member State's use of the discretions in paragraph 58 above.	Generic	Yes	To preserve competitive equality.
Annex VIII, Part 1: Credit Risk Mitigation, Eligibility					
75	§15	Discretion to recognise as eligible collateral shares in Finnish Housing companies	Generic	Yes	To preserve competitive equality.
76	§ 16	Discretion to waive certain eligibility criteria to recognise residential real estate collateral in the IRB approach.	Generic	No	Section 6.4 of the main paper.
77	§ 17	Discretion to waive certain eligibility criteria to recognise commercial real estate collateral in the IRB approach.	Generic	No	This is consistent with the treatment of commercial real estate in the standardised approach.
78	§19	Discretion to recognise as eligible collateral commercial real estate located in other member states, the competent authority of which has waived certain eligibility criteria in this respect.	Generic	Yes	To preserve competitive equality.
Annex VIII, Part 2: Credit Risk Mitigation, Minimum Requirements					
79	§9(a)(ii)	Discretion to permit recognition under the Foundation IRB approach of a first priority claim over receivables where it may be subordinate to the claims of preferential creditors provided for in legislation or based on precedent.	Generic	Yes, with conditions for certain exposures	Recent case law in other jurisdictions with similar company law lays open to question the ability of a first charge over receivables to withstand the claims of preferential creditors. At the outset, and on a periodic basis thereafter, institutions should take steps to ascertain the likely extent of preferential creditors, and ensure that an appropriate haircut is taken to the value of the collateral to reflect this. For exposures outside Ireland, exercise of this discretion should support the legal position in the local market.
80	§10(b)	Discretion to permit recognition under the Foundation IRB approach	Generic	Yes, with conditions for certain	As immediately above.

		of a first priority claim over other physical collateral where it may be subordinate to the claims of preferential creditors provided for in legislation or based on precedent.		exposures	
Annex VIII, Part 3: Calculating the effects of credit risk mitigation					
81	§ 59	Mutual recognition of 0% volatility adjustment.	Generic	Yes	To preserve competitive equality.
82	§ 72 (a)	Ability until 31 December 2012 to assign 30% LGD to CRE leasing.	Generic	No	We do not believe this treatment to be justified on the basis of risk.
83	§ 72 (b)	Ability until 31 December 2012 to assign 35% LGD to equipment leasing exposures.	Generic	No	We do not believe this treatment to be justified on this basis of risk.
84	§ 72 (c)	Ability until 31 December 2012 to assign a 30% LGD for senior exposures secured by residential or commercial real estate	Generic	No	We do not believe this treatment to be justified on the basis of risk.
85	§ 73	Ability to use a 50% risk weight in foundation IRB for the secured part of an exposure secured by commercial or residential real estate.	Generic	No	We do not believe this treatment is risk sensitive. Credit institutions should estimate the PD of the borrower and are allowed to reflect the value of the collateral through a reduced LGD.
86	§ 75	Discretion to recognise 50% weighting for residential and commercial real estate located in other member states if the competent authority of that state has recognised this discretion.	Generic	Yes	To preserve competitive equality
Securitisation					
87	Article 97.3	Ability to recognise ECAIs that have been recognised in another member state.	Generic	Yes	See Section 10 on ECAI recognition for securitisations.
88	Article 98.2	Recognition of mapping of assessments made by an ECAI within EU for securitisation purposes.	Generic	Yes	See Section 10 for ECAI recognition.for securitisations
Annex IX, Part 4: Calculation					
89	§ 30	Early amortisations - discretion to allow similar treatment as for amortisation triggered by the 3 month average excess spread when early amortisation is triggered by a quantitative value other than 3 month excess spread. Waiver to be applied for by the institution.	Case-by-case	Yes	We will permit this discretion, on application by the institution and reviewed on a case-by-case basis.
90	§43	Ability to use the internal assessment approach	Case-by-case	Yes	Subject to supervisory approval.
91	§ 43, last	The requirement for the	Case-by-case	Yes	This will be

	paragraph	assessment methodology of the ECAI to be publicly available may be waived by the competent authorities			considered in cases where there is no publicly available assessment methodology. This will be considered on a case-by-case basis.
92	§ 48	Application of a 6% risk weight to the most senior position.	Case-by-case	Yes	Subject to supervisory approval, and provided the conditions in the Directive are met.
93	§ 53 last paragraph	For securitisation involving retail exposures, the competent authorities may permit the Supervisory Formula Method to be implemented using the simplifications: H=0 and v=0	Case-by-case	Yes	We believe these simplifications to be appropriate in the context of retail securitisations, with the minimum number of retail exposures to be reviewed by the competent authority on a case-by-case basis.
Trading Book and Trading Book Review					
94	Article 19.1 (2006/49/EC)	For the purposes of paragraph 14 of Annex I, subject to national discretion, a 0% weighting can be assigned to debt securities issued by the entities listed in Annex I, Table 1, where these debt securities are denominated and funded in domestic currency.	Generic	Yes	To preserve competitive equality.
95	Annex I § 52 (2006/49/EC)	Recognition of third country CIUs (allowing institutions to look through underlying investments in order to calculate capital requirements for position risk (general and specific).	Case-by-case	Yes	This is not a discretion as such, more a requirement for the institution to seek the competent authority's permission to use the prescribed treatment, provided certain conditions are met.
96	Annex II, Para 4 (2006/49/EC)	In cases of a system wide failure of a settlement or clearing system, competent authorities may waive the capital requirements for settlement/delivery risk.	Case-by-case	Yes	Depending on the circumstances, this would be exercised on a case-by-case basis.
97	Annex V, § 4, second sub-para 2006/49/EC	Competent Authority may require the institution to perform back-testing on either hypothetical or actual trading, or both	Generic	Backtesting on hypothetical and actual trading outcomes	Backtesting on actual trading outcomes is a key aspect of model validation and, to the extent that this does not provide an adequate indication of the model's performance, this should be supplemented by backtesting on hypothetical portfolios. The

					Financial Regulator on a case-by-case basis will consider this.
98	Annex III, Part 2, § 2	Ability to use internal models to determine exposure value	Case-by-case	Yes	Subject to the approval of the Financial Regulator
99	Annex III, Part 2 para 3	Options for the calculation of capital requirements on assets hedged by credit derivatives	Case-by-case	Yes	This discretion is subject to the institution having obtained approval for use of an IRB approach.
100	Annex III, Part 5, § 19	Right of the competent authority to require use of methodology set out in Part 3 for determining size of risk positions	Generic	Yes	While the Financial Regulator reserves the right to specify an alternative methodology, in the absence of such the methodology set out in Part 3 should be used.
101	Annex III, Part 6, § 1	Use of Internal Models methodology	Case-by-case	Yes	Subject to the approval of the Financial Regulator
102	Annex III, Part 6, § 2	Discretion to permit roll out of internal models sequentially across different product types.	Case-by-case	Yes	To be reviewed on a case-by-case basis as part of the application for model recognition
103	Annex III, Part 6, § 7	Discretion to set a higher value of alpha.	Generic	No	For the time being we regard an alpha of 1.4 to be appropriate. This will be reviewed in light of experience.
104	Annex III, Part 6, §12	Discretion to use own estimates of 'alpha'	Case-by-case	Yes	Subject to the approval of the Financial Regulator
105	Annex III, Part 6, Para 42	In respect of EPE modelling, competent authorities may also require additional own funds to be held pursuant to Article 136.	Case-by-case	Yes	This discretion will be exercised on a case-by-case basis under Pillar 2.
106	Annex VIII Part 3, § 12 (end)	Use of IMM for margin lending transactions	Case-by-case	Yes	Subject to the approval of the Financial Regulator
Operational Risk					
107	Directive 2006/49/EC Art. 20 (2)	Limited licence exemption from explicit OpR charge	Generic	Yes	This discretion will be exercised to prevent a disproportionate capital impact (from the introduction of an explicit charge for operational risk) on those investment firms with limited licence. This discretion will be exercised by general dispensation from the requirement.
108	Directive 2006/49/EC Art 20(3)	Limited activity exemption from explicit OpR charge	Case-by-case	Yes	We will exercise this discretion on a case-by-case basis. Investment firms must apply for this

					discretion and set out their justification. Application will be considered only where investment firms can demonstrate they are in accordance with the criteria noted in the Directive.
109	Directive 2006/49/EC Art. 24	Consolidated calculation using EBR for limited licence groups	Generic	Yes	This discretion will be exercised so as not to frustrate the purpose of exercising the discretion exercised in Article 20(2)
110	Directive 2006/49/EC art 25.	Consolidated calculation for investment firm groups with limited licence and limited activity firms	Generic	Yes	This discretion will be exercised so as not to frustrate the purpose of exercising the discretion exercised in Article 20(2) and Article 20(3)
111	Directive 2006/49/EC, Article 46	Exemption, on a case-by-case basis from the explicit OpR charge for investment firms with limited trading activity (less than 50m euro).	Case-by-case	No	We do not propose to exercise this discretion, as we believe that firms with **any** trading activity should hold capital to support their operational risks.
112	Article 102.4	Competent Authorities may allow credit institutions to use a combination of approaches in accordance with Annex X, Part 4.	Case-by-case	Yes	Subject to the conditions in the Directive and the guidance in CEBS GL10.
113	Article 104.3	For certain business lines, the competent authorities may under certain conditions authorise a credit institution to use an alternative indicator for determining its capital requirement for operational risk.	Generic	No	We do not propose to exercise this discretion; in other words we will not implement the Alternative Standardised Approach (ASA). We do not believe the ASA is a better proxy measure for the degree of operational risk in corporate and retail banking business lines for credit institutions in Ireland.
114	Article 105.4	Where an EU parent institution and its subsidiaries or the subsidiaries of an EU parent financial holding company use an Advanced Measurement Approach on a unified basis, the competent authorities may allow the qualifying criteria set out in Annex X, Part 3 to be met by the parent and its subsidiaries considered	Case-by-case	Yes	We will review this on a case-by-case basis as part of an AMA applicant's submission to us for use of the approach. Further guidance on validation and home-host can be found in CEBS' consultations GL09 and GL10.

		together.			
Annex X, Part 2: Standardised Approach					
115	§ 3	Competent authorities may authorise a credit institution to calculate its capital requirement for operational risk using an alternative standardised approach, as set out in paragraphs 5 to 11.	Generic	No	We do not propose to exercise this discretion; in other words we will not implement the Alternative Standardised Approach (ASA). We do not believe the ASA is a better proxy measure for the degree of operational risk in corporate and retail banking business lines for credit institutions in Ireland.
116	§ 5	The competent authorities may authorise the credit institution to use an alternative indicator for the business lines: retail banking and commercial banking	Generic	No	We do not propose to exercise this discretion; in other words we will not implement the Alternative Standardised Approach (ASA). We do not believe the ASA is a better proxy measure for the degree of operational risk in corporate and retail banking business lines for credit institutions in Ireland.
Annex X, Part 4: Combined use of different methodologies					
117	§ 2	Ability of the competent authority, on a case-by-case basis, to impose additional conditions on rollout.	Case-by-case	Yes	We believe the additional criteria in the Directive may be appropriate in certain circumstances and thus we will introduce the discretion and review its application on a case-by-case basis.
Market Discipline					
118	Art. 72.3	Exemption of EU subs of third-country groups from P3 disclosures:	Case-by-case	Yes	This discretion will be exercised on a case-by-case basis, dependent on the nature, form and frequency of the disclosure from the parent.
Other Transitional Measures					
119	Art. 152 (10(b))	Discretion not to apply standardised approach for risk weighting securitisations in 2007	Generic	Yes	This will be permitted, if the institution itself has decided (under Article 152(8)) to remain on Basel 1 during 2007
120	Article 153 (first part)	Discretion to dispense with certain criteria to risk weight CRE leasing	Generic	No	Not relevant given proposal not to exercise discretion in

		transactions at 50% until 31 December 2012			respect of that CRE leasing transactions.
121	Article 153 (second part)	Recognition until 31 December 2010 of collateral other than 'eligible collateral' for purpose of defining secured portion of a past-due loan	Generic	No	We do not believe this to be justified on risk grounds, Protection providers should meet the same eligibility criteria as for other aspects of the framework.
122	Article 47 (2006/49/EC)	Grandfathering until 31 December 2009, of recognised specific risk models.	Generic	No	This discretion is not relevant at this time as no institutions in Ireland have received specific risk model recognition to date.

Type B Discretions: Discretions within pre-CRD Directives mapped over into CRD.

N.B. All references are to Directive 2006/48/EC unless stated otherwise.

REF NO.	CROSS REF	TEXT OF DIRECTIVE	GENERIC OR CASE-BY-CASE	EXERCISE
1	Art 58	Where shares in another credit institution, financial institution, insurance or reinsurance undertaking or insurance holding company are temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may waive the provisions on deduction referred to in points (l) to (p) of Article 57.	Case-by-case	Yes
2	Art 66.4	The competent authorities may authorise credit institutions to exceed the limit laid down in paragraph 1 in temporary and exceptional circumstances.	Case-by-case	Yes
3	Art 73.1	The Member States or the competent Authorities responsible for exercising supervision on a consolidated basis pursuant to Articles 125 and 126 may decided in the [listed] cases that a credit institution, financial institution or ancillary services undertaking which is a subsidiary or in which a participation is held need not be included in the consolidation.	Case-by-case	Yes
4	Art 134.1	In particular, the competent authorities may permit, or require use of, the method provided for in Article 12 of Directive 83/349/EEC. That method shall not, however, constitute inclusion of the undertakings concerned in consolidated supervision.	Generic	No
5	Art 143.3 2nd last sentence	Competent authorities may in particular require the establishment of a financial holding company, which has its head office in the Community, and apply the provisions on consolidated supervision to the consolidated position of that financial holing company.	Case-by-case	Yes
6	Annex III, Part 3,	For the purpose of calculating the potential future exposure in accordance with step (b) the competent authorities may allow credit institutions to apply the following percentages instead of those prescribed in Table 1 provided that the institutions make use of the option set out in Annex IV, paragraph 21 of Directive [93/6/EEC] for contracts within the meaning of paragraph 3(b) and (c) of Annex IV.	Generic	No
7	Annex III, part 7, section (c)	Net-to-gross ratio: at the discretion of the competent authorities either: (i) separate calculation: the quotient of the net replacement cost for all contracts included in a legally valid bilateral netting agreement with a given counterparty (numerator) and the gross replacement cost for all contracts included in a legally valid bilateral netting agreement with that counterparty (denominator), or (ii) aggregate calculation: the quotient of the sum of the net replacement cost calculated on a bilateral basis for all counterparties taking into account the contracts included in legally valid netting agreements (numerator) and the gross replacement cost for all contracts included in legally valid netting agreements(denominator).	Generic	(i) Separate Calculation
8	Article 5.2 (2006/49/ EC	The competent authorities may, allow an investment firm which executes investors' orders for financial instruments to hold such instruments for its own account if the following conditions are met: (a) such positions arise only as a result of the firm's failure to match investors' orders precisely; (b) the total market value of all such positions is subject to a ceiling of 15% of the firm's	Generic	Yes

		initial capital; (c) the firm meets the requirements laid down in Articles 18,20 and 28; (d) such provisions are incidental and provisional; in nature and strictly limited to the time required to carry out the transaction in question. 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 paragraph 1 or for the purposes of paragraph 3.		
9	Article 13.2 2006/49/ EC	By derogation to paragraph 1, the competent authorities may permit those institutions which are obliged to meet the capital requirements calculated in accordance with Articles 21 and 28 to 32 and Annexes 1 and 111 to V1 to use, for that purpose only, an alternative determination of own funds. No part of the own funds used for that purpose may be used simultaneously to meet other capital requirements. The alternative definition shall be the sum of the items set out in points (l) to (p) of Article 57 of that 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 these amounts has already been included in item (a) of this paragraph under the items set out in points (b) to (k) of Article 57 of Directive [2006/48/EC] . (c) subordinated loan capital and/or the items referred to in paragraph 5, subject to the conditions set out in paragraphs 3 and 4 and Article 14; (d) illiquid assets as specified in Article 15.	Generic	Yes
10	Article 13.5 2006/49/ EC	The competent authorities may permit institutions to replace the subordinated loan capital referred to in point (c) of paragraph 2 with points (d) to (h) of Article 57 of Directive [2006/48/EC].	Generic	Yes
11	Article 14.1 2006/49/ EC	The competent authorities may permit investment firms to exceed the ceiling for subordinated loan capital set out Article 13(4) if they judge it prudentially adequate and provided that the total of such subordinated loan capital and the items referred to in Article 13(5) does not exceed 200% of the original own funds left to meet the requirements calculated in accordance with Articles 21, 28 to 32 and Annexes I and iii to VI or 250% of the same amount where investment firms deduct the item set out in point (d) of Article 13(2) when calculating own funds.	Generic	Yes
12	Article 14.2	The competent authorities may permit the ceiling for subordinated loan capital set out in Article 13(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 points (d) to (h) of Article 57 of Directive [2006/48/EC] does not exceed 250% of the original own funds left to meet the requirements calculated in accordance with Articles 28 to 32 and Annexes I and III to VI.	Generic	Yes
13	Article 15, last paragraph 2006/49/ EC	For the purposes of point (b), where shares in a credit or financial institution are held temporarily for the purpose of a financial assistance operation designed to recognise 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.	Case-by-case	Yes
14	Article 18.2 2006/49/	By derogation to paragraph 1, the competent authorities may allow institutions to calculate the capital requirements for their trading book business in	Generic	Yes

	EC	accordance with Article 75(a) of Directive [2006/48/EC] and paragraphs 6,7,8 and 10 of Annex II of this Directive, rather than in accordance with Annexes I and II of this Directive, where the size of the trading book business meets the following requirements: (a) the trading-book business of such institutions does not normally exceed 5% of their total business; (b) their total trading-book positions do not normally exceed EUR 15 million; and (c) the trading-book business of such institutions never exceeds 6% of their total business and their total business and their total trading-book positions never exceed EUR 20 million.		
15	Article 21, 2nd paragraph 2006/49/ EC	The competent authorities may adjust that requirement in the event of a material change in a firm's business since the preceding year.	Case-by-case	Yes
16	Article 26 2006/49/ EC	Where the waiver provided for in Article 22 is not exercised, the competent authorities may, for the purpose of calculating the capital requirements set out in annexes 1 and V and the exposures to clients set out in Articles 28 to 32 and Annex VI on a consolidated basis, permit [certain offsets].	Generic	Yes
17	Article 31 First Sentence 2006/49/| EC	The competent authorities may authorise the limits laid down in Articles 111 to 117 of Directive [2006/48/EC] to be exceeded if [certain] conditions are met	Generic	Yes
18	Article 32.2 2006/49/ EC	The competent authorities may permit institutions which are allowed to use the alternative determination of own funds under Article 13(2) to use that determination for the purposes of Articles 30(2), 30(3) and 31 provided that the institutions concerned are required, to meet all of the obligations set out in Articles 110 to 117 of Directive 2006/48/EC], in respect of the exposures which arise outside their trading books by using own funds as defined in Directive [2006/48/EC].	Generic	Yes
19	Article 33.3 2006/49/ EC	In the absence of readily available market prices, the competent authorities may waive the requirement imposed in paragraphs 1 and 2 and shall require institutions to use alternative methods of valuation provided that those methods are sufficiently prudent and have been approved by competent authorities	Case-by-case	Yes
20	Annex 1, Para 4, 2nd sub-para 2006/49/ EC	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 it is at least equal to the capital requirement for a future that would result from a calculation made using the method set out in this Annex or applying the internal models method described in Annex V	Generic	Yes
21	Annex 1, Para 4, 3rd subparagr aph 2006/49/ EC	The competent authorities may also allow the capital requirement for an OTC derivatives contract of the type referred to in this paragraph cleared by a clearing house recognised by them to be equal to the margin required by the clearing house if they are fully satisfied that it provides an accurate measure of the risk associated with the derivatives contract and that it is at least equal to the capital requirement for the contract in question that would result from a calculation made using the method set out in this Annex or applying the internal models method described in Annex V.	Case-by-case	Yes
22	Annex 1, Para 5, 2nd sub-	However, the competent authorities may also prescribe that institutions calculate their deltas using a methodology specified by the competent authorities	Generic	Yes (use of a pre-processing model)

	paragraph 2006/49/ EC			
23	Annex 1, Para 5, 3rd sub-paragraph 2006/49/ EC	Other risks, apart from the delta risk, associated with options shall be 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 that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex V.	Generic	Yes
24	Annex 1 Para 14, 2006/49/ EC	Instruments issued by a non-qualifying issuer shall receive a specific risk capital charge of 8% or 12% according to Table 1 above. Competent authorities may require institutions to apply a higher specific risk charge to such instruments and/or to disallow offsetting for the purposes of defining the extent of general market risk between such instruments any other debt instruments	Generic	No
25	Annex 1 para 26 2006/49/ EC	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 17 to 25, provided that the institution does so on a consistent basis.	Generic	Yes
26	Annex 1, Para 35, First sentence 2006/49/ EC	By derogation to paragraph 34, the competent authorities may allow the capital requirement against specific risk to be 2% rather than 4% for those portfolios which meet [certain] conditions…	Generic	Yes
27	Annex 1, Para 35 (c) 2006/49/ EC	No individual position shall comprise more than 5% of the value of the institution's whole equity portfolio. For the purpose of point (c), the competent authorities may authorise individual positions of up to 10% provided that the total of such positions does not exceed 50% of the portfolio.	Generic	Yes
28	Annex III, Para 2.1, Last Sentence 2006/49/ EC	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 and in gold.	Generic	Yes
29	Annex III, Para 3.1 2006/49/ EC	The competent authorities may allow institutions to provide lower capital requirements against positions in closely correlated currencies than those which would result from applying paragraph 1 and 2 to them.	Generic	Yes
30	Annex III, Part 3.2	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, 2 and 3.1 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. By derogation to the first sub-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	Generic	Yes

		monetary union to be 1.6%, multiplied by the value of such matched positions.		
31	Annex IV, Para 7 2006/49/ EC	The competent authorities may regard the following positions as positions in the same commodity: (a) positions in different sub-categories of commodities in cases where the sub-categories are deliverable against each other; (b) positions in similar commodities if they are close substitutes and if a minimum correlation of 0.9 between price movements can be clearly established over a minimum period of one year.	Generic	Yes
32	Annex IV-, Para 8 2006/49/ EC	Commodity futures and forward commitments to buy or sell individual commodities shall be incorporated in the measurement system as notional amounts in terms of the standard unit of measurement and assigned maturity with reference to expiry date. 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 provided an accurate measure of the risk associated with the future and that it is equal to the capital requirement for a future that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex V. The competent authorities may also allow the capital requirement for an OTC commodity derivatives contract of the type referred to in this paragraph cleared by a clearing house recognised by them to be equal to the margin required by a clearing house if they are fully satisfied that it provides an accurate measure of the risk associated with the derivatives contract and that it is at least equal to the capital requirement for the contract in question that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex V.	Generic	Yes
33	Annex IV, Para 10 2006/49/ EC	Options on commodities or on commodity derivatives shall be treated as if they were positions equal in value to the amount of the underlying 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 commodity or commodity derivative. The delta used shall be that of the exchange concerned, that calculated by the competent authorities or, where none of those is 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.	Generic	Yes
34	Annex IV, Para 10, Last three sub-paragraph s 2006/49/ EC	However, the competent authorities may also prescribe that institutions calculate their deltas using a methodology specified by the competent authorities. The competent authorities may allow the requirement for a written exchange-traded commodity 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 it is at least equal to the capital requirement against an option that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal method described in Annex V. The competent authorities may also allow the capital requirement for an OTC commodity option cleared by a clearing house recognised by them to be equal to the margin require by the clearing house if they are fully satisfied that it provides an accurate measure of the risk associated with the option and that it is at least equal to the capital requirement for an OTC option that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in	Generic	a) written Exchange Traded options – delta based approach b) Yes

		Annex V. In addition they may allow the requirement on a bought exchange-traded or OTC commodity option to be the same as that for the commodity underlying it, subject to the constraint that the resulting requirement does not exceed the market value of the option. The requirement for a written OTC option shall be set in relation to the commodity underlying it.		
35	Annex IV, Para 14 2006/49/ EC	Competent authorities may allow positions which are, or are regarded pursuant to paragraph 7 as, positions in the same commodity to be offset and assigned to the appropriate maturity bands on a net basis for the following: (a) positions in contracts maturing on he same date; (b) positions in contracts maturing within 10 days of each other if the contracts are traded on markets which have daily delivery dates.	Generic	Yes
36	Annex V, Part 7, Paragraph 2	The competent authorities may, in individual cases and owing to an exceptional situation, waive the requirement to increase the multiplication factor by the plus-factor according to Table 1, if the institution has demonstrated to the satisfaction of the competent authorities that such an increase is unjustified and that the model is basically sound.	Case-by-case	Yes
37	Annex VII, part D, Para 3 2006/49/ EC	Competent Authorities may allow institutions to treat positions that are holdings as set out in Directive [2006/48/EC] Article 57 (l), (m) and (n) in the trading book as equity or debt instruments as appropriate where an institution demonstrates that it is an active market maker in these positions. In this case, the institution shall have adequate systems and controls surrounding the trading of eligible own funds instruments.	Generic	No

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