

Regulation governing the capital adequacy of institutions,  
groups of institutions and financial holding groups  
(Solvency Regulation (*Solvabilitätsverordnung*))\*

of 14 December 2006

as last amended by article 1 of the Regulation to further implement the amended Capital Requirements Directive (*Verordnung zur weiteren Umsetzung der geänderten Bankenrichtlinie und der geänderten Kapitaladäquanzrichtlinie*) of 5 October 2010 (Federal Law Gazette I, page 1330).

The German Federal Ministry of Finance hereby decrees the following

- on the basis of section 1a (9) sentences 1 and 3 of the Banking Act (*Kreditwesengesetz*), as inserted by Article 1 number 3 of the Act of 17 November 2006 (Federal Law Gazette I, page 2606),
- on the basis of section 10 (1) sentences 9 and 11, also in conjunction with section 10 (1e) sentence 2, of the Banking Act, section 10 (1) as revised and section 10 (1e) as inserted by Article 1 number 12 letters (b) and (f) of the Act of 17 November 2006 (Federal Law Gazette I page 2606),
- on the basis of section 10 (9) sentence 6 of the Banking Act, as inserted by Article 1 number 12 letter (u) (bb) of the Act of 17 November 2006 (Federal Law Gazette I page 2606), and
- on the basis of section 10a (9) sentences 1 and 3, also in conjunction with section 26a (1) sentence 3, of the Banking Act, section 10a (9) as revised and section 26a as inserted by Article 1 numbers 13 and 35 of the Act of 17 November 2006 (Federal Law Gazette I page 2606),

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\* This Regulation serves to further implement Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (OJ L177/1 of 30 June 2006) and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) (OJ L177/201 of 30 June 2006).

This translation of the *Verordnung über die angemessene Eigenmittelausstattung von Instituten, Institutsgruppen und Finanzholding-Gruppen* has been prepared by the Deutsche Bundesbank for the convenience of English-speaking readers. It is not official. The German text as published in the Federal Law Gazette (*Bundesgesetzblatt*) is the sole official and authoritative version.

in each case in consultation with the Deutsche Bundesbank and after consultation with the central associations representing the institutions:

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## Part 1

### General provisions

#### Section 1

##### Scope of application

<sup>1</sup>This Regulation shall apply to

1. credit institutions which conduct banking business within the meaning of section 1 (1) sentence 2 of the Banking Act (*Kreditwesengesetz*) and
2. financial services institutions which
  - a) trade for their own account or
  - b) which are authorised as investment brokers, contract brokers or portfolio managers to obtain the ownership or possession of money or securities of customers or to trade in financial instruments for their own account.

<sup>2</sup>Sections 298 to 307 do not apply to non-trading book institutions.

#### Section 2

##### Adequacy of an institution's own funds

(1) <sup>1</sup>An institution has adequate own funds if it meets the capital requirements for credit risk and operational risk pursuant to subsection (2) as well as the capital requirements for market risk pursuant to subsection (3) each day at the close of business. <sup>2</sup>The close of business is governed by section 1 (1) of the Regulation governing large exposures and loans of 1.5 million euro or more (*Grosskredit- und Millionenkreditverordnung*) of 14 December 2006 (Federal Law Gazette I page 3065).

(2) The capital requirements for credit risk and operational risk shall be regarded as being met if the total capital charge for credit risk and the capital charge for operational risk calculated pursuant to sections 269 to 293 do not, in the aggregate, exceed an institution's modified available capital.

(3) <sup>1</sup>The capital requirements for market risk shall be regarded as being met if, at the close of each working day, the sum of capital charges for market risk exposures and, in the case of section 308 (2) and (3) sentence 1, the capital charges for an institution's options trades do not

exceed the sum of the modified available capital, less the capital requirements for credit risk and operational risk, and the available tier 3 funds.<sup>2</sup>The market risk exposures referred to in sentence 1 are constituted by

1. foreign exchange risk exposures pursuant to section 4 (3),
2. commodity risk exposures pursuant to section 4 (5),
3. trading book risk exposures pursuant to section 4 (6),
4. other market risk exposures pursuant to section 4 (7).

<sup>3</sup>In the case of institutions which use internal risk measurement models pursuant to section 313, the market risk exposures are composed of those positions referred to in sentence 2 numbers 1 to 4 whose risk content the institution has taken into account in its internal risk model.<sup>4</sup>Partial consolidation of the positions pursuant to sentence 2 numbers 1 to 4 is permissible.<sup>5</sup>The capital charge for a market risk exposure captured by an institution's internal risk measurement model which, as a credit risk exposure of the institution allocated to the banking book, would constitute a Credit Risk Standardised Approach (CRSA) position and would be allocated to the CRSA exposure class Securitisation positions or, in the case of an institution adopting the Internal Ratings-Based Approach (IRBA), would constitute an IRBA exposure and thus be allocated to the IRBA exposure class Securitisation positions, is calculated as the market value of the position, provided the market risk exposure, pursuant to sections 225 to 268, would have to be risk-weighted at 1,250 per cent or, pursuant to section 265, recognised by the deduction amount for Securitisation positions.<sup>6</sup>Sentence 5 does not apply to market risk exposures for which the institution is a trader in these Securitisation positions and can demonstrate to the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, hereinafter BaFin) that a liquid two-way market for such exposures exists.

(4)<sup>1</sup>Notwithstanding subsection (1), a financial services institution that does not trade in financial instruments for its own account must have adequate own funds according to sentences 2 and 3.<sup>2</sup>If the fixed overheads-based capital requirement pursuant to section 10 (9) sentences 1 and 2 of the Banking Act exceeds the sum of the total capital charge for credit risk and own funds requirements for market risk, the institution is regarded as having adequate own funds if the fixed overheads-based capital requirement pursuant to section 10 (9) sentences 1 and 2 of the Banking Act does not exceed the sum of modified available capital and available tier 3 funds.<sup>3</sup>If the fixed overheads-based capital requirement pursuant to section 10 (9) sentences 1 and 2 of the Banking Act is less than or equal to the sum of the total capital charge for credit risk and own funds requirements for market risk, the institution is regarded as having adequate own funds if both the capital requirements for credit risk pursuant to subsection 2 and the own funds requirements for market risk pursuant to

subsection 3 are met; notwithstanding sections 269 to 293, the capital charge for operational risk is zero. <sup>4</sup>Section 10 (9) sentences 3 to 5 of the Banking Act applies *mutatis mutandis*.

(5) <sup>1</sup>The ratios pursuant to subsections (2) to (4) are to be calculated daily at the close of business. <sup>2</sup>An institution may refrain from calculating the ratios each working day if it can ensure, through suitable internal measures, compliance with the requirements of subsections (2) to (4) and the overall capital ratio pursuant to subsection (6) sentence 2 does not fall below a value of 8.4 per cent.

(6) <sup>1</sup>Institutions shall calculate an overall capital ratio at the end of each calendar quarter. <sup>2</sup>The overall capital ratio is the ratio of the eligible own funds pursuant to sentence 3 as the numerator to the sum, multiplied by 12.5, of the total capital charge for credit risk, the capital charge for operational risk and the sum of the capital charges for market risk exposures including options trades as the denominator; financial services institutions to which subsection (4) applies shall use 12.5 times the higher of the two amounts pursuant to subsection (4) sentence 2 or 3 as the denominator. <sup>3</sup>Eligible own funds are composed of modified available capital and tier 3 funds used to back the capital charges for market risk exposures and options trades; the use of tier 3 funds is restricted to five-sevenths of the capital charges for market risk exposures and options trades. <sup>4</sup>Sentence 1 applies to housing enterprises with savings facilities subject to the proviso that the overall capital ratio is to be calculated at the end of each calendar year.

### Section 3

#### Adequacy of consolidated own funds

(1) <sup>1</sup>The requirements pursuant to section 2 (2) to (4) and (6) apply accordingly to groups of institutions and financial holding groups for the ratios

1. of the consolidated modified available capital to the capital charge for operational risk pursuant to sections 269 to 293 and the total capital charge for credit risk pursuant to section 8, excluding the positions included in the deduction pursuant to section 10a (6) sentence 3 numbers 1 and 2 of the Banking Act,
2. of the modified available capital of the group of institutions or financial holding group less the capital requirements for credit risk and operational risk plus the available tier 3 funds to the capital charges for market risk exposures and, in the case of section 308 (2) and (3) sentence 1, the capital charges for the options trades of all enterprises belonging to the group, and
3. of the total eligible own funds to the sum, multiplied by 12.5, of the total capital charge for credit risk, the capital charge for operational risk and the sum of the capital charges for market risk exposures including options trades.

<sup>2</sup>Section 2 (5) applies *mutatis mutandis* to groups of institutions and financial holding groups.

(2) <sup>1</sup>If an institution within a group of institutions or financial holding group is a trading book institution, the group of institutions or financial holding group is subject to the provisions of sections 298 to 307 on trading book risk exposures. <sup>2</sup>Non-trading book institutions belonging to a group may calculate the capital charges for their trading book positions pursuant to sections 8 to 268.

(3) The calculation requirements for the ratios pursuant to subsection (1) sentence 1 numbers 2 and 3 may be based on the capital charges for market risk exposures and options trades of the subsidiary enterprises domiciled abroad which are calculated according to the market risk rules applicable in the respective country of domicile at the reference dates pursuant to section 6 (1) if the market risk rules applicable in the respective country of domicile

1. in countries of the European Economic Area (EEA), are equivalent to those in Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) (Official Journal of the European Union (OJ EU L 177, page 201) of 30 June 2006, as amended, or,
2. in non-EEA countries, are equivalent to those of this Regulation.

#### **Section 4**

##### Positions subject to capital charges, group of connected clients

(1) <sup>1</sup>The positions subject to capital charges which an institution is required to calculate are its credit risk exposures, foreign exchange risk exposures, commodity risk exposures and other market risk exposures and, if it is a trading book institution, its trading book risk exposures.

<sup>2</sup>Investment firms organised in the legal form of a sole proprietorship or a partnership shall also include the transactions concluded for the own account of the proprietor or of the general partners in the calculation of the positions subject to capital charges.

(2) <sup>1</sup>Credit risk exposures are constituted by those positions which

1. are subject to a counterparty credit risk (CCR) which is not captured by a trading book risk exposure of a trading book institution pursuant to subsection (6) sentence 1,
2. as tangible assets are subject to depreciation risk,
3. in the case of an IRBA institution, constitute dilution risk exposures pursuant to section 71 (2), or,
4. if the institution is a trading book institution, arise from a transaction assigned to the trading book and are subject to settlement risk,

unless they are deducted from liable capital pursuant to section 10 (6) sentence 1 of the Banking Act or are fully backed by liable capital.<sup>2</sup>CCR is the risk that a natural or legal person or partnership on whom/which the institution has a conditional or unconditional claim does not meet it or does not meet it on time or the institution is required to meet such a claim vis-à-vis a person or partnership owing to non-fulfilment by a third party, as well as the institution's financial risk with regard to equity positions.<sup>3</sup>Institutions shall ensure that the personal data stored for the purposes of this Regulation are either completely deleted or anonymised not later than at the end of the fourth calendar year after the completion and liquidation of the debt relationship with the obligor or after the failure to establish a debt relationship.<sup>4</sup>Settlement risk is the risk of a change in the value of the underlying instrument in a transaction that neither party has settled after the due delivery date.<sup>5</sup>Credit risk exposures shall be recognised according to the procedure for calculating the total capital charge for credit risk pursuant to section 8.

(3) <sup>1</sup>Foreign exchange risk exposures are claims or obligations, including equity positions, in foreign currency and in gold as well as cash holdings in foreign currency and gold holdings.<sup>2</sup>The overall currency position is to be derived from the foreign exchange risk exposures pursuant to sections 294 and 295 and the capital charge for this calculated.<sup>3</sup>Positions in gold and foreign currency up to a total value of 128,000 euro may be excluded from the overall currency position.<sup>4</sup>If the threshold pursuant to sentence 3 is exceeded, the full amount of gold and foreign currency positions shall be included in the overall currency position.

(4) <sup>1</sup>Foreign exchange risk exposures which are deducted from tier 1 or liable capital pursuant to section 10 (2a) sentence 2 or (6) of the Banking Act or are fully backed by liable capital, as well as equity positions, including shares in affiliated undertakings recorded in foreign currency which are valued at historical costs (structural currency positions), may be excluded when calculating the overall currency position pursuant to subsection (3) sentence 2 at the institution's request and subject to BaFin's prior permission.<sup>2</sup>Permission shall be deemed to have been given if the institution communicates the respective positions to BaFin with its application pursuant to sentence 1 and BaFin does not contradict this within three months.<sup>3</sup>Any changes to the positions to be excluded are to be notified to BaFin.<sup>4</sup>The amount of the excluded positions shall be noted in reports number 30 and number 63 pursuant to section 6 (1) sentences 1 and 2.

(5) <sup>1</sup>Commodity risk exposures are claims or obligations in respect of commodities and stocks of commodities.<sup>2</sup>The commodities position is to be derived from the commodity risk exposures pursuant to sections 296 and 297 and the capital charge for this calculated.<sup>3</sup>Positions in silver and platinum up to a total value of 26,000 euro may be excluded from the commodities position.<sup>4</sup>If the threshold pursuant to sentence 3 is exceeded, the full amount of silver and platinum positions shall be included in the commodities position.

(6) <sup>1</sup>Trading book risk exposures are the interest rate and equity price-related risk exposures

in a trading book institution's trading book. <sup>2</sup>The capital charge for trading book risk exposures is to be calculated pursuant to sections 298 to 307 from the sum of the partial capital charges for general and specific position risk.

(7) <sup>1</sup>Other market risk exposures are contractual claims and obligations which create a financial asset for one contracting party and a financial liability for the other contracting party and which are not captured pursuant to subsections (2) to (6). <sup>2</sup>The capital charge for other market risk exposures is to be calculated pursuant to section 312.

(8) Two or more natural or legal persons or partnerships shall generally be deemed to constitute a group of connected clients if, taking their legal and actual situation into account, they are linked in such a way that payment difficulties of one of the persons would make it difficult for the other or others to fully meet their payment obligations to the institution regarding the credit granted. If one of the persons described in sentence 1 can exercise a direct or indirect dominant influence on one or more persons, the institution may refrain from treating them as a group of connected clients pursuant to sentence 1 only in substantiated cases.

## **Section 5**

### Positions denominated in foreign currency

(1) <sup>1</sup>A position denominated in a foreign currency shall be converted to euro at the reference rate calculated by the European Central Bank on the reporting date and published by the Deutsche Bundesbank (euro reference rate). <sup>2</sup>Instead of the euro reference rate on the reporting date, institutions may use the exchange rate obtaining at the time when the positions were first entered in its books for equity positions, including shares in affiliated enterprises, which are not treated as part of its overall currency position pursuant to section 4 (4) sentences 1 and 2. <sup>3</sup>When converting currencies for which no euro reference rate is published, the middle rates derived from ascertainable buying and selling rates quoted on the respective reporting day shall be applied.

(2) Subsection (1) does not apply to institutions which use internal risk measurement models pursuant to sections 313 to 318 and which apply their internal foreign currency conversion rates used in these models consistently to all positions denominated in foreign currency.

## **Section 6**

### Capital adequacy reports

(1) <sup>1</sup>Institutions shall submit to the Deutsche Bundesbank reports on the requirements pursuant to section 2 (2) to (4) and (6), giving the status on the reporting date at the end of a

calendar quarter, using the templates pursuant to Annex 3 numbers 1 to 33 each by the 15th working day of the month following the reporting date; BaFin may extend the deadline at the institution's request. <sup>2</sup>Superordinated institutions are required to submit to the Deutsche Bundesbank reports on the requirements pursuant to section 3, giving the status on the reporting date at the end of a calendar quarter, using the templates pursuant to Annex 3 numbers 34 to 67, each by the last working day of the month following the reporting date; BaFin may extend the deadline at the institution's request. <sup>3</sup>Sentence 1 applies to housing enterprises with savings facilities, subject to the proviso that the reports are to be submitted only once a year, giving the status on the reporting date at the end of a calendar year and solely using the template pursuant to Annex 3 number 1, not later than the last working day of the calendar quarter following the reporting date.

(2) <sup>1</sup>The reports pursuant to subsection (1) are to be submitted electronically. <sup>2</sup>The Deutsche Bundesbank will publish the record formats to be used for electronic data submission and the submission procedure on its website. <sup>3</sup>It will forward the reports to BaFin. <sup>4</sup>Institutions shall store the reports pursuant to Annex 3 numbers 1 to 33, and superordinated institutions additionally the reports pursuant to Annex 3 numbers 34 to 67, for the current calendar year and the two preceding calendar years. <sup>5</sup>Institutions must store the market price data for the information pursuant to Annex 3 for the last reporting date, the reporting dates of the past 24 months and for the current reporting period and make them available to BaFin or the Deutsche Bundesbank upon request. <sup>6</sup>If the overall capital ratio pursuant to section 2 (6) sentence 2 falls below the value of 8.4 per cent, institutions shall additionally store the relevant market data and the calculations pursuant to this Regulation for the last 30 trading days. <sup>7</sup>Both BaFin and the Deutsche Bundesbank may require the information pursuant to sentences 5 and 6 to be submitted at the latest within 15 working days.

## Section 7

### Reporting non-compliance with the capital requirements

(1) <sup>1</sup>Institutions must promptly report in writing

1. any non-compliance with the capital requirements pursuant to section 2 (2) and
2. any non-compliance with the own funds requirements pursuant to section 2 (3)

between the reporting dates to BaFin and the Deutsche Bundesbank. <sup>2</sup>The report pursuant to sentence 1 must, in each case, contain the amount by which the capital or own funds fall short of the requirements.

(2) <sup>1</sup>Financial services institutions that do not trade in financial instruments for their own account must notify non-compliance with the requirement pursuant to section 2 (4) between the reporting dates to BaFin and the Deutsche Bundesbank promptly in writing. <sup>2</sup>Subsection

(1) sentence 2 applies *mutatis mutandis*.

(3) The reporting requirements pursuant to subsection (1) apply *mutatis mutandis* to superordinated enterprises of a group of institutions or a financial holding group.

## Part 2

### Credit risk

#### Section 8

##### Calculating the total capital charge for credit risk

(1) <sup>1</sup>The total capital charge for credit risk is calculated by identifying the CCR exposures among all credit risk exposures excluding settlement risk exposures and recognising them either according to the CRSA or the IRBA. <sup>2</sup>Only an IRBA institution may recognise CCR exposures according to IRBA. <sup>3</sup>An institution that is not an IRBA institution shall recognise all CCR exposures according to CRSA.

(2) <sup>1</sup>The total capital charge for credit risk is the sum, multiplied by 0.08, of

1. the risk-weighted CRSA exposure amounts or risk-weighted IRBA exposure amounts calculated for all
  - a) CRSA positions pursuant to section 24 sentence 1 and
  - b) IRBA positions pursuant to section 71 (1),which are not securitisation positions, and
2. the risk-weighted exposure amount for securitisation positions pursuant to sections 225 to 268.

<sup>2</sup>Trading book institutions shall increase their total capital charge for credit risk by the total capital charge for settlement risk pursuant to section 16.

# Chapter 1

## Risk exposures

### Section 9

#### Counterparty credit risk exposures

(1) <sup>1</sup>CCR exposures comprise the

1. balance sheet CCR exposures pursuant to section 10,
2. derivative CCR exposures pursuant to section 11,
3. off-balance sheet CCR exposures pursuant to section 13 and
4. free delivery exposures pursuant to section 14;

this also applies where they are deemed to be effectively securitised pursuant to subsection (2). <sup>2</sup>Several CCR exposures can arise from a single transactions. <sup>3</sup>Securities or commodities transferred under repurchase agreements or lent under lending agreements are to be assigned to the transferor or lender regardless of how they are shown on the balance sheet. <sup>4</sup>For a credit linked note for which the institution is the protection seller, both the CCR exposure to the issuer of the credit linked note and the CCR exposure to the reference asset or the reference portfolio are to be recognised.

(2) <sup>1</sup>A CCR exposure is deemed to be effectively securitised if it belongs to a portfolio securitised by a securitisation transaction pursuant to section 1b (6) of the Banking Act for which the institution is deemed to be an originator pursuant to section 1b (7) of the Banking Act and for which it meets the minimum requirements for material and effective risk transfer pursuant to section 232. <sup>2</sup>If the securitisation transaction pursuant to sentence 1 is a securitisation transaction which includes an investor's interest in securitisation transactions to be recognised by the originator, CCR exposures assigned to the dedicated portfolio are deemed to be effectively securitised provided they

1. are recognised as revolving CCR exposures in the CRSA assessment basis pursuant to section 248 or in the IRBA assessment basis pursuant to section 262 sentence 2 of the investor's interest in securitisation transactions to be recognised by the originator, or
2. are not recognised in the assessment basis of the investor's interest in securitisation transactions to be recognised by the originator and give rise to payment claims which are junior to those from CCR exposures pursuant to number 1.

## Section 10

### Balance sheet counterparty credit risk exposures

Balance sheet CCR exposures include

1. asset items within the meaning of section 19 (1) sentence 2 numbers 1 to 9 of the Banking Act, with the exception of securities or commodities on the balance sheets of the transferee or borrower or in the case of repurchase and lending agreements relating thereto,
2. tangible assets and other assets,
3. prepaid expenses if they are not counterparts of debt issued below nominal value and are included on the liabilities side at their nominal value, and
4. in the case of housing enterprises with savings facilities, current asset positions regarding properties and other inventories earmarked for sale, with the exception of work in progress relating to operating costs not yet invoiced to the tenants.

## Section 11

### Derivative counterparty credit risk exposures

(1) <sup>1</sup>Derivative CCR exposures include

1. derivatives pursuant to section 19 (1a) of the Banking Act, with the exception of
  - a) those derivative instruments for transferring credit risk in which the institution is the protection provider and is required to recognise this derivative instrument as an off-balance sheet CCR exposure, or for which the institution is a protection buyer and recognises this derivative instrument as eligible unfunded credit protection when calculating the risk-weighted exposure amount of another CCR exposure, as well as
  - b) option writers' obligations under options

which have not evolved into a novation position from an eligible contract for novation pursuant to subsection (2), and
2. a novation position from an eligible contract for novation pursuant to subsection (2).

<sup>2</sup>Notwithstanding sentence 1 number 1 letter (a) second alternative, an institution may consistently recognise all named derivatives included in the trading book and consistently recognise all named derivatives included in the banking book as derivative CCR exposures.

(2) <sup>1</sup>A novation position from an eligible contract for novation is any claim or obligation

which results in connection with an eligible netting agreement concerning derivatives from a single debt relationship pursuant to sections 206 and 207. <sup>2</sup>A contract for novation is any amendment, netting or debt rescheduling contract in which the debt relationship arising from a derivative is restructured so as to eliminate the resultant claims and obligations either in whole or in part.

(3) A long settlement transaction is a derivative CCR exposure pursuant to subsection (1) which is constituted by a transaction in which

1. one counterparty has assumed an obligation to deliver or receive a security, a commodity or an amount in foreign currency against cash, other financial instruments or other commodities, and
2. the number of days between the conclusion of the transaction and the contractually calculated delivery or settlement date is more than the minimum of five working days and the customary number of working days for this type of transaction.

## **Section 12**

### Netting positions

(1) A netting position comprising derivatives is the position that is constituted by all claims and obligations from derivatives which are covered by an eligible netting agreement concerning derivatives pursuant to section 207.

(2) A netting position comprising monetary claims and debts is the position that is constituted by all monetary claims and debts which are covered by an eligible netting agreement concerning monetary claims and debts pursuant to section 208.

(3) A netting position comprising non-derivative transactions with remargining is the position which is constituted by

1. all lent, sold or pledged securities and commodities as well as lent or pledged monetary amounts and
2. all borrowed, purchased or received securities and commodities as well as borrowed or received monetary amounts

which are covered by an eligible netting agreement concerning non-derivative transactions with remargining pursuant to section 209.

(4) A cross-product netting position is the position that is constituted by all claims and obligations which are covered by an eligible cross-product netting agreement pursuant to section 210 and which, in addition, includes all financial collateral that the institution has

either posted or, if eligible pursuant to section 154 (1) sentence 1 number 1, received in connection with this netting agreement.

(5) No separate risk-weighted exposure amounts have to be recognised for CCR exposures included in eligible netting positions.

### **Section 13**

#### Off-balance sheet counterparty credit risk exposures

(1) Off-balance sheet CCR exposures include

1. off-balance sheet transactions within the meaning of section 19 (1) sentence 3 of the Banking Act,
2. credit default swaps which are embedded in credit derivatives in the form of credit linked notes which at the same time represent balance sheet CCR exposures,
3. forward purchases and option writers' obligations from put options if the underlying would constitute a balance sheet CCR exposure pursuant to section 10 assuming actual delivery or receipt,
4. unpaid portions of securities which have partly been paid in,
5. documentary credits issued and confirmed in which the underlying shipment acts as the collateral,
6. in the case of an IRBA institution, derivatives pursuant to section 19 (1a) of the Banking Act not included under number 3 of equity positions which are not exempted from using IRBA pursuant to either section 70 sentence 1 numbers 2, 8 or 9 or pursuant to section 338 (4),

including CCR exposures from securitisation liquidity facilities pursuant to section 1b (3) sentence 3 of the Banking Act and the investor's interest in securitisation transactions to be recognised by the originator pursuant to section 245 (2).

(2) Transactions which are derivative CCR exposures pursuant to section 11 and which form part of off-balance sheet CCR exposures pursuant to subsection (1) numbers 1 to 6 constitute both a derivative CCR exposure and an off-balance sheet CCR exposure.

**Section 14**

## Free delivery risk exposures

(1) For a trading book institution, a free delivery risk exposure is any claim from a transaction assigned to the trading book

1. in which the institution

a) has paid for securities, foreign currency or commodities and has not yet received these, or

b) has delivered securities, foreign currency or commodities and has not yet been paid for these,

2. in which more than one working day has elapsed since payment or delivery by the institution if the transaction is a cross-border transaction, and

3. if, pursuant to section 10 (6a) number 4 of the Banking Act, no deduction from tier 1 or tier 2 capital is necessary.

(2) Free deliveries created by system-wide failures of settlement or netting systems may, upon application and subject to BaFin's permission, be disregarded until the functional ability of the systems has been restored.

**Section 15**

## Settlement risk exposures

(1) For a trading book institution, a settlement risk exposure is any claim to delivery or receipt of securities, foreign currency or commodities from a transaction assigned to the trading book which is not a repurchase, lending or comparable transaction in securities or commodities if the claim to delivery or receipt has not been fulfilled by both parties once the delivery or receipt deadline agreed for this transaction has elapsed.

(2) Settlement risk exposures created by system-wide failures of settlement and netting systems may, upon application and subject to BaFin's permission, be disregarded until the functional ability of the systems has been restored.

**Section 16**

## Total capital charge for settlement risk

<sup>1</sup>The total capital charge for settlement risk is the sum of the capital charges for all settlement risk exposures. <sup>2</sup>These are calculated from the differences, in the institution's favour, between

each respective agreed settlement price and the current market value of the underlying securities, foreign currencies or commodities, which are to be multiplied by

1. 8 per cent from the 5th up to and including the 15th working day,
2. 50 per cent from the 16th up to and including the 30th working day,
3. 75 per cent from the 31st up to and including the 45th working day, and
4. 100 per cent from the 46th working day

following the agreed settlement date.

## **Chapter 2**

### **Assessment basis for derivative counterparty credit risk exposures and counterparty credit risk exposures from non-derivative transactions with remargining or other repurchase, lending or comparable transactions involving securities or commodities**

#### **Section 17**

Assessment basis for derivative counterparty credit risk exposures and counterparty credit risk exposures from non-derivative transactions with remargining or other repurchase, lending or comparable transactions involving securities or commodities

(1) <sup>1</sup>The assessment basis for a derivative CCR exposure shall be calculated, at the institution's discretion and on a consistent and permanent basis, using

1. the Internal Model Method (IMM) pursuant to section 223 subject to BaFin's permission,
2. the Standardised Method (SM) pursuant to section 218, or
3. the marking-to-market method pursuant to section 18.

<sup>2</sup>The institution may vary its consistent and permanent choice for individual enterprises belonging to a group. <sup>3</sup>For a long settlement transaction pursuant to section 11 (3), the institution may, notwithstanding the method chosen pursuant to sentence 1, use one of the other methods described in sentence 1. <sup>4</sup>An institution using SM or IMM to calculate net assessment bases pursuant to section 211 or IMM to calculate net assessment bases pursuant to section 217 for cross-product netting agreements which include derivatives pursuant to section 210 (1) sentence 2 shall also use the respective method to calculate all assessment bases for derivative CCR exposures not included in such netting positions. <sup>5</sup>Positions pursuant

to section 220 (4) and section 222 (3) and (4) are exempted from this rule. <sup>6</sup>Notwithstanding sentence 1 and subject to the proviso of sentence 7, a non-trading book institution may calculate the assessment basis for derivative CCR exposures, at the institution's discretion and on a consistent basis, using the maturity-based replacement cost pursuant to section 23 (original exposure method) if the replacement cost is not based on changes in the prices of equities, commodities, precious metals other than gold or other transactions not relating to interest rates, currency or gold prices. <sup>7</sup>When using the original exposure method, institutions may vary their choice for particular and unambiguously defined segments. <sup>8</sup>Segments may be defined according to various financial instruments or differently defined organisational areas of the institution. <sup>9</sup>The institution may switch at any time from the original exposure method to one of the methods listed in sentence 1, in the case of IMM subject to BaFin's permission.

(2) <sup>1</sup>The assessment basis for CCR exposures from non-derivative transactions with remargining as well as from other repurchase, lending or comparable transactions concerning securities or commodities may be calculated according to IMM pursuant to section 223 subject to the proviso of section 222 (3), at the institution's discretion and on a consistent and permanent basis, and subject to BaFin's prior permission. <sup>2</sup>An institution that uses IMM to calculate net assessment bases pursuant to section 215 or 217 shall also use IMM to calculate all assessment bases for CCR exposures from non-derivative transactions with remargining as well as from other repurchase, lending or comparable transactions concerning securities or commodities.

(3) Non-derivative transactions with remargining are transactions in which

1. the CCR exposures incurred by the transactions do not constitute derivative CCR exposures pursuant to section 11 (1) and
2. the CCR exposures or dilution risk exposures pursuant to section 71 (2) constituted by these transactions are protected by collateral and
3. the institution is contractually entitled to demand remargining given corresponding changes in the market values of the transactions.

## **Section 18**

### Market price-based replacement cost

The market price-based replacement cost is

1. the current potential replacement cost pursuant to section 19 plus
2. the expected future increase in the current potential replacement cost pursuant to section 20 unless it is a single-currency floating-floating interest rate swap.

## Section 19

### Current potential replacement cost

The current potential replacement cost is the higher of zero and the current market value of the derivative.

## Section 20

### Expected future increase in the current potential replacement cost

(1) <sup>1</sup>The expected future increase in the current potential replacement cost is the product of the market price-based claim from the derivative pursuant to section 21 and the volatility rate resulting from Table 1 of Annex 1 in accordance with the transaction's relevant maturity pursuant to section 22. <sup>2</sup>If the replacement cost for the transaction is based on the volatility of prices in several categories, the transaction is to be assigned to the category with the highest volatility rate pursuant to Table 1 of Annex 1.

(2) <sup>1</sup>For each derivative CCR exposure which is incurred by a credit derivative in the form of a total return swap or credit default swap, the expected future increase in the current potential replacement cost is the product of the nominal amount of this credit derivative and

1. 0 per cent if the credit derivative is a credit default swap, the institution is a protection seller under the credit derivative and – even in the event that the protection buyer under the credit derivative defaults – only has to render payment to the protection buyer if the reference unit has defaulted,
2. 5 per cent if the reference liability of the credit derivative, as the institution's trading book risk exposure, constitutes a qualified item pursuant to section 303 (3),
3. otherwise, 10 per cent.

<sup>2</sup>For a credit derivative that can be drawn on as soon as a credit event has occurred for the  $n^{\text{th}}$  time for a majority of given counterparties (basket), thus terminating the contract, the percentage to be applied in sentence 1 is

1. 10 per cent if the basket contains at least  $n$  reference liabilities which, as trading book risk exposures of the institution, would not constitute qualified items,
2. otherwise, 5 per cent.

<sup>3</sup>The expected future increase in the current potential replacement cost for credit default swaps for which the institution is the protection provider and which do not fall under sentence 1 number 1 is limited to the premiums not yet paid by the entity to the institution.

**Section 21**

## Market price-based claim from a derivative

The market price-based claim from a derivative is, in the case of

1. swaps and unfunded credit protection provided in connection therewith: the effective principal amount or, in the absence of such principal amount, the current market value of the underlying instrument,
2. futures contracts or options and unfunded credit protection provided in connection therewith: the institution's claim to the delivery or receipt of the underlying instrument, on the assumption that the underlying instrument is actually delivered or received, converted at the current market price.

**Section 22**

## Relevant maturity for the replacement cost

The relevant maturity for a transaction's replacement cost is, for each transaction which constitutes a derivative CCR exposure,

1. the maturity of the underlying instrument in the case of derivatives concerning underlying instruments that have a given time to maturity,
2. the period remaining until the next interest rate adjustment date in the case of derivatives concerning variable-yield securities and single-currency floating-floating interest rate swaps,
3. otherwise, the maturity of the derivative.

**Section 23**

## Maturity-based replacement cost

The maturity-based replacement cost for a derivative CCR exposure is the product of the market price-based claim from the derivative and the volatility rate resulting from Table 2 of Annex 1 in accordance with the transaction's relevant maturity.

## **Chapter 3**

### **Credit Risk Standardised Approach (CRSA)**

#### **Section 24**

##### Calculating risk-weighted CRSA exposure amounts

<sup>1</sup>To calculate risk-weighted CRSA exposure amounts, a credit institution shall assign all CCR exposures to be included under the CRSA pursuant to section 9 and netting exposures pursuant to section 12 (CRSA exposures) to the CRSA exposure classes. <sup>2</sup>For each CRSA exposure that is not a CRSA securitisation position, the risk-weighted CRSA exposure amount shall be calculated as the product of its CRSA risk weight pursuant to sections 26 to 40 and its CRSA exposure value pursuant to sections 48 to 51. <sup>3</sup>The risk-weighted CRSA exposure amount of each CRSA securitisation position shall be calculated pursuant to section 240.

#### **Section 25**

##### Assigning CRSA exposures to CRSA exposure classes

(1) <sup>1</sup>Each CRSA exposure shall be assigned to one of the following CRSA exposure classes:

1. central governments,
2. regional governments and local authorities,
3. other public-sector entities,
4. multilateral development banks,
5. international organisations,
6. institutions,
7. covered bonds issued by credit institutions,
8. corporates,
9. retail business,
10. exposures secured by real estate property,
11. exposures in the form of collective investment undertakings (CIU),
12. equity exposures,

13. securitisation positions,

14. other items,

15. past due items.

<sup>2</sup>Off-balance sheet CCR exposures shall be assigned to the CRSA exposure class of the assets in question and not that of the counterparty.

(2) A CRSA exposure shall be assigned to the CRSA exposure class Central governments if it is to

1. the Federal Republic of Germany, the Deutsche Bundesbank or a legally dependent special fund of the Federal Republic of Germany,
2. a foreign central government or central bank or
3. the European Central Bank.

(3) A CRSA exposure shall be assigned to the CRSA exposure class Regional governments and local authorities if it is to

1. a domestic state government (*Land*),
2. a domestic local government,
3. a domestic local government association,
4. a legally dependent special fund (*Sondervermögen*) of one of the government authorities specified under numbers 1 to 3,
5. a foreign regional government or local authority or
6. a church or religious community with the legal form of a public-law corporation (*Körperschaft des öffentlichen Rechts*) and which levies taxes or shares in the tax revenue of tax-levying church corporations at public law, pursuant to article 140 of the Basic Law (*Grundgesetz*) in conjunction with article 137 (6) of the Weimar Imperial Constitution (*Weimarer Reichsverfassung*) of 11 August 1919 (Imperial Gazette, *Reichsgesetzblatt*, page 1383).

(4) A CRSA exposure shall be assigned to the CRSA exposure class Other public-sector entities if it is to an administrative body or non-commercial undertaking, including public-sector bodies pursuant to section 1 (30) of the Banking Act.

(5) A CRSA exposure shall be assigned to the CRSA exposure class Multilateral development banks if it is to a multilateral development bank pursuant to section 1 (27) of the Banking Act.

(6) A CRSA exposure shall be assigned to the CRSA exposure class International organisations if it is to an international organisation pursuant to section 1 (28) of the Banking Act.

(7) A CRSA exposure shall be assigned to the CRSA exposure class Institutions if it is to

1. an institution falling under this Regulation or which would do so had it not been exempted pursuant to section 2a of the Banking Act from the application of section 10 of the Banking Act,
2. an institution within the meaning of article 3 (1) letter (c) of Directive 2006/49/EC domiciled in another EEA state and which is supervised on the basis of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (OJ L 177/1, 30 June 2006) as amended, or Directive 2006/49/EC,
3. a credit institution within the meaning of article 4 (1) of Directive 2006/48/EC domiciled in a non-EEA country and authorised in that country and subject to prudential requirements which are materially equivalent to that provided for by the Banking Act,
4. a financial institution within the meaning of article 4 (5) of Directive 2006/48/EC domiciled abroad that is authorised by the banking supervisory authority in the country of domicile and is subject to a prudential regime that is materially equivalent to that provided for by the Banking Act,
5. a recognised investment firm from a non-EEA country,
6. a central counterparty domiciled abroad or
7. a stock exchange or futures exchange.

(8) <sup>1</sup>Covered debt securities pursuant to section 20a of the Banking Act may be assigned to the CRSA exposure class Covered bonds issued by credit institutions. <sup>2</sup>Claims on a Pfandbriefbank pursuant to section 4 (3) of the Pfandbrief Act (Pfandbriefgesetz) may also be assigned to this CRSA exposure class provided these claims arise from derivative transactions which are used to cover Pfandbriefe pursuant to section 1 (1) sentence 2 numbers 1 to 4 of the Pfandbrief Act.

(9) A CRSA exposure shall be assigned to the CRSA exposure class Corporates if it is to an enterprise, another natural or legal person or partnership of natural persons and is not assignable to any other CRSA exposure class.

(10) <sup>1</sup>A CRSA exposure may be assigned to the CRSA exposure class Retail business if it is not a security and meets the following conditions:

1. it is an exposure to a natural person, a partnership of natural persons or a small or medium-sized enterprise,
2. it belongs to a large number of CRSA exposures with similar features so that the risk associated with it is materially lessened by diversification effects and
3. the aggregate amount owed by the obligor and the natural or legal persons or commercial partnerships constituting a group of connected clients with that obligor pursuant to section 4 (8) to the institution or group of institutions or financial holding group to which the institution belongs does not, to the institution's knowledge, exceed 1 million euro; the institution shall undertake all appropriate steps to acquire such knowledge.

<sup>2</sup>When calculating the ceiling pursuant to sentence 1 number 3, CCR exposures which are secured by mortgages on residential property may be disregarded.

(11) A CRSA exposure may be assigned to the CRSA exposure class Exposures secured by real estate property if it has a CRSA risk weight pursuant to section 35.

(12) <sup>1</sup>A CRSA exposure shall be assigned to the CRSA exposure class Exposures in the form of collective investment undertakings (CIU) if it arises from an exposure in the form of a CIU.

<sup>2</sup>An exposure in the form of a CIU within the meaning of sentence 1 is a share in an investment fund which

1. represents a pro-rata claim on the value of the investment fund which is left over after deducting loans and other obligations that have to be fulfilled from the invested assets and which, if further holders in the investment fund exist, is of equivalent rank with their claims, and
2. gives the shareholder the right to call in the claim listed in number 1, at least at certain times, by returning his share and to be satisfied from the investment fund without this triggering the calling-in of the relevant claims of other holders of shares in this investment fund.

<sup>3</sup>If the opportunity pursuant to sentence 1 number 2 of calling in the claim pursuant to sentence 1 number 1 exists only in as much as the residual value of the investment fund does not fall below a certain amount, and the shareholder also does not have the opportunity to dissolve, in a timely manner, the investment fund by distributing it pro rata to the shareholders if this amount is undershot, the share up to this amount, but not in excess of the total invested amount, is regarded not as an exposure in the form of a CIU but as a junior residual claim on the investment fund.

(13) <sup>1</sup>A CRSA exposure shall be assigned to the CRSA exposure class Equity exposures if

1. it is not a credit risk exposure constituted by a payment claim and constitutes a junior residual claim on the assets or income of an issuer, or
2. it is a credit risk exposure constituted by a payment claim which, owing to its legal construction or actual circumstances, gives rise to an economic substance comparable to that of a risk exposure pursuant to number 1.

<sup>2</sup>Notwithstanding sentence 1, an institution may assign equity holdings in undertakings offering ancillary services to the CRSA exposure class Other items.

(14) A CRSA securitisation position pursuant to section 227 (3) shall be assigned to the CRSA exposure class Securitisation positions.

(15) The following CRSA exposures shall be assigned to the CRSA exposure class Other items:

1. tangible assets,
2. prepayments and accrued income for which the institution is unable to determine an obligor,
3. cash items in the process of collection for which corresponding payment was already advanced,
4. gold bullion,
5. credit derivatives for which the institution is a protection seller and which can trigger payment as soon as the n<sup>th</sup> default amongst the exposures occurs, terminating the contract, if all such exposures in the basket, as CCR exposures of the institution, would be CRSA exposures,
6. the residual values of leased assets assumed at the end of the leasing agreement at the time the contract was drafted, unless
  - a) a sum has been fixed for the residual value which the lessee is or can be obliged to pay, or
  - b) the residual value is covered by a purchase option offering the lessee an incentive to exercise it,
7. equity holdings in undertakings offering ancillary services which the institution has not assigned to the CRSA exposure class Equity exposures, and
8. cash in hand and equivalent cash items.

(16) <sup>1</sup>A CRSA exposure shall be assigned to the exposure class Past due items if the

underlying payment claim is past due for more than 90 successive calendar days to the amount of 100 euro or more.<sup>2</sup>When assigning a CRSA exposure to this CRSA exposure class, an institution may instead of sentence 1 apply the provisions pursuant to section 125.<sup>3</sup>Sentences 1 and 2 do not apply to CRSA securitisation positions.

## **Division 1**

### **CRSA risk weights**

#### **Section 26**

##### **CRSA risk weights for central governments**

The CRSA risk weight for a CRSA exposure of the CRSA exposure class Central governments shall be calculated as follows.

1. If, notwithstanding numbers 2 to 4, a relevant credit assessment pursuant to section 43 is available from an external credit assessment institution (ECAI) or export credit agency nominated by an institution pursuant to section 41 and if the prerequisites for using credit assessments and country classifications for prudential purposes pursuant to section 42 have been met, the CRSA risk weight shall be calculated,
  - a) where the relevant credit assessment is from an ECAI, in accordance with the credit quality step to which the specific credit assessment of the nominated ECAI has been prudentially mapped according to Table 3 of Annex 1;
  - b) where the relevant credit assessment is a country classification of an export credit agency, in accordance with the minimum export insurance premiums for export credits specified in the Arrangement on Guidelines for Officially Supported Export Credits of the Organisation for Economic Co-operation and Development (OECD Arrangement; see Scheibe/Moltrecht/Kuhn, Garantien und Bürgschaften, Ausfuhrleistung des Bundes und Rechtsverfolgung im Ausland, 2<sup>nd</sup> edition, 2006, in German only) according to Table 4 of Annex 1.
2. If the exposure is to
  - a) the Federal Republic of Germany, a legally dependent special fund of the Federal Republic of Germany, the Deutsche Bundesbank or
  - b) a central government or a central bank of another EEA country

and if it is incurred and refinanced in the national currency of the country, a CRSA risk weight of 0 per cent may be applied.

3. If the CRSA exposure is to the European Central Bank, the CRSA risk weight shall be 0 per cent.
4. If the CRSA exposure is to a central government of a non-EEA country whose prudential regime is materially equivalent to that provided for by the Banking Act, and if it is incurred and refinanced in the national currency of that country, the risk weight applied in that country for the exposure in question may be adopted.
5. Otherwise the CRSA risk weight shall be 100 per cent.

### **Section 27**

#### CRSA risk weight for regional governments and local authorities

The CRSA risk weight for a CRSA exposure of the CRSA exposure class Regional governments and local authorities shall be calculated as follows:

1. If the exposure is to
  - a) a domestic state government, a legally dependent special fund of a domestic state government, a domestic local government, a domestic local government association or
  - b) a regional government or a local authority in another EEA country for which, because of the specific revenue-raising powers of the former, and the existence of specific institutional arrangements the effect of which is to reduce their risk of default, the risk of this exposure is no different from that of exposures to said country's central government, it shall be assigned the CRSA risk weight of the central government pursuant to section 26 under whose jurisdiction the obligor comes.
2. If the exposure is to a regional government or local authority in a non-EEA country whose prudential regime is materially equivalent to that provided for by the Banking Act, and if the CRSA exposure is treated in that country like an exposure to the central government, the risk weight applied in that country may be adopted.
3. If the exposure is to a regional government or a local authority in an EEA country and is denominated and funded in the domestic currency of that regional government or local authority, it may be assigned a CRSA risk weight of 20 per cent.
4. Otherwise the exposure shall be risk-weighted in accordance with the rules for institutions pursuant to section 31; section 31 number 4 does not apply.

**Section 28**

## CRSA risk weight for other public-sector entities

The CRSA risk weight for a CRSA exposure of the CRSA exposure class Other public-sector entities shall be calculated as follows.

1. If it is a CRSA exposure to a public-sector entity pursuant to section 1 (30) of the German Banking Act or a self-administered body subject to public supervision which is also operated by the Federal Republic of Germany and for the settlement of whose payment obligations the Federal Republic of Germany has assumed liability equivalent to an explicit guarantee, or which is a legally independent promotional institution in the legal form of a Federal agency (*bundesunmittelbare Anstalt*), it shall be assigned the same risk weight as the Federal Republic of Germany pursuant to section 26.
2. If it is a CRSA exposure to
  - a) a domestic non-commercial legal person under public law which is operated by the Federal Republic of Germany, a domestic state government, a domestic local government, a domestic local government association, or
  - b) a domestic non-commercial enterprise wholly owned by one or more of the government entities specified in (a),it shall be risk-weighted in accordance with the rules for institutions pursuant to section 31; section 31 number 4 does not apply.
3. If it is a CRSA exposure
  - a) to a public-sector entity domiciled in an EEA country or domiciled in a non-EEA country whose prudential regime is materially equivalent to that provided for by the Banking Act, and
  - b) which in that country is treated like an exposure to institutions or the central government of that country,the risk weight applied in that country may be adopted.
4. Otherwise the CRSA risk weight shall be 100 per cent.

**Section 29**

## CRSA risk weight for multilateral development banks

The CRSA risk weight for a CRSA exposure of the CRSA exposure class Multilateral development banks shall be calculated as follows.

1. If it is an exposure to one of the development banks specified in section 1 (27) numbers 1 to 12 of the Banking Act, the CRSA risk weight shall be 0 per cent.
2. For not yet fully paid up capital shares in a multilateral development bank pursuant to section 1 (27) number 12 of the Banking Act, the CRSA risk weight shall be 20 per cent.
3. If, notwithstanding numbers 1 and 2, a relevant credit assessment pursuant to section 43 is available from an ECAI nominated by the institution pursuant to section 41 and if the prerequisites for using credit assessments for prudential purposes pursuant to section 42 have been met, the CRSA risk weight shall be calculated according to the credit quality step to which the specific credit assessment of the nominated ECAI has been prudentially mapped according to Table 5 of Annex 1.
4. Otherwise the CRSA risk weight shall be 50 per cent.

**Section 30**

## CRSA risk weight for international organisations

The CRSA risk weight for a CRSA exposure of the CRSA exposure class International organisations shall be 0 per cent.

**Section 31**

## CRSA risk weight for institutions

The CRSA risk weight for a CRSA exposure of the CRSA exposure class Institutions shall be calculated as follows.

1. If it is a CRSA exposure to a promotional institution that operates non-competitively and is domiciled in Germany and is exclusively operated by one or more of the government authorities specified in section 27 number 1 (a) and whose payment obligations enjoy a declaration of liability equivalent to an explicit guarantee from one or more of the operating authorities, it shall be assigned the CRSA risk weight of the operating authorities.

2. If the central government of the country in which the institution is domiciled has a relevant credit assessment pursuant to section 43 from an ECAI or an export credit agency nominated by the institution pursuant to section 41 and if the prerequisites for using credit assessments and country classifications for prudential purposes pursuant to section 42 have been met, the CRSA risk weight shall be calculated, subject to numbers 3 to 5,
  - a) where the relevant credit assessment is from an ECAI, in accordance with the credit assessment of the central government of the country of domicile and the credit quality step to which the specific credit assessment of the nominated ECAI has been prudentially mapped according to Table 6 of Annex 1;
  - b) where the relevant credit assessment is a country classification of an export credit agency, in accordance with the country classification of the central government of the country of domicile and the minimum export insurance premiums for export credits specified in the OECD Arrangement according to Table 6 of Annex 1.
3. If it is a CRSA exposure which is allocated to an institution's own funds, the CRSA risk weight shall be 100 per cent.
4. If it is a CRSA exposure which has a residual maturity of not more than three months and is incurred and refinanced in the obligor's national currency, it may, subject to numbers 3 and 5, be assigned the CRSA risk weight, raised by one step, applicable to the central government pursuant to section 26 number 2 or section 26 number 4 of the country in which the obligor is domiciled.
5. If it is a CRSA exposure which has an original maturity of not more than three months, the CRSA risk weight shall be 20 per cent.
6. Otherwise the CRSA risk weight shall be 100 per cent.

### **Section 32**

#### **CRSA risk weight for covered bonds issued by credit institutions**

The CRSA risk weight for a CRSA exposure of the CRSA exposure class Covered bonds issued by credit institutions shall be calculated in accordance with Table 7 of Annex 1 depending on the CRSA risk weight pursuant to section 31 numbers 2 or 6 for exposures to the issuing credit institution.

**Section 33**

## CRSA risk weight for corporates

The CRSA risk weight for a CRSA exposure of the CRSA exposure class Corporates shall be calculated as follows.

1. If a relevant credit assessment pursuant to section 43 is available from an ECAI nominated by the institution pursuant to section 41 and if the prerequisites for using credit assessments for prudential purposes pursuant to section 42 have been met, the CRSA risk weight shall be calculated according to the credit quality step to which the specific credit assessment of the nominated ECAI has been prudentially mapped,
  - a) for CRSA exposures for which a relevant credit assessment for short-term risk exposures is available, according to Table 8 of Annex 1,
  - b) otherwise according to Table 9 of Annex 1.
2. In all other cases the CRSA risk weight shall be the greater of 100 per cent or the CRSA risk weight pursuant to section 26 for the central government of the country in which the obligor is domiciled.

**Section 34**

## CRSA risk weight for retail business

The CRSA risk weight for a CRSA exposure of the CRSA exposure class Retail business shall be 75 per cent.

**Section 35**

## CRSA risk weight for exposures secured by real estate property

(1) <sup>1</sup>The CRSA risk weight for a CRSA exposure of the CRSA exposure class Exposures secured by real estate property shall be:

1. 35 per cent where an exposure is fully and completely secured by mortgages on residential real estate property which is or will be occupied or let by the owner and if the prerequisites specified in subsection (2) have been met,
2. 50 per cent where an exposure is fully and completely secured by mortgages on commercial real estate property within Germany or in the territory of another EEA country which has chosen the option pursuant to Annex VI, part 1, 51 of Directive 2006/48/EC, and if the prerequisites specified in subsection (3) have been met,

3. 50 per cent, applicable at an institution's discretion and on a consistent basis, for all of the following exposures of building and loan associations (*Bausparkassen*) to contract holders:
  - a) building loans from drawdowns on contracts, including lendings pursuant to number 1, and
  - b) prefinancing and bridging loans in connection with payments made by building and loan associations in respect of saving-and-loan contracts,

if at least 60 per cent of these loans are granted in compliance with the mortgage lending value ceilings pursuant to section 7 (1) sentence 3 of the Building and Loan Associations Act (*Gesetz über Bausparkassen*) and are secured by mortgages on real estate property.

<sup>2</sup>Sentence 1 number 1 applies *mutatis mutandis* to CRSA exposures from leasing residential real estate property for which an institution is the lessor and remains the owner of the leased asset until the tenant exercises its purchase option. <sup>3</sup>Sentence 1 number 2 applies *mutatis mutandis* to CRSA exposures from leasing commercial real estate property for which an institution is the lessor and remains the owner of the leased asset until the tenant exercises its purchase option, provided that in the case of leased assets which are located in the territory of another EEA country, that country has chosen the option pursuant to Annex VI, part 1, 53 of Directive 2006/48/EC. <sup>4</sup>A CRSA exposure shall be deemed fully and completely secured by mortgages if its CRSA assessment basis pursuant to section 49 (2) does not exceed the following limits.

1. In the case of a mortgage on residential real estate property, 60 per cent of the mortgage lending value of the residential property pursuant to section 16 (2) sentences 1 to 3 of the Pfandbrief Act in conjunction with the Regulation on calculating the mortgage lending value (*Beleihungswertermittlungsverordnung*) of 12 May 2006 (Federal Gazette I, page 1175) or of a continuously measurable figure obtained by other means which meets the requirements of section 16 (2) sentences 1 to 3 of the Pfandbrief Act, or, if the residential real estate property is located in another EEA country, the upper limit set by the competent authorities in that country for full collateralisation by residential real estate property.
2. In the case of a mortgage on commercial real estate property
  - a) the lower of 50 per cent of the market value or 60 per cent of the mortgage lending value of the commercial real estate property pursuant to section 16 (2) sentences 1 to 3 of the Pfandbrief Act in conjunction with the Regulation on calculating the mortgage lending value of 12 May 2006 (Federal Gazette I, page 1175) or of a continuously measurable figure obtained by other means which meets the requirements of section 16 (2) sentences 1 to 3 of the Pfandbrief Act or, if the commercial real estate property is located

in an EEA country which has comparably stringent statutory or prudential rules for calculating the mortgage lending value, the lower of 50 per cent of the market value or 60 per cent of the mortgage lending value calculated according to the rules valid in that country,

b) otherwise 50 per cent of the market value of the commercial real estate property.

<sup>5</sup>If the option pursuant to subsection (1) sentence 1 number 3 is exercised, the further recognition of credit protection instruments pursuant to section 154 (1) is hereby excluded for the CRSA exposures to which the option applies. <sup>6</sup>For the purposes of this Regulation, real estate used for agricultural purposes pursuant to section 22 of the Regulation on calculating the mortgage lending value shall be equated to commercial real estate property.

(2) <sup>1</sup>The prerequisites for applying subsection (1) sentence 1 numbers 1 and 3 are that

1. the value of the real estate property does not materially depend upon the credit quality of the obligor of the exposure,
2. the institution complies with the requirements pursuant to section 20a (4) to (8) of the Banking Act and pursuant to section 172, for this purpose the mortgage lending value calculated according to the rules for calculating mortgage lending values pursuant to section 7 (7) of the Building and Loan Associations Act, while observing a provision approved by BaFin pursuant to section 5 (2) number 3 of the Building and Loan Associations Act, is equivalent to a mortgage lending value pursuant to section 16 (2) sentences 1 to 3 of the Pfandbrief Act,
3. the mortgage covers all obligor payment obligations from the CRSA exposure secured by mortgage, and
4. for real estate property located outside Germany, the obligor's solvency
  - a) does not materially depend upon the economic development of the hypothecated property or on the project to which the property belongs and especially not on cash flows generated by the underlying property, and
  - b) depends on its capacity to repay the debt from other sources.

<sup>2</sup>If the competent authorities in an EEA country have decided that the prerequisites pursuant to Annex VI part 1 number 49 of Directive 2006/48/EC are met in their territory, the requirement pursuant to sentence 1 number 4 for real estate property located in that country shall be deemed to have been met. <sup>3</sup>Application of subsection (1) sentence 1 number 3 is governed by the requirements pursuant to sentence 1 only with respect to those loans which are secured by mortgages pursuant to section 7 (1) sentence 3 of the Building and Loan Associations Act within the mortgage lending value limits.

(3) <sup>1</sup>The prerequisites for applying subsection (1) sentence 1 number 2 are that

1. the requirements stated in subsection (2) sentence 1 numbers 1 to 3 have been met, and
2. the obligor's solvency
  - a) does not materially depend on the economic development of the hypothecated property or on the project to which the property belongs and especially not on cash flows generated by the underlying property, and
  - b) depends on its capacity to repay the debt from other sources.

<sup>2</sup>The requirement of sentence 1 number 2 shall be deemed to have been met for commercial real estate property located in Germany if BaFin announces at least annually that the maximum loss rates for CCR exposures secured by mortgages on commercial real estate property located in Germany have not been exceeded. <sup>3</sup>Sentence 2 applies *mutatis mutandis* to commercial real estate property located in another EEA country which exercises the option pursuant to Annex VI part 1 number 58 of Directive 2006/48/EC.

(4) <sup>1</sup>BaFin will publicly announce on its website that the maximum loss rates pursuant to subsection (3) sentence 2 have not been exceeded if it establishes that the total losses incurred by CCR exposures of institutions, groups of institutions and financial holding groups in the preceding calendar year

1. which are secured by mortgages on the lower of 60 per cent of the mortgage lending value pursuant to section 16 (2) sentences 1 to 3 of the Pfandbrief Act in conjunction with the Regulation on calculating the mortgage lending value of May 2006 (Federal Gazette I/1175) or of a continuously measurable figure obtained by other means which meets the requirements of section 16 (2) sentences 1 to 3 of the Pfandbrief Act, and of 50 per cent of the market value, of commercial real estate property located in Germany has not exceeded 0.3 per cent, and
2. which are secured by mortgages on commercial real estate property located in Germany has not exceeded 0.5 per cent

of the total CCR exposures of institutions, groups of institutions and financial holding groups which are secured by mortgages on commercial real estate property located in Germany.

<sup>2</sup>Institutions, groups of institutions and financial holding groups shall submit annually to BaFin the data required to enable it to establish the above.

**Section 36**

## CRSA risk weight for exposures in the form of CIUs

(1) The CRSA risk weight for a CRSA exposure of the CRSA exposure class Exposures in the form of collective investment undertakings (CIU) shall be calculated as follows.

1. If a relevant credit assessment pursuant to section 43 is available from an ECAI nominated by an institution pursuant to section 41 for exposures in the form of CIUs and if the prerequisites for using credit assessments for prudential purposes pursuant to section 42 have been met, the CRSA risk weight shall be calculated in accordance with the credit quality step to which the specific credit assessment of the nominated ECAI has been prudentially mapped according to Table 9 of Annex 1.
2. If the preconditions specified in subsection (2) have been met, the institution may, for these exposures in the form of CIUs,
  - a) if the institution is aware of the underlying exposures of the CIU, calculate pursuant to sections 24 to 54 an amount-weighted average CRSA risk weight by looking through to those underlying exposures or,
  - b) if the institution is not aware of the underlying exposures of the CIU, calculate pursuant to sections 24 to 54 an amount-weighted average CRSA risk weight based on the assumption that the CIU invests its assets, to the maximum extent laid down in its sales prospectus or equivalent document, in the exposure classes attracting the highest CRSA risk weight and then continues making investments in descending order until the maximum total investment limit is reached.
3. Otherwise the CRSA risk weight shall be 100 per cent.

(2) The preconditions for applying the procedures specified pursuant to subsection (1) number 2 are as follows.

1. The exposures in the form of CIUs are issued by a company which
  - a) is supervised in an EEA country or,
  - b) is subject to supervision in a non-EEA country which BaFin or the competent supervisory authority of another EEA country has confirmed to be equivalent to that laid down in European Union law, and cooperation between BaFin and the competent supervisory authority of said non-EEA country is adequately ensured,
2. The CIU's sales prospectus or an equivalent document shall contain
  - a) all categories of assets in which the CIU may be invested and,

b) if there are ceilings for investment in certain assets, the relative ceilings and the methodology of calculating these.

3. A report shall be prepared at least annually on the CIU showing the asset and liability items, the net income and business activity during the reporting period.

(3) <sup>1</sup>Provided that the correctness of the calculation and reporting to the institution are adequately assured, institutions may rely on a third party to calculate the CRSA risk weight pursuant to subsection (1) number 2. <sup>2</sup>An external auditor must confirm the correctness of the calculation pursuant to sentence 1 by three months at the latest after the end of the CIU's business year.

(4) BaFin may define a CRSA risk weight of 150 per cent or higher for exposures in the form of CIUs associated with particularly high risks.

### **Section 37**

#### CRSA risk weight for equity exposures

The CRSA risk weight for a CRSA exposure of the CRSA exposure class Equity exposures shall be 100 per cent.

### **Section 38**

#### CRSA risk weight for other items

(1) The CRSA risk weight for a CRSA exposure of the CRSA exposure class Other items shall be 0 per cent for gold bullion in the institution's possession, for certificates evidencing *pro rata* ownership of gold bullion, provided that they are backed by corresponding gold bullion liabilities, and for cash in hand and equivalent cash items.

(2) Notwithstanding subsection (1) the CRSA risk weight shall be 20 per cent for cash items in the process of collection for which corresponding advance payments have already been made.

(3) Notwithstanding subsection (1) the CRSA risk weight shall be 100 per cent for

1. tangible assets,
2. prepayments and accrued income for which the institution is unable to determine the counterparty,
3. a residual value of a leased asset to be included pursuant to section 25 (15) number 6, and

4. equity holdings in providers of ancillary services which the institution has not assigned to the CRSA exposure class Equity exposures.

(4) Notwithstanding subsection (1) the following shall apply to a credit derivative pursuant to section 25 (15) number 5.

1. If a relevant credit assessment pursuant to section 237 is available for the CRSA exposure from an ECAI nominated by the institution pursuant to section 235 and if the prerequisites for using credit assessments for prudential purposes pursuant to section 236 have been met, the CRSA risk weight shall be calculated according to the credit quality step to which the specific credit assessment of the relevant credit assessment has been prudentially mapped, according to Table 11 of Annex 1.
2. In all other cases the CRSA risk weight shall be the sum of the CRSA risk weights of all exposures contained in the credit derivatives basket up to a ceiling of 1,250 per cent, whereby the CRSA risk weights of n-1 exposures showing the lowest risk-weighted CRSA exposure amounts are to be excluded from the aggregation.

### **Section 39**

#### CRSA risk weight for past due items

<sup>1</sup>The CRSA risk weight for a CRSA exposure of the CRSA exposure class Past due items shall be 150 per cent. <sup>2</sup>If the individual value adjustments for this exposure amount to at least 25 per cent of the unprotected part of the CRSA assessment basis pursuant to section 49 (2) for this exposure, the CRSA risk weight shall be 100 per cent. <sup>3</sup>If the exposure was assignable before it became past due to the CRSA exposure class Exposures secured by real estate property and had

1. a CRSA risk weight of 35 per cent, the CRSA risk weight when it is past due shall be
  - a) 50 per cent, if the individual value adjustments for this exposure amount to at least 25 per cent of the CRSA assessment basis pursuant to section 49 (2) for this exposure,
  - b) otherwise 100 per cent,
2. a CRSA risk weight of 50 per cent, the CRSA risk weight when it is past due shall be 100 per cent.

### Section 40

Recognising unfunded credit protection, life insurance policies and financial collateral at their CRSA risk weight

(1) <sup>1</sup>The risk-weighted CRSA exposure amount of a CRSA exposure adjusted to the CRSA risk weight of unfunded credit protection, life insurance policies and financial collateral recognisable using the Financial Collateral Simple Method shall be, subject to section 241 (2), for each CRSA exposure to which at least an amount of eligible unfunded credit protection pursuant to section 162, an eligible life insurance policy pursuant to section 170 or of the market value of an eligible financial collateral item pursuant to section 154 (1) sentence 1 number 1, recognised at the institution's discretion pursuant to section 180 using the Financial Collateral Simple Method, has been assigned, the sum of

1. the sum of the products of the protected partial exposure value calculated according to subsections (2) to (4) for each of the eligible unfunded credit protection items of which an amount is assigned to this CRSA exposure, and of the protection provider's CRSA risk weight calculated according to sentence 2,
2. the sum of the products of the protected partial exposure value calculated according to subsections (2) to (4) for each financial collateral item recognised according to the Financial Collateral Simple Method of which an amount of the market value has been assigned to this CRSA exposure, and of the CRSA risk weight of that financial collateral item calculated according to sentence 3,
3. the sum of the products of the protected partial exposure value calculated according to subsections (2) to (4) for each of the eligible life insurance policies pursuant to section 170 of which an amount of the market value has been assigned to this CRSA exposure, and of the CRSA risk weight for the surrender value of this life insurance policy according to Table 11a of Annex 1, and
4. the product of the unprotected partial exposure value calculated according to subsections (2) to (4) and the CRSA risk weight of this CRSA exposure.

<sup>2</sup>The protection provider's CRSA risk weight shall be the CRSA risk weight which would be assigned to a CRSA exposure to that protection provider. <sup>3</sup>The CRSA risk weight of a financial collateral item shall be the CRSA risk weight which would be assigned to a CRSA exposure to that financial collateral item taking section 185 into account.

(2) To define the protected partial exposure values and the unprotected partial exposure value of a CRSA exposure for subsection (1) sentence 1, it is first necessary to calculate the non-substituted assessment basis for a CRSA exposure as follows.

1. In the case of eligible unfunded credit protection or an eligible life insurance policy, if the institution has chosen the Financial Collateral Comprehensive Method pursuant to section 180 and if at least one financial collateral item has been assigned to the CRSA exposure using the Financial Collateral Comprehensive Method, the CRSA assessment basis shall be calculated recognising financial collateral pursuant to section 49 (1) sentence 1 number 2,
2. otherwise the CRSA assessment basis shall be calculated without recognising financial collateral pursuant to section 49 (2).

(3) <sup>1</sup>An amount of the non-substituted assessment basis of the CRSA exposure shall be carved out as follows and recorded as the substituted assessment basis of the CRSA exposure for the unfunded credit protection, life insurance policy or financial collateral item recognisable using the Financial Collateral Simple Method:

1. for each eligible unfunded credit protection item assigned to the CRSA exposure, in the amount of the unfunded credit protection adjusted for mismatches pursuant to section 204 assigned to this exposure,
2. for each portion of the market value of a financial collateral item recognisable using the Financial Collateral Simple Method and assigned to the CRSA exposure, in the amount of the portion of the market value of that financial collateral item assigned to this CRSA exposure, and
3. for each eligible life insurance policy assigned to the CRSA exposure, in the amount of the eligible portion of the life insurance policy pursuant to section 170 (2) assigned to this exposure.

<sup>2</sup>The value of the unfunded credit protection, the surrender value of the life insurance policy or of the market value of the financial collateral item recognisable using the Financial Collateral Simple Method shall be reduced by the portion assigned to the CRSA exposure.

<sup>3</sup>The difference between the non-substituted assessment basis and the substituted assessment basis for the CRSA exposure for unfunded credit protection, a life insurance policy or financial collateral shall be used as the non-substituted assessment basis of the CRSA exposure for recognising further unfunded credit protection, life insurance policies or financial collateral pursuant to sentence 1.

(4) <sup>1</sup>The protected partial exposure value of a CRSA exposure pursuant to subsection (1) sentence 1 numbers 1, 2 and 3 shall be, for each unfunded credit protection item, life insurance policy or financial collateral item recognised pursuant to subsection (3), the product of the substituted assessment basis of this CRSA exposure for this unfunded credit protection life insurance policy or financial collateral item and the CRSA conversion factor of this CRSA exposure pursuant to section 50. <sup>2</sup>The unprotected partial exposure value of a CRSA

exposure pursuant to subsection (1) sentence 1 number 4 is the product of the non-substituted assessment basis of this CRSA exposure remaining after all unfunded credit protection items, life insurance policies and financial collateral items assigned to that CRSA exposure have been recognised and the CRSA conversion factor of this CRSA exposure pursuant to section 50.

## **Division 2**

### **Use of external credit assessments and country classifications**

#### **Section 41**

##### **Nominating eligible ECAIs and export credit agencies**

(1) <sup>1</sup> When determining the CRSA risk weight for a CRSA exposure belonging to a credit assessment-related asset category according to Table 12 of Annex 1, an institution may use an ECAI credit assessment only if BaFin has recognised said ECAI as being eligible for risk-weighting purposes pursuant to sections 52 and 53 and the institution has nominated this ECAI to BaFin for the credit assessment-related asset category in question. <sup>2</sup> An institution may nominate one or more eligible ECAIs for risk-weighting purposes for a credit assessment-related asset category. <sup>3</sup> The nomination may differ for the various credit assessment-related asset categories.

(2) When determining the CRSA risk weight for a CRSA exposure in the credit assessment-related asset category Countries according to Table 12 of Annex 1, an institution may use a country classification of an export credit agency only if the institution has nominated at least one export credit agency to BaFin for the credit assessment-related asset category Countries. The institution may nominate one or more export credit agencies to BaFin for the credit assessment-related exposure class Countries irrespective of whether it has nominated one or more eligible ECAIs for this exposure class.

(3) <sup>1</sup> An institution may revoke its nomination of an eligible ECAI or export credit agency only with BaFin's permission. <sup>2</sup> The institution must substantiate its application for permission to revoke a nomination. <sup>3</sup> BaFin will refuse said permission only if there are concrete indications that the intention underlying the revocation is to reduce the capital adequacy requirements.

#### **Section 42**

##### **Use of credit assessments and country classifications**

(1) An institution which has nominated an ECAI for a credit assessment-related exposure class according to Table 12 of Annex 1 must apply that ECAI's credit assessments

permanently and consistently for all CRSA exposures in that class for which a relevant credit assessment is available from an ECAI nominated by the institution.

(2) Subsection (1) applies *mutatis mutandis* to the country classifications of export credit agencies.

### **Section 43**

#### Relevant credit assessment

<sup>1</sup>The relevant credit assessment of a CRSA exposure shall be calculated pursuant to section 44. <sup>2</sup>For a CRSA exposure of the CRSA exposure class Institutions pursuant to section 25 (1) sentence 1 number 6 the relevant credit assessment shall be the issuer credit assessment, as calculated pursuant to section 44 sentences 1, 3 and 4, of the central government of the country in which the obligor of this CRSA exposure is domiciled. <sup>3</sup>An issuer credit assessment is defined as a credit assessment which makes a general statement, unrelated to specific assets, about an obligor's creditworthiness. <sup>4</sup>In determining the relevant credit assessment, section 47 stipulates that applicable country classifications from export credit agencies which an institution has nominated shall rank *pari passu* with issuer credit assessments.

### **Section 44**

#### Relevant credit assessment of a rated CRSA exposure

<sup>1</sup>The institution shall identify all applicable credit assessments pursuant to section 46 from the ECAIs it has nominated which relate to a CRSA exposure. <sup>2</sup>If there are no applicable credit assessments, the CRSA exposure shall be deemed unrated and the procedure pursuant to section 45 for calculating the relevant credit assessment of an unrated CRSA exposure shall apply. <sup>3</sup>If only one applicable credit assessment is available, it shall be used to calculate the CRSA risk weight. <sup>4</sup>If more than two applicable credit assessments are available, the relevant ones are those which lead to the two lowest CRSA risk weights in accordance with the prudential mapping of the specific credit assessments to credit quality steps; if the two lowest CRSA risk weights differ, the relevant credit assessment is the one leading to the higher CRSA risk weight.

### **Section 45**

#### Relevant credit assessment of an unrated CRSA exposure

(1) If, for unrated CRSA exposures of the CRSA exposure class Corporates pursuant to section 25 (1) sentence 1 number 8, at least one short-term applicable credit assessment

pursuant to section 46 is available from an ECAI nominated by the institution with a prudential mapping pursuant to section 54 to credit quality steps 4 to 6, which

1. refers to other asset items exposed to the same obligor as the CRSA exposure, or
2. is an issuer credit assessment relating to the obligor of the CRSA exposure,

this shall be the relevant credit assessment.

(2) <sup>1</sup>For unrated CRSA exposures other than those for which a relevant short-term credit assessment can be determined pursuant to subsection (1), the institution shall determine the relevant credit assessment on the basis of comparable exposures. <sup>2</sup>Comparable exposures are unprotected exposures to the same obligor as the CRSA exposure for which at least one applicable credit assessment pursuant to section 46 is available from an ECAI nominated by the institution. <sup>3</sup>Section 44 sentence 4 applies *mutatis mutandis* to each comparable exposure for which there is more than one credit assessment from ECAIs nominated by the institution. <sup>4</sup>The risk weights resulting from the prudential mapping are the presumed CRSA risk weights for the comparable exposures. <sup>5</sup>These presumed CRSA risk weights are to be matched with the CRSA risk weight that would be assigned to the CRSA exposure without a credit assessment. <sup>6</sup>The relevant credit assessment of the unrated CRSA exposure shall be calculated as follows.

1. If, looking at all comparable exposures that are not junior to the CRSA exposure, one of the presumed CRSA risk weights is higher than the CRSA risk weight obtained without applying a credit assessment, the credit assessment underlying this higher presumed CRSA risk weight shall be relevant.
2. Otherwise the relevant credit assessment may be calculated from all comparable exposures that are ranked *pari passu* with the CRSA exposure pursuant to section 44 sentences 3 and 4.

<sup>7</sup>If there are no comparable exposures that are ranked *pari passu* with the CRSA exposure, the relevant credit assessment pursuant to sentence 6 number 2 may be calculated from junior comparable exposures.

(3) <sup>1</sup>If there are no comparable exposures pursuant to subsection (2), the institution shall identify all applicable issuer credit assessments pursuant to section 46 from the ECAIs it has nominated. <sup>2</sup>A presumed CRSA risk weight shall be calculated for the identified issuer credit assessments; the CRSA risk weight obtained without applying a credit assessment shall be calculated for the CRSA exposure. <sup>3</sup>Subsection (2) sentences 5 and 6 applies *mutatis mutandis*. <sup>4</sup>However, issuer credit assessments for which the presumed CRSA risk weight is lower than the CRSA risk weight of the CRSA exposure without applying a credit assessment may be recognised only if the CRSA exposure ranks *pari passu* with or senior in all respects to the senior unprotected exposures of the same obligor. <sup>5</sup>If there are no issuer credit

assessments, there is no relevant credit assessment.

### **Section 46**

#### Applicable credit assessments

<sup>1</sup>A credit assessment which has been issued by an eligible ECAI nominated by the institution is applicable only if

1. the obligor has solicited it,
2. it includes all amounts and especially nominal value and interest owed to the institution in the position,
3. it is not a short-term credit assessment, unless the CRSA position is assigned to the exposure class Corporates pursuant to section 25 (9) and,
4. in the case of section 45 (2) and (3) for a CRSA exposure that is not denominated in the domestic currency of the obligor of the CRSA exposure, the credit assessment does not refer to an exposure denominated in the obligor's national currency.

<sup>2</sup>Notwithstanding sentence 1 number 1, credit assessments which the obligor has not solicited shall be applicable with BaFin's permission. <sup>3</sup>BaFin may refuse permission, in particular, if the solicited and unsolicited credit assessments of the ECAI differ in quality or if the ECAI uses the unsolicited credit assessments to put pressure on the rated entity to place an order for a credit assessment or other services. <sup>4</sup>If the credit assessment is to be used for a securitisation position, section 237 (2) applies.

### **Section 47**

#### Applicable country classifications from export credit agencies

<sup>1</sup>The following country classifications from export credit agencies are applicable for a CRSA exposure in the credit assessment-related exposure class Countries according to Table 12 of Annex 1:

1. a consensus risk score expressed as a minimum export insurance premium from an export credit agency which participates in the OECD Arrangement, or
2. a country classification from an export credit agency which applies the country classification methodology as laid down in the OECD Arrangement, publishes its country classifications and assigns them to the minimum export insurance premiums using that methodology.

### **Division 3**

#### **CRSA exposure value**

#### **Section 48**

##### **CRSA exposure value**

The CRSA exposure value of a CRSA exposure is the product of its CRSA assessment basis pursuant to section 49 (1) and its CRSA conversion factor pursuant to section 50.

#### **Section 49**

##### **CRSA assessment basis**

- (1) The CRSA assessment basis for a CRSA exposure,
  1. if it has not been assigned an amount of the volatility-adjusted market value of a financial collateral item pursuant to the Financial Collateral Comprehensive Method, is the CRSA assessment basis excluding financial collateral items pursuant to subsection (2),
  2. otherwise the CRSA assessment basis shall be determined recognising financial collateral pursuant to subsection (3).
- (2) The CRSA assessment basis excluding financial collateral for a CRSA exposure,
  1. for a balance sheet CCR exposure:
    - a) is its book value plus the free contingency reserves attributable to the individual asset items pursuant to section 340f of the German Commercial Code (*Handelsgesetzbuch, HGB*) recognised as liable capital pursuant to section 10 (2b) sentence 1 number 1 of the Banking Act, less fees booked but creditable to subsequent financial years and deferrals for loan discount,
    - b) where use is made of the option pursuant to section 17 (2) sentence 1, it is its assessment basis defined in section 17 (2) sentence 1,
    - c) where said assessment basis is the outcome of a leasing agreement and is not the residual value of a leased asset recognisable pursuant to section 25 (15) number 6, it is the present value of the minimum lease payments, which consist, firstly, of all payments to which the lessee is or can be obliged for the term of the leasing agreement, including an amount for the residual value of the leased asset which the lessee is or can be obliged to pay and, secondly, of any purchase option offering the lessee the incentive to exercise it,

- d) in the case of the residual value of a leased asset recognisable pursuant to section 25 (15) number 6, it is the present value of the residual value assumed at the end of the leasing agreement at the time the leasing agreement was being drafted less the present value of purchase options recognised pursuant to (b),
2. for an off-balance sheet CCR exposure:
    - a) it is the book value of claims and contingent claims constituting that CRSA exposure,
    - b) where use is made of the option pursuant to section 17 (2) sentence 1, it is its assessment basis defined in section 17 (2) sentence 1,
  3. in the case of a derivative CCR exposure, it is its assessment basis pursuant to section 17,
  4. in the case of a free delivery risk exposure pursuant to section 14 (1), it is the value of the institution's claim from the transaction which has given rise to the free delivery risk exposure,
  5. in the case of a netting position comprising
    - a) derivatives, it is their net assessment basis pursuant to section 211
    - b) monetary claims and debts, it is their net assessment basis pursuant to section 212,
    - c) non-derivative transactions with remargining, it is their net assessment basis pursuant to section 215,
  6. in the case of a cross-product netting position, it is its net assessment basis pursuant to section 217,
  7. in the case of a CRSA exposure incurred by a transaction with an enterprise in its capacity as a central counterparty pursuant to section 1 (31) of the Banking Act or by a collateral item posted to that end, it is zero.

<sup>2</sup>In the case of a CRSA exposure incurred by collateral posted for an obligation of the institution arising from transactions which for the institution incur derivative CCR exposures or a netting position comprising derivatives, section 100 (11) and (12) applies *mutatis mutandis*. <sup>3</sup>In the case of a CRSA exposure incurred by a CCR exposure to the reference asset or the reference portfolio of a credit linked note, the assessment basis may be reduced by 8 per cent of the risk-weighted exposure amount for the CCR exposure to the issuer of the credit linked note.

(3) <sup>1</sup>If an institution has opted to use the Financial Collateral Comprehensive Method pursuant to section 180 and has assigned at least one eligible financial collateral item to the CRSA exposure, the CRSA assessment basis excluding financial collateral pursuant to

subsection (2) shall be raised by the product of the market value volatility adjustment for that CRSA exposure pursuant to section 188 and the CRSA assessment basis excluding financial collateral.<sup>2</sup> For a CRSA exposure of this type, the CRSA assessment basis including financial collateral shall be the maximum of zero and the difference between the raised CRSA assessment basis excluding financial collateral pursuant to sentence 1 and the sum of the protected partial assessment bases calculated pursuant to sentence 3.<sup>3</sup> For each part of the market value assigned to this CRSA exposure of a financial collateral item recognisable at the volatility-adjusted value for financial collateral pursuant to section 187, an amount shall be carved out from the raised CRSA assessment basis excluding financial collateral pursuant to sentence 1 as the protected partial assessment basis in the amount of the product of

1. the volatility-adjusted value for financial collateral for the portion of the market value of the financial collateral assigned to the CRSA exposure, and
2. the maturity mismatch adjustment pursuant to section 186 for the financial collateral item in relation to the CRSA exposure.

<sup>4</sup>The market value of the financial collateral shall be reduced by the portion assigned to the CRSA exposure pursuant to sentence 3.

### **Section 50**

#### CRSA conversion factor

(1) <sup>1</sup>The CRSA conversion factor is as follows:

1. for the undrawn amount of immediately cancellable credit facilities pursuant to section 51: 0 per cent,
2. for the undrawn amount of not immediately cancellable credit facilities with an original maturity of up to and including one year: 20 per cent,
3. for the undrawn amount of not immediately cancellable credit facilities with an original maturity of more than one year: 50 per cent,
4. documentary credits
  - a) secured by underlying shipment: 20 per cent,
  - b) otherwise: 50 per cent,
5. transactions pursuant to section 19 (1) sentence 3 number 4 of the Banking Act: 50 per cent,
6. irrevocable standby letters of credit:

- a) 100 per cent, if they have the character of a credit substitute,
  - b) otherwise 50 per cent,
7. obligations arising from a note issuance facility or a revolving underwriting facility: 50 per cent,
8. in all other cases: 100 per cent.

<sup>2</sup>If an off-balance sheet CCR exposure consists of an uncalled obligation to incur a further CCR exposure, the lower of the two CRSA conversion factors shall be used.

(2) The CRSA conversion factors pursuant to section 239 (2) or (3) apply to CCR exposures which are CRSA securitisation positions pursuant to section 227 (3).

## **Section 51**

### Immediately cancellable credit facility

<sup>1</sup>A credit facility shall be defined as immediately cancellable when determining the CRSA conversion factor if the institution has the right to cancel it without notice and unconditionally, or if a deterioration in the obligor's creditworthiness immediately triggers the cancellation of the credit facility. <sup>2</sup>For a credit facility which constitutes a CRSA exposure assigned to the CRSA exposure class Retail business, treatment of the right to cancel as being without notice and unconditional shall not be countermanded by a restriction of an institution's right to cancel it on the mandatory grounds of consumer protection legislation. <sup>3</sup>The institution shall actively monitor the obligor's financial condition and have an internal control and monitoring system in place to immediately detect a deterioration in the credit quality of the obligor.

## **Division 4**

### Recognising ECAIs and mapping specific credit assessments to credit quality steps

## **Section 52**

### Recognising eligible ECAIs

(1) <sup>1</sup>An ECAI shall be recognised as eligible by BaFin for risk-weighting purposes only if its credit assessment methodology guarantees objectivity, independence, ongoing review and transparency and if the credit assessments which are generated using that methodology guarantee credibility and transparency. <sup>2</sup>As regards methodology, the ECAI must meet especially the preconditions for recognition stipulated in section 53 sentence 1 numbers 1 to 6,

and as regards credit assessments, especially the preconditions for recognition stipulated in section 53 sentence 1 numbers 7 and 8. <sup>3</sup>BaFin and the Deutsche Bundesbank will assess *in tandem* whether the recognition criteria have been met. <sup>4</sup>If an ECAI has been recognised as eligible for risk-weighting purposes by the competent authorities in an EEA country, BaFin can also recognise said ECAI as eligible for risk-weighting purposes without conducting its own recognition procedure if the recognition procedure implemented by the competent authority is equivalent to that of BaFin. <sup>5</sup>If the ECAI is a credit rating agency registered under Regulation (EC) 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302 of 17 November 2009, page 1; L 350 of 29 December 2009, page 59), the requirements of sentence 1 shall be deemed to be met in respect of the objectivity, independence, ongoing review and transparency of the credit assessment methodology.

(2) <sup>1</sup>An ECAI shall be recognised as eligible for risk-weighting purposes only upon application from the enterprise which is seeking recognition as an ECAI for risk-weighting purposes. <sup>2</sup>The application must be accompanied by a declaration by a central association of the banking industry that at least one of its member institutions, or an institution falling within the scope of application of section 1, would like to use the enterprise in question for risk-weighting purposes. <sup>3</sup>If the declaration pursuant to sentence 2 is submitted by a central association of the banking industry, the declaration shall contain the names of the member institutions of the central association which would like to use the enterprise for risk-weighting purposes, and details of those credit assessment-related asset categories according to Table 12 of Annex 1 for which the enterprise shall be used. <sup>4</sup>If the declaration pursuant to sentence 2 is submitted by an institution falling within the scope of application of section 1, it shall specify those credit assessment-related asset categories according to Table 12 of Annex 1 for which it nominates the enterprise subject to the proviso that said enterprise will be recognised by BaFin as an eligible ECAI for risk-weighting purposes. <sup>5</sup>The application shall contain details of the market segments which the application covers. <sup>6</sup>Market segments are

1. exposures to public sector entities,
2. structured financing, including securitisation tranches within the meaning of section 1b (2) of the Banking Act, and exposures in the form of CIUs within the meaning of section 25 (12),
3. other exposures.

<sup>7</sup>BaFin may demand the submission of further details needed for the recognition procedure.

**Section 53**

## Preconditions for recognising eligible ECAIs

The following preconditions must be met for ECAIs to be recognised as being eligible.

1. The methodology used for assigning credit assessments must be rigorous, systematic and continuous and subject to validation based on historical experience.
2. The methodology must be free from external political influences or constraints and may not be exposed to any economic pressures that could influence the credit assessment.
3. The independence of the ECAI's methodology must be guaranteed, having special regard to the ECAI's
  - a) ownership and organisation structure,
  - b) financial resources,
  - c) staffing and expertise, and
  - d) corporate governance.
4. The ECAI must continually review its credit assessments and adjust them if the financial situation of the rated entity changes; said reviews shall occur after every event which might have a significant influence upon the rated entity's creditworthiness, and at least annually.
5. Before any recognition, the ECAI must prove for each market segment that it has established an assessment methodology meeting the following standards.
  - a) A backtesting procedure must be established for at least a year.
  - b) The regularity of the ECAI's review process must be demonstrated.
  - c) At BaFin's request, the ECAI shall disclose information on the extent of its contacts with the senior management of the firms for which it issues a credit assessment.
6. The principles of the methodology employed by the ECAI to generate its credit assessments must be publicly available in such a way that all potential users are able to assess their appropriateness.
7. The ECAI's credit assessments must be perceived in the market as credible and reliable; criteria for this shall be in particular:
  - a) the ECAI's market share,

- b) the source and magnitude of the ECAI's revenue, and its general financial resources,
  - c) the influence the credit assessments have on price formation in the market, and
  - d) the use of credit assessments for issuing bonds and/or assessing credit risks by at least two institutions.
8. The credit assessments shall be accessible at equivalent terms to all domestic and foreign institutions which have a legitimate interest in them.

<sup>2</sup>The ECAI must inform BaFin promptly of any material changes in the methodology it uses for assessing credit assessments.

### **Section 54**

#### Mapping specific credit assessments to credit quality steps

(1) <sup>1</sup>BaFin shall map each specific credit assessment used by an ECAI recognised for risk-weighting purposes to a credit quality step. <sup>2</sup>In so doing, it shall apply the principles listed in subsections (3) to (6). <sup>3</sup>BaFin will publish the mappings pursuant to sentence 1 on its website.

(2) If the competent authorities of an EEA country have conducted a mapping for an ECAI, BaFin may recognise said mapping for risk-weighting purposes without conducting its own mapping.

(3) BaFin will take the following factors into account so as to differentiate between the relative degrees of risk expressed in the various specific credit assessments:

1. quantitative factors such as the long-term default rate of all liabilities assigned by an ECAI to the same specific credit assessment, and
2. qualitative factors such as the pool of issuers classified by the ECAI; the range of specific credit assessments which the ECAI assigns, the meaning of each credit assessment and the definition of default which an ECAI uses.

(4) <sup>1</sup>BaFin shall first compare the default rates experienced for each specific credit assessment of a given ECAI with one another and then compare them with a benchmark. <sup>2</sup>The benchmark shall be based on default rates experienced by other ECAs on a population of issuers which present an equivalent level of credit risk.

(5) If BaFin ascertains that the default rates experienced for the specific credit assessment of a given ECAI are materially and systematically higher than those of the benchmark, it shall map the ECAI's specific credit assessment to a higher credit quality step.

(6) If BaFin has raised the credit quality step to which a given specific credit assessment from

an ECAI has been mapped pursuant to subsection (5), it can consider restoring the original credit quality step once the ECAI has furnished proof that the default rates experienced for its specific credit assessment are no longer materially and systematically higher than those of the benchmark.

## **Chapter 4**

### **Internal Ratings-Based Approach (IRBA)**

#### **Division 1**

#### **Basis of IRBA**

#### **Section 55**

#### **Structure of IRBA**

(1) <sup>1</sup>Under the internal ratings-based approach (IRBA), the estimates of risk parameters used to derive the risk-weighted exposure amounts of CCR exposures are determined internally using rating systems. <sup>2</sup>Use of IRBA is subject to approval from BaFin pursuant to sections 58 to 70.

(2) <sup>1</sup>The IRBA exposures pursuant to section 71 are to be assigned to the IRBA exposure classes pursuant to sections 73 to 83. <sup>2</sup>In addition, for every IRBA exposure which is not an IRBA securitisation position pursuant to section 227 (4), the IRBA risk weight shall be determined pursuant to sections 85 to 98 and the IRBA exposure value pursuant to sections 99 to 103. <sup>3</sup>To determine the IRBA risk weight, the forecast probability of default (PD) pursuant to sections 88 to 91, the forecast loss given default (LGD) pursuant to sections 92 to 94 and the IRBA maturity adjustment pursuant to sections 95 and 96 must be calculated. <sup>4</sup>To calculate the IRBA exposure value, the IRBA assessment basis pursuant to section 100 and the IRBA conversion factor pursuant to section 101 have to be determined. <sup>5</sup>The risk-weighted IRBA exposure amount is calculated pursuant to section 84 from the assigned exposure class, the IRBA risk weight and the IRBA exposure value. <sup>6</sup>Additionally, the expected loss amount must be calculated for each IRBA exposure pursuant to section 104.

(3) <sup>1</sup>The risk-weighted IRBA exposure amount of each IRBA securitisation position pursuant to section 227 (4) is determined pursuant to section 253. <sup>2</sup>For those IRBA securitisation positions pursuant to section 255 for which the IRBA risk weight is 1,250 per cent, an institution, in exercising the option pursuant to section 266, must calculate the deduction for IRBA securitisation positions pursuant to section 265 in accordance with section 10 (6a) number 3 of the Banking Act.

## **Division 2**

### **Using IRBA**

## **Subdivision 1**

### **Requirements for use**

## **Section 56**

### **Requirements for using IRBA**

(1) <sup>1</sup>To be able to recognise credit risk exposures according to IRBA for the purpose of calculating the total capital charge for credit risk pursuant to section 8 and the expected loss amounts for IRBA exposures pursuant to section 104, an institution must

1. have been granted approval by BaFin to use IRBA pursuant to section 58,
2. have identified, for each rating system to be used under IRBA, all of the new business exposures pursuant to section 68 (1) and all of the recognisable existing business exposures pursuant to section 68 (4) which fall within the scope of this rating system pursuant to section 108,
3. comply with the minimum requirements for using IRBA pursuant to sections 106 to 153,
4. meet the disclosure requirements pursuant to section 26a of the Banking Act and pursuant to sections 319 to 337 of this Regulation, and
5. comply with the implementation plan authorised with IRBA approval; in particular, an institution shall provide evidence that it has reached the supervisory reference point pursuant to section 65 after 2.5 years at the latest and full implementation of IRBA pursuant to section 66 after 5 years at the latest and that it ensures ongoing compliance with each threshold reached.

<sup>2</sup>Prior to the first-time use of a rating system for IRBA to determine the risk parameter estimates used to calculate the total capital charge for credit risk and expected loss amounts for IRBA exposures, an institution shall have historical data for the observation period specified in the IRBA minimum requirements, shall have made plausible the informative value of the estimates for an appropriate period by comparing them with the historical data, shall have calculated the resulting risk-weighted IRBA exposure amounts and expected loss amounts for IRBA exposures at least once, and shall have met the track record requirements pursuant to section 63 (1). <sup>3</sup>An institution shall be permitted to use a rating system or equity risk model to calculate its total capital charge for credit risk only after its use for IRBA has

been specified by BaFin in the IRBA approval after said system or model has passed the suitability examination pursuant to section 62.

(2) If an institution does not furnish the evidence pursuant to section 56 (1) sentence 1 number 5 or if BaFin ascertains during a suitability examination pursuant to section 62 sentence 2 or otherwise that the institution is not complying with its implementation plan as authorised by the IRBA approval or a plan pursuant to section 67 (4) sentence 2, BaFin may require the institution

1. to disclose this circumstance using the disclosure medium pursuant to section 320,
2. to submit an amended implementation plan for authorisation,
3. for business units for which the risk exposures may not yet be recognised in the numerator for the degree of coverage pursuant to section 67 (2), to add a surcharge, to be defined by BaFin, to these risk-weighted exposure amounts, or
4. for business units for which the risk exposures may already be recognised in the numerator for the degree of coverage pursuant to section 67 (2), to use the highest of the risk-weighted exposure amounts in each case which result for the respective risk exposure,
  - a) if it is not a type of risk exposure falling within the meaning of section 59 (1) sentence 2 number 1 letter (b), as the risk-weighted IRBA exposure amount and the risk-weighted CRSA exposure amount, and
  - b) if it is a type of risk exposure falling within the meaning of section 59 (1) sentence 2 number 1 letter (b), as the risk-weighted IRBA exposure amount using internal estimates of the forecast LGD and forecast conversion factor, as the risk-weighted IRBA exposure amount using the supervisory LGD and the supervisory conversion factor and as the risk-weighted CRSA exposure amount.

(3) <sup>1</sup>Once IRBA approval has been granted, an institution shall, for every rating system specified for using IRBA in the IRBA approval, record all credit risk exposures arising from new business pursuant to section 68 (1) or from recognisable existing business pursuant to section 68 (4) of the business unit falling within the scope of the rating system consistently over time using this rating system, and it shall also calculate the total capital charge for credit risk and the expected loss amounts according to the method specified for each type of IRBA exposure in the IRBA approval. <sup>2</sup>Only if substantive reasons exist and following prior permission from BaFin

1. may the institution be allowed to stop using its internal estimates of forecast LGDs and forecast conversion factors for IRBA exposure types falling within the meaning of section 59 (1) sentence 2 number 1 letter (b),

2. may the institution calculate the IRBA risk weight for IRBA exposure types falling within the meaning of section 59 (1) sentence 2 number 1 letter (c) differently from the method specified in the IRBA approval,
3. may the institution switch to using CRSA for IRBA exposures.

<sup>3</sup>The institution shall apply to BaFin for permission pursuant to sentence 2, citing the reasons.

## **Section 57**

### Use of IRBA by groups of institutions or financial holding groups

(1) The provisions for institutions shall apply *mutatis mutandis* when a group of institutions or financial holding group calculates risk-weighted exposure amounts for CCR exposures using IRBA, so as to demonstrate appropriate consolidated capital adequacy pursuant to section 10 (1) sentence 1 of the Banking Act, subject to the proviso that

1. the superordinated enterprise submits an application for IRBA approval for the purpose of demonstrating appropriate consolidated capital adequacy,
2. the superordinated enterprise registers the rating systems and equity risk models for a suitability examination, and
3. the implementation plan submitted for authorisation covers all enterprises within the group in question.

(2) For the purpose of demonstrating appropriate capital adequacy pursuant to section 10 (1) sentence 1 of the Banking Act, an institution belonging to a group may submit an application to use IRBA independently of an application for IRBA approval submitted by the group of institutions or financial holding group to which it belongs.

## **Subdivision 2**

### Approval to use IRBA

## **Section 58**

### IRBA approval

(1) <sup>1</sup>BaFin will grant IRBA approval upon application if an institution has reached the entry threshold pursuant to section 64. <sup>2</sup>The IRBA approval may contain covenants, especially with regard to satisfying particular conditions, providing particular information and evidence or eliminating identified deficiencies in meeting the requirements for using IRBA. <sup>3</sup>If an institution does not satisfy the conditions for using IRBA pursuant to section 56, BaFin may

revoke already granted approval to use IRBA for a certain type of risk exposure or authorisation to use internal estimates of forecast LGDs and forecast conversion factors for types of IRBA exposures pursuant to section 59 (1) sentence 2 number 1 letter (b), or it may revoke the IRBA approval for the institution or financial holding group as a whole. <sup>4</sup>BaFin can waive revocation of the IRBA approval if the institution

1. submits a plausible plan showing how it will achieve a timely return to compliance, and implements said plan on time, or
2. demonstrates that the effects of non-compliance are immaterial.

(2) An institution shall register every rating system and equity risk model which it wishes to use for IRBA with BaFin for a suitability examination.

(3) <sup>1</sup>Once the use of a rating system or equity risk model for IRBA has been defined in the IRBA approval for the institution, BaFin shall conduct follow-up examinations pursuant to section 61 in cooperation with the Deutsche Bundesbank on the basis of an audit pursuant to section 44 (1) sentence 2 of the Banking Act to establish whether the model is still suitable.

<sup>2</sup>In the case of extensions or material changes, the amended rating system or equity risk model shall be resubmitted to BaFin for a suitability examination; IRBA use is permitted only if this has been specified by BaFin in the IRBA approval pursuant to section 62 following a passed suitability examination. <sup>3</sup>Significant and insignificant changes do not require a renewed suitability examination but must be notified to BaFin and the Deutsche Bundesbank in writing. <sup>4</sup>Significant changes are to be coordinated with BaFin prior to use of the amended rating system or equity risk model for IRBA.

## Section 59

### Application for IRBA approval

(1) <sup>1</sup>The application for IRBA approval submitted pursuant to section 58 (1) sentence 1 shall be accompanied by an authorisable implementation plan. <sup>2</sup>An implementation plan shall be deemed authorisable if

1. it shows
  - a) for which types of risk exposures an institution wishes to use CRSA and for which types it wishes to use IRBA,
  - b) for which types of risk exposures in the IRBA exposure classes Central governments, Institutions or Corporates, which do not result from purchased receivables, are not IRBA special lending exposures pursuant to section 81 for which the institution has decided to use the simple IRBA risk weight pursuant to section 97, and are not credit risk exposures

which as CRSA exposures would be assignable to the CRSA exposure class Covered bonds issued by credit institutions and for which the institution, at its discretion and on a consistent basis, wishes to use supervisory LGD, the institution intends to use its own estimates of forecast LGDs and forecast conversion factors,

- c) how the institution intends to calculate the risk-weighted IRBA exposure amount for the types of risk exposure for which it wishes to use IRBA pursuant to letter (a) and which do not fall under letter (b);
2. it plausibly demonstrates that the institution will achieve the supervisory reference point pursuant to section 65 within 2.5 years of reaching the entry threshold, and full implementation of IRBA pursuant to section 66 within 5 years at the latest,
  3. it specifies the points in time at which the institution intends to apply the rating systems and equity risk models to be used for IRBA as the key instrument for measuring and controlling risk pursuant to section 63 (2) and intends to be ready for the suitability examination pursuant to section 62, and
  4. it specifies the point in time as from when it intends to apply said rating systems and equity risk models for IRBA and, for that purpose, will be ensuring compliance with the requirements for using IRBA pursuant to section 56 not yet evidenced at the time of the suitability examination, especially the requirements of section 56 (1) sentence 1 numbers 2 and 3, the viability of the reporting framework and the conclusion of preparations for validation and stress testing.

(2) Once an authorisable implementation plan has been submitted pursuant to subsection (1), BaFin will forward an application submitted by an institution that is a subsidiary of an EU parent institution or of an EU parent financial holding company domiciled in another member state to the entity that is responsible for supervising that EU parent institution or that EU parent financial holding company on a consolidated basis.

## Title 1

### Definition and suitability of rating systems and equity risk models

#### **Section 60**

##### Definition of rating systems and equity risk models in IRBA

(1) A rating system shall comprise all of the methods, processes, controls, data collection and IT systems that support the assessment of credit risk, the assignment of IRBA exposures to grades or pools (rating), and the quantification of default and loss estimates for a given type of IRBA exposure.

(2) An equity risk model shall comprise all of the methods, processes, controls, data collection and IT systems that are used to estimate and quantify the maximum potential loss on a portfolio of equity exposures derived as the 99<sup>th</sup> percentile, one-tailed confidence interval of the difference between quarterly returns and an appropriate risk-free rate calculated over a long-term sample period.

### **Section 61**

#### Suitability of rating systems and equity risk models

Rating systems and equity risk models shall be deemed suitable for use in IRBA if they meet the requirements of this Regulation, in particular the requirements for use pursuant to section 56.

### **Section 62**

#### Suitability examination

<sup>1</sup>BaFin will conduct suitability examinations in conjunction with the Deutsche Bundesbank on the basis of an audit pursuant to section 44 (1) sentence 2 of the Banking Act in respect of rating systems or equity risk models submitted for examination pursuant to section 58 (2) if the institution, with the submitted rating systems and those rating systems which the institution is already permitted to use under IRBA pursuant to section 56 (1) sentence 3, would reach the entry threshold or has already reached it, if, for each of the rating systems and equity risk models submitted for examination, at least the application requirements pursuant to section 63 (2) have been met and, in the case of a rating system, the track record requirements pursuant to section 63 (1) have been met sufficiently to enable said track record requirements to be satisfied completely by the envisaged time the rating system will be used, if new business pursuant to section 68 (1) and at least a significant part of recognisable existing business pursuant to section 68 (4) has been identified, and if the institution in question can provide *prima facie* evidence that it will be complying with the necessary requirements for using the rating system or equity risk model for IRBA by the time their use under IRBA is scheduled in the implementation plan. <sup>2</sup> When performing a suitability examination after IRBA approval has been granted, BaFin will also assess whether the institution is complying with the authorised implementation plan.

### **Section 63**

#### Application and track record requirements for rating systems and equity risk models

(1) An institution shall have met the track record requirements for a given business unit constituting the scope of application of a rating system to be used for calculating the risk-

weighted IRBA exposure amounts pursuant to section 99 and expected loss amounts pursuant to section 104 if

1. it has been using a rating system which was broadly in line with the requirements of this Regulation, in particular the minimum requirements for using IRBA, for the principal risk measurement and management processes for at least three years, and,
2. where the IRBA exposures in this business unit belong to the IRBA exposure classes Central governments, Institutions or Corporates and are not incurred by purchased receivables which meet the requirements of section 84 (3) sentence 2 and the institution wishes to use its own estimates of LGD and IRBA conversion factors, has been estimating and employing own estimates of LGDs and IRBA conversion factors in a manner that was broadly consistent with the minimum requirements for using own estimates of these risk parameters for at least three years.

(2) An institution shall have met the requirements for using a rating system or equity risk model for a given business unit constituting the scope of application for using a rating system or equity risk model to calculate the risk-weighted IRBA exposure amounts pursuant to section 99 and the expected loss amounts pursuant to section 104 if, at the time of the suitability examination, it has been using said rating system or equity risk model for an appropriate period as the principal instrument for measuring and managing its credit risks and, on this basis, has satisfied itself that said rating system or equity risk model to be used for calculating the risk-weighted IRBA exposure amounts and expected loss amounts is concretely suited to achieving its intended purposes.

## **Title 2**

### **Applicability of the IRBA**

#### **Section 64**

##### **Entry threshold**

The entry threshold for IRBA is reached if both the degree of coverage for IRBA exposure values pursuant to section 67 (3) sentence 1 and the degree of coverage for risk-weighted IRBA exposure amounts pursuant to section 67 (3) sentence 2 using suitable rating systems and equity risk models is at least 50 per cent in each case.

**Section 65**

## Supervisory reference point

<sup>1</sup>The supervisory reference point is reached if both the degree of coverage for IRBA exposure values pursuant to section 67 (3) sentence 1 and the degree of coverage for risk-weighted IRBA exposure amounts pursuant to section 67 (3) sentence 2 using suitable rating systems and risk equity models is at least 80 per cent in each case. <sup>2</sup>Until BaFin establishes that an institution has reached the supervisory reference point, the institution must be able to calculate the risk-weighted CRSA exposure amount for all credit risk exposures with the exception of settlement risk exposures. <sup>3</sup>If an institution has already been granted IRBA approval on the basis of an implementation plan pursuant to which none of the institution's types of risk exposures fall under section 59 (1) sentence 2 number 1 letter (b), and if the institution has already reached full implementation of IRBA on the basis of that implementation plan, then the institution need not comply with the requirement pursuant to sentence 2 for its IRBA exposures for a subsequent implementation plan in which certain types of risk exposures of the institution fall under section 59 (1) sentence 2 number 1 letter (b) if the institution, until BaFin has established that the institution has reached the supervisory reference point, is able instead to calculate the risk-weighted IRBA exposure amounts for its IRBA exposures on the assumption that none of the institution's IRBA exposures fall under section 59 (1) sentence 2 number 1 letter (b).

**Section 66**

## Full implementation of IRBA

Full implementation of IRBA terminates the implementation phase and is reached when both the degree of coverage for the IRBA exposure values pursuant to section 67 (3) sentence 1 and the coverage for the risk-weighted IRBA exposure amounts pursuant to section 67 (3) sentence 2 using suitable rating systems are at least 92 per cent in each case. <sup>2</sup>BaFin may lower the said figure for an institution upon application if the institution furnishes substantive reasons for doing so.

**Section 67**

## Degree of coverage

(1) The denominator for the degree of coverage shall contain all IRBA and CRSA exposures which belong to the population for that coverage.

(2) <sup>1</sup>The numerator for the degree of coverage may contain,

1. if the institution has no risk exposure types for which the institution is seeking to use its own estimates of forecast LGD or forecast conversion factors and this information is required to be communicated separately in the implementation plan pursuant to section 59 (1) sentence 2 number 1 letter (b), all risk exposures identified using suitable rating systems or equity risk models pursuant to section 61 and for which all those risk parameters have been estimated which themselves must at least be estimated to calculate the risk-weighted IRBA exposure amount of the risk exposure in question;
2. if there are risk exposure types for which the institution is seeking to use its own estimates of forecast LGD or forecast conversion factors, and this information is required to be communicated separately in the implementation plan pursuant to section 59 (1) sentence 2 number 1 letter (b), all those risk exposures which
  - a) belong to the types of risk exposures for which the institution's implementation plan must contain a special notification pursuant to section 59 (1) sentence 2 number 1 letter (b) indicating that the institution is seeking to use its own estimates apart from PD and which have been identified using rating systems which are suitable pursuant to section 61 both for estimating forecast PD and forecast LGD and, where applicable, the forecast conversion factor, or
  - b) do not belong to the types of risk exposures for which the institution's implementation plan must contain a special notification pursuant to section 59 (1) sentence 2 number 1 letter (b) indicating that the institution is seeking to use its own estimates apart from PD and have been identified using suitable rating systems or risk equity models pursuant to section 61 and for which all those risk parameters are estimated which themselves must at least be estimated to calculate the risk-weighted IRBA exposure amount of the risk exposure in question.

<sup>2</sup>Risk exposures shall be recognised pursuant to sentence 1 only insofar as they belong to the population for the degree of coverage. <sup>3</sup>The decision as to which business units pursuant to section 108 sentence 1 are to have their risk exposures recognised in the numerator, provided that the requirements of sentence 1 have been met, is the responsibility of the institution and must be exercised consistently for all risk exposures in new business or recognisable existing business of a given business unit and documented in the implementation plan by means of the details pursuant to section 59 (1) sentence 2 number 1. <sup>4</sup>IRBA exposures for recognisable existing business pursuant to section 68 (4) of a given business unit may be recognised for the degree of coverage in the numerator only if all of these IRBA exposures are allowed to be recognised for that degree of coverage in the numerator pursuant to sentences 1 to 3.

(3) <sup>1</sup>The degree of coverage for IRBA exposure values is the ratio of

1. the sum of the IRBA exposure values of all IRBA exposures which may be recognised for the degree of coverage in the numerator pursuant to subsection (2) to

2. the sum of the CRSA exposure values of all CRSA exposures and of the IRBA exposure values of all IRBA exposures which may be recognised for the degree of coverage in the denominator.

<sup>2</sup>The degree of coverage for risk-weighted IRBA exposure amounts is the ratio of

1. the sum of the risk-weighted IRBA exposure amounts of all IRBA exposures which may be recognised for the degree of coverage in the numerator pursuant to subsection (2) provided these risk-weighted IRBA exposure values are recognised in the total capital charge for credit risk or have been deducted when calculating the modified available capital pursuant to section 10 (1d) of the Banking Act to
2. the sum of the risk-weighted CRSA exposure amounts of all CRSA exposures and of the risk-weighted IRBA exposure amounts of all IRBA exposures which are recognisable for coverage in the denominator provided these risk-weighted exposure values are recognised in the total capital charge for credit risk or have been deducted when calculating the modified available capital pursuant to section 10 (1d) of the Banking Act

<sup>3</sup>To determine the degree of coverage, the exposure values and the risk-weighted exposure amounts shall be calculated according to the procedure envisaged for each risk exposure at that point in time in the implementation plan or already specified by the IRBA approval.

(4) <sup>1</sup>The population for the degree of coverage shall contain all CRSA exposures and IRBA exposures with the exception of

1. those which have been indefinitely exempted from using IRBA at the institution's discretion pursuant to section 70,
2. other non credit-obligation assets pursuant to section 82,
3. equity claims pursuant to section 78,
4. securitisation positions pursuant to section 1b (3) of the Banking Act ,
5. risk exposures incurred by a CIU transaction which contains an exposure in the form of a CIU within the meaning of section 25 (12),
6. risk exposures of enterprises belonging to a group pursuant to section 10a (1) sentence 1 of the Banking Act which are not a superordinated enterprise pursuant to section 10a (1) sentence 1 of the Banking Act and for which BaFin has identified substantive reasons, as submitted by the institution, for excluding them from the population and where these reasons existed before this Regulation came into force, or
7. which belong to a credit risk exposure type for which a transitional exemption may apply.

<sup>2</sup>A credit risk exposure type for which a transitional exemption may apply pursuant to number 7 is one for which BaFin has identified substantive reasons, as submitted by the institution, for excluding it from the population for the degree of coverage and has approved a plan submitted by said institution the implementation of which over an appropriate transitional period will nullify the reasons for excluding this credit risk exposure type from the population. <sup>3</sup>Substantive reasons within the meaning of sentence 2 shall be constituted, in particular, if the credit risk exposures are incurred by the transactions of a business unit pursuant to section 108 sentence 1 which did not belong to the institution's business units at the time the implementation plan was submitted for authorisation pursuant to section 59 (1) sentence 1 and these credit risk exposures do not fall within the scope of application of a rating system or equity risk model which the institution is already allowed to use for IRBA or which it intends to use for IRBA according to its authorised implementation plan.

(5) In compliance with the requirements of subsection (3) sentence 3, an institution may additionally recognise the following IRBA exposures in the population for the degree of coverage:

1. IRBA equity portfolios subject to the internal models approach which have been identified using an equity risk model which the institution may use for IRBA pursuant to section 56 (1) sentence 3,
2. IRBA equity claims belonging to an equity portfolio subject to the PD/LGD approach which have been identified using a rating system which the institution may use for IRBA pursuant to section 56 (1) sentence 3,
3. IRBA exposures assignable to the IRBA exposure class Securitisation positions whose IRBA securitisation risk weight is calculated using the supervisory formula approach pursuant to section 258, if the institution has identified the CCR exposures of the securitised portfolio using a rating system which the institution may use for IRBA pursuant to section 56 (1) sentence 3, or whose IRBA securitisation risk weight pursuant to section 259 (1) sentence 2 is calculated using a credit assessment generated by an internal rating procedure,
4. risk exposures incurred by a CIU transaction which contains an exposure in the form of a CIU within the meaning of section 25 (12) and which have been recognised as IRBA exposures pursuant to section 83 (4) sentence 1.

(6) <sup>1</sup>An institution may recognise in the population for the degree of coverage and in the numerator and denominator for the degree of coverage all CCR exposures pursuant to section 10c (3) of the Banking Act which it has excluded from using IRBA pursuant to section 70 sentence 1 number 6 and is treating as CRSA exposures if the institution, using suitable rating systems pursuant to section 61 whose suitability has been confirmed by a suitability examination pursuant to section 62, calculates IRBA risk weights or risk-weighted

IRBA exposure amounts for these CCR exposures as if the CCR exposures were IRBA exposures.<sup>2</sup> When recognising CCR exposures pursuant to sentence 1, the institution may use the IRBA risk weights and risk-weighted IRBA exposure amounts pursuant to sentence 1 in the numerator and denominator for the degree of coverage instead of the CRSA risk weights or risk-weighted CRSA exposure amounts.

### **Section 68**

New business, exemptible existing business, recognisable existing business

(1) New business in a business unit which is not an expiring business unit pursuant to section 69 and constitutes the scope of application of a rating system pursuant to section 108 specified for using IRBA in the implementation plan comprises transactions entered into from the time this rating system starts to be used as the principal instrument to measure and manage credit risks in compliance with the application requirements pursuant to section 63 (2).

(2) Existing business in a business unit which is not an expiring business unit pursuant to section 69 and constitutes the scope of application of a rating system pursuant to section 108 specified for using IRBA in the implementation plan comprises transactions which fall within the scope of application of the rating system and are not recognised as new business.

(3) Exemptible existing business is existing business for a non-expiring business unit where

1. the institution has decided currently to exclude the entire existing business of a business unit from application of the IRBA rating system to be used for that business unit, and
2. the institution can demonstrate that application of the rating system to be used for IRBA exposures for this business unit would currently be unduly burdensome in comparison with the burden usually involved for the institution in applying a rating system to comparable existing business.

(4) Recognisable existing business is existing business which is not exemptible existing business.

### **Section 69**

Expiring business units

An expiring business unit of an institution is a business unit pursuant to section 108 sentence 1 in which the institution is neither incurring nor intends to incur new credit risk exposures by concluding new transactions.

**Section 70**

## Indefinite exemption from using IRBA

<sup>1</sup>Even after the end of the implementation phase pursuant to section 66, an institution may, in addition to the credit risk exposures that belong to the population for the degree of coverage and are not recognised in the numerator for the degree of coverage, indefinitely exempt the following CCR exposures from using IRBA and treat them as CRSA exposures:

1. CCR exposures to
  - a) the Federal Republic of Germany, a domestic state government, a legally dependent special fund of the Federal Republic of Germany or of a domestic state government, a domestic local government, a domestic local government association or an administrative entity which is subject to the exclusive authority of the Federal Republic of Germany, its state governments or local governments or local government associations and discharges their tasks,
  - b) a promotional institution domiciled in Germany that operates non-competitively and is exclusively operated by one or more of the government authorities specified in letter (a) and for whose payment obligations one or more of its owners has assumed liability equivalent to an explicit guarantee, or which is a legally independent promotional institution in the legal form of a Federal agency,
  - c) another EEA country,
  - d) a regional government, local authority or administrative entity of another EEA country where the risk of claims on the obligor is not different from that of claims on this central government because of specific public arrangements, provided the CRSA risk weight pursuant to section 26 number 1 or number 2 for relevant CRSA exposures to the Federal Republic of Germany in the case of letters (a) and (b) and to the other EEA country in the case of letters (c) and (d) is 0 per cent,
2. equity exposures if a claim on the enterprise in which the equity is held would attract a CRSA risk weight of 0 per cent,
3. CCR exposures which would be assignable to the IRBA exposure class Central governments if
  - a) the number of material obligors for all those CCR exposures is limited and
  - b) implementing a suitable rating system for these obligors would be unduly burdensome for the institution,
4. CCR exposures to public-law corporations pursuant to section 25 (3) number 6,

5. CCR exposures which would be assignable to the IRBA exposure class Institutions if
  - a) the number of material obligors for all those CCR exposures is limited and
  - b) implementing a suitable rating system for these obligors would be unduly burdensome for the institution,
6. CCR exposures pursuant to section 10c (3) of the Banking Act,
7. exposures which belong to an expiring business unit of the institution or to exemptible existing business of a non-expiring business unit of the institution,
8. equity exposures incurred under a legislative programme to promote specified sectors of the economy that involves some form of government oversight and investment restrictions if the sum of their book values does not exceed 10 per cent of the institution's liable capital,
9. equity exposures, including the parts of the CIU classified as other IRBA equity exposures pursuant to section 83 (2) and (4) sentence 2 number 1 or sentence 5 if the sum of their book values, excluding equity exposures pursuant to number 8, on average over the preceding one-year period,
  - a) does not exceed 5 per cent of the amount of the institution's modified available capital, excluding the deduction pursuant to section 10 (6a) number 2 of the Banking Act, if the equity exposures relate to fewer than ten equity investments in different enterprises,
  - b) does not otherwise exceed 10 per cent of the amount of the institution's modified available capital, excluding the deduction pursuant to section 10 (6a) number 2 of the Banking Act,
10. exposures which are guaranteed or counter-guaranteed by a guarantor named in section 164 (3) sentence 1 number 2 letters (a) or (b) if this guarantee meets the conditions specified in section 164 (3) sentence 2 numbers 1 or 2, and
11. long settlement transactions pursuant to section 11 (3).

<sup>2</sup>To calculate the totals specified in sentence 1 numbers 8 and 9, institutions may recognise netting effects in the formation of IRBA net equity exposures pursuant to section 103. <sup>3</sup>The conditions pursuant to sentence 1 number 3 letters (a) and (b) shall be deemed to have been met if the sum of the obligors of an institution for which the credit risk exposures would be assignable to the IRBA exposure class Central governments does not exceed 40. <sup>4</sup>The conditions pursuant to sentence 1 number 5 letters (a) and (b) shall be deemed to have been met if the sum of the obligors of an institution for which the credit risk exposures would be

assignable to the IRBA exposure class Institutions, excluding the obligors of the CCR exposures pursuant to number 6, does not exceed 40.

### **Division 3**

#### **Risk-weighted IRBA exposure amounts**

##### **Section 71**

##### **IRBA exposures**

(1) <sup>1</sup>IRBA exposures include CCR exposures pursuant to section 9, netting positions pursuant to section 12 and dilution risk exposures pursuant to subsection (2) if the approval for using IRBA specifies IRBA for such exposures (IRBA exposures). <sup>2</sup>CCR exposures incurred by purchasing receivables for which the conditions pursuant to sections 142 to 146 have not been met shall invariably constitute CRSA exposures; a dilution risk exposure shall not be recognised in this case.

(2) <sup>1</sup>Dilution risk is the risk in respect of the existence and realisability of a purchased receivable that the obligor of said purchased receivable is not obliged to meet it in full. <sup>2</sup>For each CCR exposure incurred by purchasing receivables, a dilution risk exposure position shall additionally be set up, unless the institution can demonstrate to BaFin that the dilution risk for said purchased receivable is immaterial. <sup>3</sup>Irrespective of possible recourse to the seller of the receivable, a dilution risk exposure shall be incurred by

1. each purchased receivable and
2. any undrawn part of an institution's purchase commitment for revolving purchased receivables.

(3) <sup>1</sup>If the institution has full recourse to the seller of a receivable both in respect of the counterparty credit risk and the dilution risk, it may treat the IRBA exposure as a CCR exposure to the seller of the receivable and which is protected by the claims arising from the receivable as if the receivable had been assigned to the institution by way of security. <sup>2</sup>In this case, a dilution risk exposure shall not be recognised.

(4) As soon as an institution has received approval to use IRBA, it shall assign all CIU exposures within the meaning of section 25 (12) to exposure classes pursuant to section 83, and it shall use IRBA for all equity exposures pursuant to section 78, unless they can be indefinitely exempted from using IRBA pursuant to section 70 sentence 1 numbers 2, 8 or 9 or temporarily exempted pursuant to section 338 (4), and for all credit risk exposures assignable to the exposure class Other non credit-obligation assets.

(5) CCR exposures and netting positions which are not IRBA exposures pursuant to subsections (1) to (4) are to be recognised as CRSA exposures pursuant to section 24 sentence 1.

## **Section 72**

### Calculating risk-weighted IRBA exposure amounts

<sup>1</sup>After assignment to one of the IRBA exposure classes pursuant to section 73, the risk-weighted IRBA exposure amount of each IRBA exposure shall be calculated. <sup>2</sup>The risk-weighted IRBA exposure amount of each IRBA exposure which is not an IRBA securitisation exposure pursuant to section 227 (4) is to be calculated pursuant to section 84. <sup>3</sup>The risk-weighted exposure amount of each IRBA securitisation exposure is to be calculated pursuant to section 253.

## **Subdivision 1**

### IRBA exposure classes

## **Section 73**

### Assigning IRBA exposures to IRBA exposure classes

<sup>1</sup>Each IRBA exposure shall be assigned to one of the following IRBA exposure classes:

1. Central governments
2. Institutions
3. Retail claims
4. Equity claims
5. Securitisation positions
6. Corporates
7. Other non credit-obligation assets

<sup>2</sup>The IRBA exposures in the IRBA exposure class Retail claims shall be additionally assigned to one of the three sub-portfolios pursuant to section 77. <sup>3</sup>When assigning CIU claims within the meaning of section 25 (12) to IRBA exposure classes, section 83 shall be taken into account. <sup>4</sup>The methodology used by the institution for assigning exposures shall be appropriate and consistent over time. <sup>5</sup>Irrespective of the assignment of CCR exposures incurred by purchasing receivables, the associated dilution risk shall invariably be assigned to

the exposure class Corporates. <sup>6</sup>An IRBA exposure incurred by a written credit derivative which can be drawn as soon as a credit event for a basket has occurred for the nth time, thus terminating the contract, shall be assigned to the exposure class Central governments if all the exposures contained in the basket would be assignable as IRBA exposures of the institution to the exposure class Central governments; it shall be assigned to the exposure class Institutions if all the exposures contained in the basket would be assignable as IRBA exposures of the institution to the exposure class Institutions; in all other cases, it shall be assigned to the exposure class Corporates.

#### **Section 74**

##### IRBA exposure class Central governments

An IRBA exposure to the following shall be assigned to the IRBA exposure class Central governments pursuant to section 73 sentence 1 number 1:

1. central governments or central banks,
2. regional governments, local authorities or public-sector entities which pursuant to section 27 number 1 as the obligor of a CRSA exposure attract the CRSA risk weight for central governments or pursuant to section 28 number 1 the same CRSA risk weight as the Federal Republic of Germany or which in a non-EEA country are treated as claims on central governments and pursuant to section 27 number 2 or section 28 number 3 attract the risk weight applicable in that non-EEA country, or
3. international organisations and multilateral development banks which as the obligor of a CRSA exposure attract the CRSA risk weight of 0 per cent pursuant to section 29 number 1.

#### **Section 75**

##### IRBA exposure class Institutions

An IRBA exposure shall be assigned to the IRBA exposure class Institutions pursuant to section 73 sentence 1 number 2 if it is to

1. an institution
  - a) within the meaning of section 1 (1b) of the Banking Act to which the requirements of adequate own funds pursuant to section 10 (1) sentence 1 apply, or which pursuant to section 2a of the Banking Act is exempt from section 10 of the Banking Act, or

- b) within the meaning of article 3 (1) point (c) of Directive 2006/49/EC domiciled in another EEA country which is supervised on the basis of Directive 2006/48/EC or 2006/49/EC,
2. a credit institution within the meaning of article 4 (1) of Directive 2006/48/EC domiciled in a non-EEA country and authorised in that country and subject to a prudential regime which is materially equivalent to that provided for by the Banking Act,
  3. a recognised investment firm from non-EEA countries,
  4. an enterprise domiciled abroad in its function as a central counterparty within the meaning of section 1 (31) of the Banking Act,
  5. a regional government or local authority other than those specified under section 74 number 2,
  6. a multilateral development bank which as the obligor of a CRSA exposure does not attract the CRSA risk weight of 0 per cent pursuant to section 29 number 1, or
  7. another public-sector entity which as the obligor of a CRSA exposure attracts the CRSA risk weight for Institutions pursuant to section 28 numbers 2 and 3, or
  8. a stock exchange or futures exchange.

## **Section 76**

### IRBA exposure class Retail claims

(1) <sup>1</sup>An IRBA exposure shall be assignable to the exposure class Retail claims pursuant to section 73 sentence 1 number 3 if all the following conditions have been met.

1. It is to a natural person, a partnership of natural persons or a small or medium-sized enterprise.
2. If the obligor is neither a natural person nor a partnership of natural persons, the total amount, excluding the amounts of CCR exposures secured on residential real estate, which the obligor and the enterprises constituting a group of connected clients with it pursuant to section 4 (8), to the institution's knowledge, owed to said institution and the group of institutions or financial holding group to which it belongs does not exceed 1 million euro.
3. The institution treats the exposure consistently in its risk management over time and in a similar manner to comparable exposures.

4. The institution does not manage the exposure as individually as IRBA exposures in the IRBA exposure class Corporates.
5. It is one of a significant number of similarly managed exposures.

<sup>2</sup>The institution must have taken reasonable steps to obtain the knowledge specified in sentence 1 number 2.

(2) All CCR exposures incurred by purchasing receivables which meet the requirements for use pursuant to sections 142 to 146 and, in addition, satisfy the criteria for assignment to Retail claims pursuant to subsection (1) shall be assigned to the IRBA exposure class Retail claims.

### **Section 77**

#### Sub-portfolios of retail claims

(1) A distinction shall be made within the IRBA exposure class Retail claims between the sub-portfolios

1. qualifying revolving,
2. secured by real estate collateral, and
3. other IRBA retail exposures.

(2) <sup>1</sup>An IRBA exposure within the meaning of section 76 may be assigned to the sub-portfolio pursuant to subsection (1) number 1 if it meets the following requirements.

1. It is to one or more natural persons.
2. It is revolving in the sense that borrowings and repayments may fluctuate within a limit set by the institution.
3. It is unprotected.
4. The undrawn portion within the limits pursuant to number 2 is immediately and unconditionally cancellable at any time to the extent allowable under consumer protection and related legislation.
5. The maximum exposure to a single individual arising from IRBA exposures in this sub-portfolio is 100,000 euro.
6. The institution can demonstrate, especially within the low PD bands, that the volatility of loss rates in this sub-portfolio is low relative to the average level of loss rates.

7. BaFin agrees that treatment of the IRBA exposure as a qualifying revolving IRBA retail exposure is consistent with the underlying risk characteristics of this sub-portfolio.

<sup>2</sup>Sentence 1 number 3 shall not apply to a collateralised credit facility linked to a wage account.

(3) An IRBA exposure within the meaning of section 76 shall be assigned to the sub-portfolio pursuant to subsection (1) number 2 if it is secured on residential or commercial real estate and the institution recognises this collateral in its internal risk measurement.

(4) An IRBA exposure within the meaning of section 76 which does not fall under the provisions of subsections (2) and (3) shall be assigned to the sub-portfolio pursuant to subsection (1) number 3.

### **Section 78**

#### IRBA exposure class Equity claims

(1) <sup>1</sup>An IRBA exposure which is an equity portfolio position or a portfolio-raising or portfolio-reducing (ie long or short) equity exposure (IRBA equity exposure ) shall be assigned to the IRBA exposure class Equity claims pursuant to section 73 number 4. <sup>2</sup>An equity exposure is any IRBA exposure that

1. is a non-debt credit risk exposure conveying a subordinated, residual claim on the assets or income of the issuer, or
2. is a debt credit risk exposure the economic substance of which, owing to its legal construction or actual circumstances, is similar to the exposure specified in number 1.

(2) <sup>1</sup>When assigning an IRBA exposure, the institution shall identify whether it

1. belongs to an equity portfolio in which the institution internally manages each equity exposure uniformly
  - a) by recognising the PD/LGD for the enterprise in which the equity investment is held and using a rating system for these equity claims which has been approved as suitable by BaFin (IRBA equity portfolio subject to the PD/LGD approach), or
  - b) by applying an internal equity risk model which has been approved as suitable for calculating risk-weighted IRBA exposure amounts by BaFin (IRBA equity portfolio subject to the internal models approach), or
2. is to be valued at the simple risk weight pursuant to section 98.

<sup>2</sup> If an institution does not classify its IRBA equity exposures uniformly, it shall demonstrate to BaFin that its classification method is consistent and is not determined by regulatory arbitrage considerations. <sup>3</sup>The institution shall distinguish between the following when valuing IRBA equity exposures at the simple risk weight:

1. exchange traded equity exposures,
2. private equity exposures in sufficiently diversified equity portfolios, and
3. other equity exposures.

(3) Notwithstanding subsection (1) sentence 1, an institution may assign equity exposures to ancillary services undertakings to the IRBA exposure class Other non credit-obligation assets.

### **Section 79**

#### IRBA exposure class Securitisation positions

Each IRBA securitisation position pursuant to section 227 (4) shall be assigned to the IRBA exposure class Securitisations positions pursuant to section 73 number 5.

### **Section 80**

#### IRBA exposure class Corporates

All IRBA exposures which cannot be assigned to any of the IRBA exposure classes Central governments, Institutions, Retail claims, Equity claims or Securitisation positions and which are not Other non credit-obligation assets within the meaning of section 82 shall be assigned to the IRBA exposure class Corporates pursuant to section 73 number 6.

### **Section 81**

#### Specialised lending exposures

An IRBA specialised lending exposure is an IRBA exposure in the IRBA exposure class Corporates

1. which is normally to an entity which was created specifically to finance or operate physical assets,
2. the contractual arrangements of which give the lending institution a substantial degree of control over the financed or operated assets and the income that they generate and

3. the primary source of repayment of the obligation is the income generated by the financed or operated assets rather than the independent capacity of a broader commercial enterprise.

### **Section 82**

#### Exposure class Other non credit-obligation assets

The following shall be assigned to the IRBA exposure class Other non credit-obligation assets pursuant to section 73 number 7:

1. equity exposures to ancillary services undertakings which the institution has not assigned to the IRBA exposure class Equity claims,
2. the residual values of leased assets assumed at the end of the lease when the contract was drafted, unless
  - a) a sum has been fixed for the residual value which the lessee is or can be obliged to repay,
  - b) the residual value is covered by a purchase option offering the lessee an incentive to exercise it,
3. tangible assets,
4. prepayments and accrued income for which the institution is unable to determine a counterparty, and
5. cash in hand and equivalent cash items.

### **Section 83**

#### Assigning claims in the form of collective investment undertakings (CIUs) to exposure classes

(1) When assigning claims in the form of collective investment undertakings (CIUs) within the meaning of section 25 (12) to exposure classes, claims on a CIU which is itself exposed to one or more other CIUs shall be assigned to exposure classes based on the underlying exposures of the other CIUs.

(2) If an institution holds a claim in the form of a CIU within the meaning of section 25 (12), it shall classify that part of it for which it is not aware of the underlying exposures of the CIU and may not make assumptions pursuant to subsection (3) about said exposures based on the CIU's investment mandate as IRBA other equity exposures pursuant to section 78 (2)

sentence 3 number 3 recognised at the simple risk weight pursuant to section 98.

(3) <sup>1</sup>An institution may make assumptions about a CIU's underlying exposures of which it is not aware based on the CIU's investment mandate if the CIU satisfies the conditions of section 36 (2). <sup>2</sup>The assumptions about the composition of the underlying exposures based on the investment mandate shall be made in such a way that the classification of the credit risk exposures pursuant to subsection (4) sentence 2 numbers 1 and 2 results in the highest-possible sum of the risk-weighted exposure amounts. <sup>3</sup>The basis of the investment mandate is determined by the document pursuant to section 36 (2) number 2.

(4) <sup>1</sup>If a credit risk exposure is to a CIU which satisfies the conditions stipulated in section 36 (2) and the institution is aware of, or could reasonably be aware of, the underlying exposure, or it would not be unduly burdensome for the institution to look through the underlying exposure and to calculate the risk-weighted IRBA exposure amount and the expected loss amounts such as for an IRBA exposure, and if a credit risk exposure incurred by an identical own exposure of the institution would be an IRBA exposure pursuant to section 71 (1), then the credit risk exposure shall be recognised as an IRBA exposure. <sup>2</sup>For any other credit risk exposure due to an exposure of which the institution is aware or for which it makes an assumption based on the investment mandate pursuant to subsection (3) or to an exposure of which the institution can reasonably be expected to be aware without it being unduly burdensome, and for which the institution can calculate the risk-weighted IRBA exposure amount and the expected loss amount such as for an IRBA exposure, the institution shall,

1. if it is an equity exposure, classify it as an IRBA equity claim recognised at the simple IRBA risk weight pursuant to section 98 and assign it to the categories specified in section 78 (2) sentence 3,
2. otherwise it shall be assigned to the relevant CRSA exposure class for such exposures.

<sup>3</sup>For a credit risk exposure to be assigned to a CRSA exposure class pursuant to sentence 2 number 2, the CRSA risk weight, provided that it can be calculated by assignment to a credit quality step and that a CRSA risk weight which is not the highest CRSA risk weight for the relevant CRSA exposure class is assigned to this credit quality step, shall be the CRSA risk weight of the credit risk exposure pursuant to sections 24 to 40, multiplied by a factor of 1.1 yet not less than 5 per cent. <sup>4</sup>Where the CRSA risk weight for a credit risk exposure assignable to a CRSA exposure class pursuant to sentence 2 number 2 cannot be calculated by assignment to a credit quality step or the highest CRSA risk weight for the relevant CRSA exposure class is assigned to the credit quality step, the CRSA risk weight shall be the CRSA risk weight laid down for the credit risk exposure in sections 24 to 40 multiplied by a factor of two but not exceeding 1,250 per cent. <sup>5</sup>Where the institution cannot differentiate equity exposures for sentence 2 pursuant to the categories specified in section 78 (2) sentence 3, it must assign these as other equity exposures pursuant to section 78 (2) sentence 3 number 3.

(5) If the correctness of the calculation and report to the institution is adequately ensured, the institution may rely on a third party to calculate exposures for which an assumption is made based on the investment mandate pursuant to subsection (3) and to calculate the risk-weighted exposure amounts or their average pursuant to subsection (4) sentences 1 and 2; the correctness of the calculation must be confirmed by a firm of independent auditors by three months at the latest after the CIU's financial year has ended.

(6) The assignment of a risk exposure to a CRSA or IRBA exposure class renders the exposure subject to all provisions contained in this Regulation for that exposure class, with due regard to derogations contained in subsections (2) to (5).

## **Subdivision 2**

### **Calculating risk-weighted IRBA exposure amounts**

#### **Section 84**

##### **Overview of risk-weighted IRBA exposure amounts**

(1) The risk-weighted exposure amount for an IRBA exposure is the product of its IRBA risk weight pursuant to section 85 and its IRBA exposure value pursuant to section 99. <sup>2</sup>If an IRBA exposure is hedged by eligible unfunded credit protection pursuant to section 162 and the institution may treat credit risk exposures to the protection provider as CRSA exposures, the institution may, for that part of the IRBA exposure which is hedged by this unfunded credit protection, take as the risk-weighted IRBA exposure amount the risk-weighted CRSA exposure amount which would result if the part of the credit risk exposure that is hedged by this unfunded credit protection were a CRSA exposure and the institution recognised the unfunded credit protection for this CRSA exposure.

(2) For an IRBA exposure in the IRBA exposure class Retail claims incurred by a purchased receivable that belongs to a hybrid pool of purchased claims assignable as CCR exposures to the IRBA exposure class Retail claims for which the institution cannot separate qualifying revolving exposures or exposures secured by real estate from the other retail exposures, the risk-weighted IRBA exposure amount is the product of the IRBA exposure value and the highest IRBA risk weight pursuant to section 77 for this IRBA exposure for one of the sub-portfolios of the IRBA exposure class Retail claims that may be present in the pool.

(3) <sup>1</sup>The risk parameters for an IRBA dilution risk exposure for which the CCR exposure incurred by the purchased receivable is assigned to the IRBA exposure class Retail claims may be calculated using the minimum requirements for using IRBA applicable to Retail claims. <sup>2</sup>The foregoing shall also apply to the calculation of risk parameters for CCR exposures incurred by purchasing receivables and not assigned to the IRBA exposure class Retail claims and to dilution risk exposures if the institution can demonstrate that, for these

purchased receivables, complying with the minimum requirements for using IRBA for the exposure class Corporates would be unduly burdensome and if each of the following criteria is met.

1. The institution has purchased the receivables from an unrelated third party and there are no CRSA exposures or IRBA exposures to the obligors of the purchased receivables which are originated directly or indirectly by the institution itself.
  2. <sup>1</sup>The receivables must have been generated on an arm's length basis between the seller and the obligor. <sup>2</sup>Inter-company accounts receivable and receivables subject to contra-accounts between firms that buy and sell to each other are ineligible pursuant to sentence 1.
  3. The purchasing institution has a claim on all proceeds from the purchased receivables or an equal-ranking interest in the proceeds.
  4. The portfolio of purchased receivables is sufficiently diversified.
- (4) The risk-weighted IRBA exposure amount for an IRBA exposure in an equity portfolio
1. that is subject to the PD/LGD approach pursuant to section 78 (2) sentence 1 number 1 letter (a) is the minimum of
    - a) 12.5 times the difference between the IRBA exposure value and the expected loss amount pursuant to section 104 and
    - b) the product of the IRBA risk weight and the IRBA exposure value for this IRBA exposure,
  2. that is subject to the internal models approach pursuant to section 78 (2) sentence 1 number 1 letter (b) is the maximum
    - a) of the product of the IRBA risk weight and the IRBA exposure value for this IRBA exposure and
    - b) of the sum of the risk-weighted IRBA exposure amounts which result for all appertaining equity exposures when using the procedures for IRBA equity portfolios subject to the PD/LGD approach plus 12.5 times the expected loss amounts pursuant to section 104 for those equity exposures; the calculation of the IRBA exposure values and expected loss amounts shall be based on a forecast PD pursuant to section 88 (4) sentence 2 and a forecast LGD pursuant to section 93 (2) sentence 1 or 2,
  3. that does not satisfy the conditions of numbers 1 and 2 is the product of the IRBA exposure value and the simple IRBA risk weight for equity claims pursuant to section 98 for this IRBA exposure.

(5) (Repealed)

(6) For an IRBA exposure incurred by a written credit derivative that triggers payment as soon as the nth default amongst the basket of exposures occurs, terminating the contract, the risk-weighted IRBA exposure amount,

1. if its IRBA risk weight is calculated pursuant to section 85 (6) sentence 1 number 1, is the higher of zero and the difference between
  - a) the product of the IRBA risk weight and the IRBA exposure value for this IRBA exposure and
  - b) 12.5 times the provisions recognised in the annual or interim financial statements for actual or potential value impairments for the credit risk-related loss risk set up for this IRBA exposure,
2. if its IRBA risk weight is calculated pursuant to section 85 (6) sentence 1 number 2, is the lesser
  - a) of 12.5 times the difference between the IRBA exposure value and the expected loss amount of this IRBA exposure pursuant to section 104 and
  - b) the product of the IRBA risk weight and the IRBA exposure value for this IRBA exposure.

### **Subdivision 3**

#### **Calculating the IRBA risk weight**

#### **Section 85**

##### **Calculating the IRBA risk weight**

(1) The IRBA risk weight for an IRBA exposure is its risk weight subject to the PD/LGD approach pursuant to section 86.

(2) For IRBA specialised lending exposures for which the institution does not meet the requirements for own estimates of PD pursuant to sections 129 and 130, the simple IRBA risk weight for specialised lending exposures pursuant to section 97 shall be used.

(3) For IRBA equity exposures

1. which belong to an IRBA equity portfolio subject to the internal models approach, the IRBA risk weight is 100 per cent,
2. which belong to an IRBA equity portfolio subject to the PD/LGD approach, the IRBA risk weight is the risk weight subject to the PD/LGD approach pursuant to section 86; for equity claims about which the institution does not have adequate information to apply the default definition pursuant to section 125, the IRBA risk weight is 1.5 times the risk weight subject to the PD/LGD approach,
3. which do not meet the conditions of numbers 1 and 2, the simple IRBA risk weight for equity claims pursuant to section 98 applies.

(4) The IRBA risk weight for an IRBA exposure in the exposure class Other non-credit obligation assets pursuant to section 82 is 0 per cent for cash in hand and equivalent cash items and 100 per cent otherwise.

(5) The IRBA risk weight for a split-off IRBA exposure pursuant to section 100 (8) is 50 per cent.

(6) <sup>1</sup>The IRBA risk weight for an IRBA exposure incurred by a written credit derivative that triggers payment as soon as the nth default amongst the basket of exposures occurs, terminating the contract,

1. is its rating-based IRBA securitisation risk weight pursuant to section 257 if for this IRBA exposure there is a relevant credit assessment pursuant to section 237 from an ECAI nominated by the institution pursuant to section 235 and the institution meets the application requirements pursuant to section 236,
2. is otherwise the lesser of 1,250 per cent and the difference between
  - a) the sum of the risk weights subject to the PD/LGD approach for all exposures contained in the basket and
  - b) the sum of the risk weights subject to the PD/LGD approach for those n-1 exposures in the basket for which the lowest risk-weighted IRBA exposure amount results.

<sup>2</sup>If a risk weight subject to the PD/LGD approach cannot be determined for all exposures contained in the basket, a risk weight of 1,250 per cent shall be applied to those exposures in the basket for which such a risk weight subject to the PD/LGD approach cannot be determined.

(7) <sup>1</sup>For free delivery risk exposures whose IRBA exposure value is immaterial, the institution may waive calculating the IRBA risk weight pursuant to subsections (1) to (6) and instead apply an IRBA risk weight of 100 per cent. <sup>2</sup>At its own discretion and on a consistent basis for

all free delivery risk exposures, the institution may waive calculating the IRBA risk weight for free delivery risk exposures pursuant to subsections (1) to (6) and may either apply for each of these IRBA exposures the CRSA risk weight that would be applicable to the free delivery risk exposure as a CRSA exposure or, alternatively, a uniform risk weight of 100 per cent for all such IRBA exposures.

## Title 1

### Calculating the IRBA risk weight subject to the PD/LGD approach

#### Section 86

##### IRBA risk weight subject to the PD/LGD approach

(1) <sup>1</sup>The risk weight subject to the PD/LGD approach for an IRBA exposure for which the obligor has not been deemed to be in default is

1. zero, if the forecast PD for this IRBA exposure is 0 per cent,
2. otherwise it is the product of 12.5 times the supervisory scaling factor pursuant to subsection (4) and
  - a) the difference between the conditional PD pursuant to section 87 and the forecast PD,
  - b) the forecast LGD pursuant to section 92 and,
  - c) if the IRBA exposure has not been assigned to the IRBA exposure class Retail claims, the IRBA maturity adjustment pursuant to section 95 for this IRBA exposure.

<sup>2</sup>If the institution recognises the protection of an IRBA exposure by a guarantee or a credit derivative when calculating forecast PD pursuant to section 88 (2) sentence 2 or LGD pursuant to section 92 (2) sentence 2, the risk weight subject to the PD/LGD approach for this IRBA exposure shall be the higher of the risk weight subject to the PD/LGD approach obtained by recognising this guarantee or credit derivative pursuant to sentence 1 and the risk weight subject to the PD/LGD approach which results pursuant to sentence 1 without recognising this guarantee or credit derivative under the assumption of a comparable direct IRBA exposure to the protection provider.

(2) The risk weight subject to the PD/LGD approach for an IRBA exposure for which the obligor has been deemed to be in default,

1. if the institution may not use its own estimate of LGD for this IRBA exposure, is zero,

2. if the institution must use its own estimate of LGD for this IRBA exposure, is the greater of
  - a) zero and
  - b) 12.5 times the difference between the forecast LGD and the best estimate of EL for this IRBA exposure under current economic circumstances calculated according to the definition in section 132 (9).

(3) <sup>1</sup>If an IRBA exposure which meets the requirements pursuant to section 166 number 2 is hedged by guarantees or credit derivatives for which the requirements pursuant to section 163 (4) and (5) and section 166 numbers 1 and 3 to 9 have been met and the obligor is not deemed to be in default for this IRBA exposure, this IRBA exposure may be treated as an IRBA exposure with special recognition of unfunded credit protection and the risk weight subject to the PD/LGD approach may thus be calculated as the product of 12.5 times the supervisory scaling factor pursuant to subsection (4) and

1. the difference between the conditional PD pursuant to section 87 and the forecast PD of the obligor,
2. the forecast LGD for a comparable direct IRBA exposure to the protection provider pursuant to sentence 2,
3. the IRBA maturity adjustment pursuant to section 95 for this IRBA exposure and
4. the sum of 0.15 and 160 times the forecast PD of the protection provider.

<sup>2</sup>A direct IRBA exposure to the protection provider comparable to an IRBA exposure pursuant to sentence 1

1. is incurred by the claim on the obligor deemed to be unhedged if the available information and the structure of the guarantee give grounds to suppose that, in the event of the double default of the protection provider and the obligor during the life of the hedged claim, the amount recovered would depend on the financial condition of the obligor, and
2. is incurred by a comparable unhedged claim on the protection provider if the available information and the structure of the guarantee give grounds to suppose that, in the event of the double default of the protection provider and the obligor during the life of the hedged claim, the amount recovered would depend on the financial condition of the protection provider.

(4) The supervisory scaling factor is 1.06.

**Title 2**

## Calculating conditional probability of default

**Section 87**

## Conditional PD

The conditional PD for an IRBA exposure is to be calculated using Formula 1 in Annex 2.

**Section 88**

## Forecast PD

(1) The forecast PD for an IRBA exposure is the PD to be estimated pursuant to the provisions of sections 129 to 131

1. for the rating system grade to which the obligor of the IRBA exposure has been assigned, or
2. for the rating system risk pool to which the IRBA exposure in the IRBA exposure class Retail claims has been assigned.

<sup>2</sup>If the IRBA exposure is a free delivery risk exposure and there is no credit risk exposure to the counterparty from a transaction assignable to the institution's banking book, the institution may use an external credit assessment to assign the counterparty to a rating grade pursuant to sentence 1 number 1 or to assign the IRBA exposure to a risk pool pursuant to sentence 1 number 2.

(2) <sup>1</sup>If an IRBA exposure for which the institution must use the supervisory LGD pursuant to section 93 is hedged by unfunded credit protection eligible for such IRBA exposures and if this protection has not been recognised by applying the risk weight subject to the PD/LGD approach for IRBA exposures with special recognition of unfunded credit protection pursuant to section 86 (3), the institution may, provided that the minimum requirements for unfunded credit protection pursuant to section 177 and the minimum requirements for credit derivatives pursuant to section 178 are observed, apply the PD for that part of the IRBA assessment basis that is protected by this protection which is assignable to the protection provider's rating, or, where more appropriate, that is assignable to a rating between that of the obligor and that of the protection provider. <sup>2</sup>For an IRBA exposure for which the institution itself has to estimate LGD pursuant to section 92 (1), it shall be permitted to recognise unfunded credit protection in the form of guarantees or credit derivatives when estimating PD as long as it complies with the provisions of section 92 (2) sentence 2.

(3) If an institution cannot estimate the forecast PD as required by sections 129 to 131 for

IRBA exposures incurred in connection with purchased receivables and if the institution may not apply its own estimate of LGD for this IRBA exposure or, when applying its own LGD estimate, cannot demonstrate the reliability of the decomposition of estimated EL into PD and LGD, then the forecast PD is the quotient of EL estimated pursuant to the definition in section 127 and the forecast LGD for this IRBA exposure pursuant to section 92.

(4) <sup>1</sup>The forecast PD must have a minimum value of 0.03 per cent. <sup>2</sup>The minimum value for an IRBA exposure in the IRBA exposure class Equity claims,

1. for an equity claim traded on the stock exchange
  - a) for which the institution's investment is part of a long-term customer relationship with the issuer of the claim, is 0.09 per cent,
  - b) otherwise, also in the case of a short equity position which reduces the portfolio, it is 0.4 per cent.
2. for an equity claim not traded on a stock exchange, for which
  - a) the returns on the investment are based on regular and periodic cash flows not derived from capital gains, is 0.09 per cent,
  - b) otherwise, also in the case of a short equity position which reduces the portfolio, it is 1.25 per cent.

<sup>3</sup>For an IRBA exposure in the IRBA exposure class Central governments, the minimum value is 0 per cent. <sup>4</sup>If the obligor has defaulted on an IRBA exposure, the forecast PD shall be 100 per cent.

## Section 89

### Calculating the correlation with the economic factor

(1) The correlation with the economic factor for IRBA exposures in the IRBA exposure classes Central governments, Institutions, Corporates, Equity claims subject to the PD/LGD approach and Other retail claims is the correlation calculated pursuant to section 90 in conjunction with Formula 2 of Annex 2. The correlation pursuant to sentence 1 may be reduced by the deduction calculated pursuant to section 91 if the IRBA exposure is to a small or medium-sized enterprise pursuant to section 91 (1) and this IRBA exposure

1. is assigned to the IRBA exposure class Corporates, or
2. is an IRBA exposure with special recognition of unfunded credit protection pursuant to section 86 (3) assigned to the IRBA exposure class Retail claims.

(2) The correlation with the economic factor for an IRBA exposure in the IRBA exposure class Retail claims is,

1. if it is secured by real estate collateral, uniformly 0.15, and,
2. if it is a qualifying revolving IRBA exposure, uniformly 0.04.

### **Section 90**

#### Supervisory parameters for calculating correlations

(1) The following supervisory parameters shall apply to calculations using Formula 2 of Annex 2 for IRBA exposures in the IRBA exposure classes Central governments, Institutions or Corporates, IRBA exposures with special recognition of unfunded credit protection in the IRBA exposure class Retail claims and Equity claims subject to the PD/LGD approach:

1. the minimum correlation  $R_{\min}$  shall equal 0.12,
2. the maximum correlation  $R_{\max}$  shall equal 0.24 and
3. the coefficient K shall equal 50.

(2) The following supervisory parameters shall apply to calculations using Formula 2 of Annex 2 for IRBA exposure values in the IRBA exposure class Retail claims which are other retail claims and which are not IRBA exposures with special recognition of unfunded credit protection:

1. the minimum correlation  $R_{\min}$  shall equal 0.03,
2. the maximum correlation  $R_{\max}$  shall equal 0.16 and
3. the coefficient K shall equal 35.

### **Section 91**

#### Reduced correlation for small or medium-sized enterprises

(1) For enterprises for which the size indicator pursuant to subsection (2) does not exceed 50 million euro, the reduced correlation for IRBA exposures assigned to the IRBA exposure class Corporates or IRBA exposures with special recognition of unfunded credit protection assigned to the IRBA exposure class Retail claims is to be calculated using Formula 3 of Annex 2.

(2) <sup>1</sup>The size indicator is the enterprise's total annual sales, if this is a meaningful indicator of the enterprise's size. <sup>2</sup>If total annual sales are not an informative size indicator, the balance

sheet total may be used instead provided that BaFin does not object.<sup>3</sup> In the case of an enterprise belonging to a corporate group, the eligible size indicator shall be the consolidated total annual sales or the consolidated balance sheet total of the corporate group.

(3) In the case of an IRBA exposure incurred by purchased receivables, the size indicator may also be calculated as the average, weighted by the IRBA risk exposures, of the size indicators for all enterprises which are obligors of the purchased receivables in the pool.

### **Title 3**

## **Calculating forecast loss given default**

### **Section 92**

#### **Forecast LGD**

(1)<sup>1</sup> An institution must use its own estimate of LGD as the forecast LGD of an IRBA exposure pursuant to sections 132 to 134 if the exposure

1. is assigned to one of the IRBA exposure classes Central governments, Institutions or Corporates for which the simple IRBA risk weight for specialised lending exposures pursuant to section 97 is not applied, and if the IRBA exposure is captured by a rating system which the institution must use to calculate own estimates of LGD after it has been permitted to use IRBA,
2. is assigned to the IRBA exposure class Retail claims, or
3. is incurred by purchased receivables and the institution can decompose its own estimates of EL for this IRBA exposure, as performed in accordance with the definition in section 127, into own estimates of PD and own estimates of LGD in a reliable manner.

<sup>2</sup>For every other IRBA exposure the institution may not use its own estimates of LGD but must instead use the supervisory LGD as the forecast LGD pursuant to section 93 or, where recognising guarantees or credit derivatives pursuant to subsection (2) sentence 1, the LGD resulting from subsection (2) sentence 1, if no eligible collateral is available or if the IRBA exposure is an IRBA equity claim subject to the PD/LGD approach, otherwise the supervisory LGD recognising collateral pursuant to section 94.

(2)<sup>1</sup> If an IRBA exposure for which the institution must use supervisory LGD is incurred by a subordinated claim and if this IRBA exposure is protected by non-subordinated guarantees or credit derivatives, the institution shall be allowed to recognise this by applying the supervisory LGD for non-subordinated exposures pursuant to section 93 (1).<sup>2</sup> If an IRBA exposure for which the institution has to compute its own estimate of forecast LGD is protected by guarantees or credit derivatives and if the minimum requirements for estimating

the effect of guarantees and credit derivatives pursuant to sections 138 to 141 are met, the institution may recognise this when estimating the forecast LGD pursuant to subsection (1) and PD pursuant to section 88, unless it recognises unfunded credit protection by applying the risk weight subject to the PD/LGD approach for IRBA exposures with special recognition of unfunded credit protection pursuant to section 86 (3).

(3) An institution may treat free delivery risk exposures, for which it must compute its own estimate of LGD pursuant to subsection (1) sentence 1, at its own discretion and on a consistent basis for all such free delivery risk exposures, as IRBA exposures for which it must use supervisory LGD pursuant to subsection (1) sentence 2.

### **Section 93**

#### Supervisory loss given default

(1) The supervisory LGD, before recognising collateral, for an IRBA exposure in the IRBA exposure classes Central governments, Institutions or Corporates,

1. if the claims or contingent claims associated with said IRBA exposure are subordinated,
  - a) if the IRBA exposure is incurred by a subordinated purchased receivable and is not an IRBA dilution risk exposure and the institution cannot estimate forecast PD pursuant to sections 129 to 131, is 100 per cent,
  - b) otherwise it is 75 per cent,
2. if it is an IRBA dilution risk exposure, it is 75 per cent,
3. if it would be assignable as a CRSA exposure to the CRSA exposure class Covered bonds issued by credit institutions, it is 11.25 per cent,
4. if it is a free delivery risk exposure pursuant to section 92 (3), it is 45 per cent,
5. in all other cases, it is 45 per cent.

(2) <sup>1</sup>For an IRBA equity exposure which does not relate to equity claims traded on a stock exchange and which belongs to a sufficiently diversified equity portfolio, the supervisory LGD shall be 65 per cent. <sup>2</sup>For all other IRBA equity exposures the supervisory LGD shall be 90 per cent.

**Section 94**

## Recognising available collateral in supervisory LGD

(1) <sup>1</sup>The supervisory LGD recognising available collateral for an IRBA exposure is the sum of the weighted LGDs for each available category of collateral plus the weighted LGD for the unprotected portion of the IRBA exposure. <sup>2</sup>Sentence 1 and subsections (2) to (8) shall not apply to exposures split off pursuant to section 100 (8) and recognised at the alternative risk weight for real estate collateral pursuant to section 85 (5) or to the corresponding value of the real estate collateral.

(2) All collateral assigned to the IRBA exposure shall be allocated to one of the following categories:

1. financial collateral pursuant to section 154 (1) sentence 1 number 1,
2. receivables assigned as collateral pursuant to section 160,
3. real estate collateral pursuant to section 159, unless the alternative risk weight for real estate collateral is used,
4. other IRBA physical collateral pursuant to section 161.

(3) <sup>1</sup>The supervisory LGD for the category

1. financial collateral is 0 per cent,
2. receivables assigned as collateral,
  - a) if the claims or contingent claims associated with said IRBA exposure are subordinated, is 65 per cent,
  - b) otherwise it is 35 per cent,
3. real estate collateral,
  - a) if the claims or contingent claims associated with said IRBA exposure are subordinated, is 65 per cent,
  - b) otherwise it is 35 per cent,
4. other physical collateral,
  - a) if the claims or contingent claims associated with said IRBA exposure are subordinated, is 70 per cent,
  - b) otherwise it is 40 per cent.

<sup>2</sup>The supervisory LGD for the IRBA exposure pursuant to section 93 or, recognising guarantees or credit derivatives pursuant to section 92 (2) sentence 1, the LGD pursuant to section 92 (2) sentence 1 shall be used for the unprotected portion.

(4) The LGD weight pursuant to subsection (1) is derived as the quotient of the respective sub-assessment basis and the IRBA assessment basis for the IRBA exposure.

(5) <sup>1</sup>If financial collateral is available, for the purposes of calculation pursuant to subsection (6), the IRBA assessment basis pursuant to section 100 of the IRBA exposure shall be raised by the product of the market value volatility adjustment pursuant to section 188 and the IRBA assessment basis. <sup>2</sup>The sub-assessment basis shall be calculated pursuant to subsections (6) and (7) for each of the collateral categories recognisable for the IRBA exposure. <sup>3</sup>All collateral in a given category shall be assigned to the relevant sub-assessment basis. <sup>4</sup>The remainder constitutes the sub-assessment basis of the unprotected portion of the IRBA exposure.

(6) The sub-assessment basis for the category financial collateral shall be calculated as the minimum of

1. the IRBA assessment basis given the availability of financial collateral pursuant to subsection (5) sentence 1 and
2. the sum, calculated from the individual financial collateral items, of the products of the volatility-adjusted value for financial collateral pursuant to section 187 and the maturity mismatch adjustment pursuant to section 186 for each financial collateral item in relation to the IRBA exposure.

(7) <sup>1</sup>The sub-assessment basis for the collateral of the categories receivables assigned as collateral, real estate collateral and other IRBA physical collateral shall be calculated as the quotients of

1. the sum of the values of the collateral in a given category assigned to the IRBA exposure and
2. the required excess cover for the category, expressed as a decimal figure, pursuant to sentence 2.

<sup>2</sup>The required excess cover for

1. receivables assigned as collateral is 125 per cent,
2. real estate collateral is 140 per cent, and
3. other IRBA physical collateral is 140 per cent.

(8) Collateral in the categories real estate collateral or other IRBA physical collateral shall be recognised only if the quotient of

1. the sum of the values of the collateral in a given category assigned to the IRBA exposure and
2. the sub-assessment basis pursuant to subsection (7) sentence 1 for this category

does not undershoot the required minimum cover of 30 per cent.

## **Title 4**

### **Calculating the IRBA maturity adjustment**

#### **Section 95**

##### **IRBA maturity adjustment**

The IRBA maturity adjustment for an IRBA exposure which is assigned to one of the IRBA exposure classes Central governments, Institutions or Corporates, which is an IRBA exposure with special recognition of unfunded credit protection assigned to the IRBA exposure class Retail claims or which is an IRBA equity claim subject to the PD/LGD approach, is to be calculated using Formula 4 of Annex 2.

#### **Section 96**

##### **Relevant residual maturity**

(1) The relevant residual maturity for an IRBA exposure for which an institution must use supervisory LGD, as well as for IRBA dilution risk exposures for which the institution must use its own estimate of LGD or its own estimate of the IRBA conversion factor,

1. for an IRBA equity claim subject to the PD/LGD approach, is 5 years,
2. for an IRBA exposure arising from repurchase transactions or securities or commodities lending or borrowing transactions, is 0.5 year,
3. for an IRBA dilution risk exposure, is 1 year, and
4. for all other IRBA exposures is 2.5 years.

(2) The relevant residual maturity for an IRBA exposure in the IRBA exposure classes Central governments, Institutions or Corporates which is not an IRBA dilution risk exposure and for which the institution must use its own estimate of LGD or its own estimate of the IRBA conversion factor shall be recognised with a maximum of five years and shall be

calculated in years as follows.

1. For an IRBA exposure subject to a fixed principal and interest cash flow schedule, the relevant residual maturity, which is to be recognised with a minimum of one year, is given in Formula 5 of Annex 2.
2. For an IRBA derivatives exposure subject to a master netting agreement, the relevant residual maturity is the greater of one year and the average remaining maturity under the agreement, weighted by the nominal amounts of the individual exposures, of the claims and liabilities arising from the exposure.
3. <sup>1</sup>For an IRBA exposure subject to a master netting agreement not covered by number 2, the relevant residual maturity is the greater of the minimum maturity to be recognised for the IRBA exposure subject to a master netting agreement pursuant to sentences 2 and 3 and the average of the remaining maturities under the agreement, weighted by the nominal amounts of the individual exposures, of the associated claims and liabilities. <sup>2</sup>The relevant residual maturity is ten calendar days for exposures subject to a master netting agreement arising from fully or nearly-fully protected derivative CCR exposures or fully or nearly-fully protected CCR exposures arising from non-derivative margin lending transactions which are not repurchase transactions or securities or commodities lending or borrowing transactions. <sup>3</sup>For exposures subject to a master netting agreement arising from repurchase transactions or securities or commodities lending or borrowing transactions, the relevant residual maturity is five calendar days.
4. <sup>1</sup>For purchased receivables for which own PD estimates have to be used, the relevant residual maturity shall be the greater of 90 calendar days and the average remaining maturity under the agreement of the purchased receivables, weighted by the respective IRBA exposure value. <sup>2</sup>The same value shall be used for the undrawn portion of a committed revolving purchase facility if effective covenants, early amortisation triggers or other features of the revolving purchase facility protect the purchasing institution over the whole maturity against a significant deterioration in the quality of the receivables to be purchased in the future. <sup>3</sup>If such effective protection is lacking, the relevant residual maturity for the undrawn part of the revolving purchase facility shall be the greater of 90 calendar days and the sum of the remaining maturity of this committed purchase facility and the time-span from the expiry of the purchase facility to the longest-dated potential receivable under the purchase facility.
5. <sup>1</sup>For IRBA exposures which meet the criteria of sentences 2 and 3, do not fall under numbers 6 to 8 and belong to one of the following categories:
  - a) repurchase transactions and similar agreements,
  - b) securities or commodities lending or borrowing transactions,

- c) fully or nearly-fully protected non-derivative margin lending transactions which are not repurchase transactions or securities or commodities lending or borrowing transactions,
- d) fully or nearly-fully protected derivatives,
- e) short-dated, easily liquidated commodity trade financing transactions, import and export letters of credit according to their residual maturity,
- f) receivables arising from the settlement of securities purchases or sales, within the usual delivery period (two business days),
- g) receivables arising from the settlement of electronic payment transactions, including overdrafts arising from faulty credit transfers, if said overdrafts do not exceed a short, fixed number of business days,
- h) receivables arising from foreign currency settlement with banks,
- i) short-term loans and deposits,

the relevant residual maturity shall be the greater of one day and the remaining maturity of the claims or contingent claims under the agreement. <sup>2</sup>For the transactions listed in sentence 1 under letters (a) to (d), the associated documentation must require daily revaluation and daily remargining and include further provisions that allow for the prompt liquidation or setoff of collateral in the event of default or failure to remargin. <sup>3</sup>The transactions listed in sentence 1 under letters (e) to (i) must not be part of the ongoing financing of the obligor by the institution and the residual maturities of the claims against the obligor and contingent claims must be less than one year.

6. <sup>1</sup>For IRBA exposures whose assessment basis the institution calculates pursuant to section 17 (1) sentence 1 number 1 and for which the maturity of the longest-dated contract contained in an eligible netting position is longer than one year, the relevant residual maturity is to be calculated using Formula 6 of Annex 2. <sup>2</sup>Notwithstanding sentence 1, an institution which uses an internal model to calculate a one-sided credit value adjustment (CVA) may, subject to BaFin's permission, apply the effective credit duration estimated by this internal model as the relevant residual maturity.
7. For IRBA exposures with special recognition of unfunded credit protection pursuant to section 86 (3), the relevant residual maturity shall be at least one year.
8. <sup>1</sup>The relevant residual maturity for an IRBA exposure incurred by an enterprise whose total annual sales and balance sheet total do not exceed 500 million euro in each case and which is domiciled in an EEA country shall not be determined according to numbers 1 to 7 and 9, but instead according to subsection (1). <sup>2</sup>For an enterprise that primarily invests in

real estate and is domiciled in an EEA country, 1 billion euro shall be the relevant balance sheet total amount pursuant to sentence 1.<sup>3</sup> In the case of an enterprise belonging to a corporate group, the consolidated total annual sales and consolidated balance sheet total of the group shall apply.

9. In all other cases, the relevant residual maturity is the greater of 1 year and the maximum remaining time that the obligor is permitted to fully discharge all claims or contingent claims arising from the IRBA exposure.

## **Title 5**

### **Simple IRBA risk weight for specialised lending exposures**

#### **Section 97**

##### **Simple IRBA risk weight for specialised lending exposures**

(1) An IRBA specialised lending exposure for which an institution cannot demonstrate that its own PD estimate for this IRBA exposure meets the requirements of the definition pursuant to section 129 shall be assigned a simple IRBA risk weight for specialised lending exposures, which is to be calculated using Table 14 of Annex 1 depending on the residual maturity and risk weight category of the IRBA exposure.

(2) <sup>1</sup>An IRBA specialised lending exposure pursuant to subsection (1) for which the obligor is not deemed to have defaulted according to the default definition pursuant to section 125 shall be assigned to one of four risk weight categories (strong, good, satisfactory and weak) for specialised lending exposures in accordance with the following criteria and in line with assignment to one of the rating grades pursuant to section 110 (8):

1. financial strength,
2. political and legal environment,
3. transaction and/or asset characteristics,
4. strength of the sponsor and developer, including any public-private partnership income stream,
5. security package.

<sup>2</sup>An IRBA specialised lending exposure pursuant to subsection (1) for which the obligor is deemed to have defaulted according to the default definition pursuant to section 125 shall be assigned to the defaulted risk weight category. <sup>3</sup>BaFin shall publish on its website guidelines

for assigning IRBA specialised lending exposures to the risk weight categories for specialised lending exposures pursuant to sentence 1.

## **Title 6**

### **Simple IRBA risk weight for equity claims**

#### **Section 98**

##### **Simple IRBA risk weight for equity claims**

<sup>1</sup>The simple IRBA risk weight for an IRBA exposure in the IRBA exposure class Equity claims, with the exposure belonging neither to an IRBA equity claims portfolio subject to the internal models approach nor to one subject to the PD/LGD approach,

1. if the equity exposure relates to an equity claim not traded on a stock exchange and is part of a sufficiently diversified equity portfolio, is 190 per cent,
2. if the equity exposure relates to an equity claim traded on a stock exchange, is 290 per cent,
3. otherwise it is 370 per cent.

<sup>2</sup>If an IRBA equity exposure to be recognised pursuant to sentence 1 is hedged by an eligible guarantee or eligible credit derivative, the portion covered by this guarantee or credit derivative can be recognised at the protection provider's IRBA risk weight as long as the minimum requirements for unfunded credit protection pursuant to section 177 are complied with. <sup>3</sup>The protection provider's IRBA risk weight shall be the risk weight subject to the PD/LGD approach which would be calculated as the IRBA exposure for the contingent claim on this protection provider arising from the unfunded credit protection.

## **Subdivision 4**

### **Calculating the IRBA exposure value**

#### **Section 99**

##### **IRBA exposure value**

<sup>1</sup>The IRBA exposure value is the expected amount that will be exposed to a loss risk as a result of an obligor default, a dilution risk, a deterioration in the quality of tangible assets or a counterparty risk. <sup>2</sup>The IRBA exposure value for an IRBA exposure is the product of the

IRBA conversion factor pursuant to section 101 and the IRBA assessment basis pursuant to section 100.

### **Section 100**

#### IRBA assessment basis

(1) The IRBA assessment basis for an IRBA exposure in the case of a balance sheet CCR exposure is

1. the amount drawn, and at least the sum of the amount by which the liable capital would be reduced were the exposure to be written off and of the amounts recognised in the annual or interim financial statements for actual or potential value adjustments as a consequence of the credit risk-related loss risk,
2. the exposure's book value if it is assignable to the IRBA exposure class Equity claims and is neither an IRBA net equity exposure pursuant to section 102 nor belongs to an IRBA equity portfolio subject to the internal models approach pursuant to section 78 (2) sentence 1 number 1 letter (b),
3. in the case of a purchased receivable
  - a) for the resulting IRBA dilution risk exposure, it is the outstanding amount,
  - b) for the resulting IRBA CCR exposure, it is the IRBA assessment basis pursuant to letter (a), less 8 per cent of the product of the IRBA assessment basis pursuant to letter (a) and the risk weight subject to the PD/LGD approach that results from using the forecast LGD calculated for this IRBA dilution risk exposure prior to credit risk mitigation,
4. if it is assigned to the IRBA exposure class Other non-credit obligation assets and is not a leased asset to be recognised pursuant to section 82 number 2, its book value,
5. insofar as use is made of the option pursuant to section 17 (2) sentence 1, its assessment basis pursuant to section 17 (2) sentence 1.

(2) The IRBA assessment basis for an IRBA exposure in the case of an off-balance sheet CCR exposure is

1. the book value of the claims and contingent claims which constitute this IRBA exposure, and in the case of conditional delivery or acceptance claims on equities, the assessment basis pursuant to subsection (1) number 2 for equity claims for which the institution has a claim to delivery or acceptance assuming actual performance, whereby said assessment basis is imputed to the likelihood of occurrence in line with the delta equivalent,

2. if it is an obligation arising from a note issuance facility (NIF) or a revolving underwriting facility (RUF) or is constituted by the undrawn part of a credit line or a revolving purchase facility for receivables, the amount committed but not drawn,
3. insofar as use is made of the option pursuant to section 17 (2) sentence 1, its assessment basis pursuant to section 17 (2) sentence 1.

(3) The IRBA assessment basis for an IRBA exposure for a derivative CCR exposure is its assessment basis pursuant to section 17.

(4) The IRBA assessment basis for a free delivery risk exposure pursuant to section 14 (1) is the value of the institution's claim arising from the transaction which has given rise to the free delivery risk exposure.

(5) <sup>1</sup>The IRBA assessment basis for a netting position comprising

1. derivatives is its net assessment basis for derivatives pursuant to section 211,
2. monetary claims and debts, its net assessment basis for monetary claims and debts pursuant to section 212,
3. non-derivative margin lending transactions, its net assessment basis for non-derivative margin lending transactions pursuant to section 215.

<sup>2</sup>For a cross-product netting position the IRBA assessment basis is its net assessment basis pursuant to section 217.

(6) The IRBA assessment basis for an IRBA exposure in the case of an IRBA net equity position pursuant to section 102 is its IRBA net equity assessment basis pursuant to section 103.

(7) The IRBA assessment basis for an IRBA exposure in an IRBA equity portfolio subject to the internal models approach is 12.5 times the maximum possible portfolio loss for the population of exposures belonging to the portfolio, which is derived, using the equity risk model to be used for said portfolio, as the 99<sup>th</sup> percentile, one-tailed confidence interval of the difference between quarterly returns and an appropriate risk-free rate computed over a long-maturity sample period.

(8) If an institution has decided pursuant to section 159 (2) to use the alternative risk weight for real estate collateral for an IRBA exposure secured by real estate for which it has to use supervisory LGDs, it shall split off that part of the IRBA exposure pursuant to subsection (1) which, if the property

1. is residential real estate property located within Germany, does not exceed 60% of the mortgage lending value pursuant to section 16 (2) sentences 1 to 3 of the Pfandbrief Act in

conjunction with the Regulation on calculating the mortgage lending value or of a sustainably achievable value calculated in a different way which meets the requirements of section 16 (2) sentences 1 to 3 of the Pfandbrief Act,

2. is commercial real estate property located within Germany, does not exceed the lower of 50 per cent of the market value and 60% of the mortgage lending value pursuant to section 16 (2) sentences 1 to 3 of the Pfandbrief Act in conjunction with the Regulation on calculating the mortgage lending value or of a sustainably achievable value calculated in a different way which meets the requirements of section 16 (2) sentences 1 to 3 of the Pfandbrief Act,
3. is residential or commercial real estate property located in another EEA country pursuant to section 159 (2) sentence 1 number 3 and does not exceed the value for real estate collateral eligible for the alternative risk weight for institutions domiciled in this country, in implementation of Annex VIII Part 3 number 73 of Directive 2006/48/EC.

from the IRBA assessment basis of the IRBA exposure and recognise the split-off amount as a separate IRBA exposure, with this split-off amount being the IRBA assessment basis.

(9) The IRBA assessment basis for an IRBA exposure which has been incurred on the basis of a lease,

1. if it is assigned to the IRBA exposure class Other non credit-obligation assets and is incurred by a residual value of a leased asset to be recognised pursuant to section 82 number 2, is the present value of the residual value assigned to the end of the lease at the time the contract was drafted, less the present value of purchase options recognised pursuant to number 2 letter (b),
2. otherwise it is the present value of the minimum lease payments, consisting of
  - a) all payments over the lease term which the lessee is or can be required to make, including an amount for the residual value of the leased property which the lessee is or can be required to pay, and
  - b) every purchase option which provides the lessee an incentive to exercise it.

(10) The IRBA assessment basis for an IRBA exposure which is incurred by a transaction with an enterprise in its capacity as central counterparty pursuant to section 1 (31) of the Banking Act or by collateral posted to that end is zero.

(11) <sup>1</sup>For an IRBA exposure which is incurred by the posting of collateral for an obligation of the institution arising from a transaction that constitutes a derivative CCR exposure for the institution, the IRBA assessment basis may be calculated pursuant to sentence 3 if the requirements pursuant to sentence 2 are met. <sup>2</sup>The option pursuant to sentence 1 may be

exercised if

1. the institution calculates the IRBA assessment basis for the derivative CCR exposure using the marking-to-market method,
2. the current market value of the derivative used in calculating the current potential replacement cost pursuant to section 19 is negative, and
3. the conditions pursuant to section 206 (2) numbers 3 to 5 in respect of the transaction included and the collateral posted have been met.

<sup>3</sup>If the option pursuant to sentence 1 is exercised, the IRBA assessment basis for the CCR exposure incurred by posting the collateral shall be calculated by multiplying the IRBA assessment basis which would result if the option pursuant to sentence 1 were not exercised by the market value volatility adjustment for CCR exposures pursuant to section 188 and deducting the absolute amount of the current market value pursuant to sentence 2. <sup>4</sup>Where the absolute amount of the negative current market value of a derivative is deducted pursuant to sentence 3, it may not be recognised elsewhere for the purpose of reducing the capital charge.

(12) <sup>1</sup>For an IRBA exposure which is incurred by the posting of collateral for an obligation of the institution arising from transactions which constitute a derivatives netting exposure for the institution, the IRBA assessment basis may be calculated pursuant to sentence 3 if the requirements pursuant to sentence 2 are met. <sup>2</sup>The option pursuant to sentence 1 may be exercised if

1. the institution calculates the IRBA assessment basis for the derivatives netting exposure using the marking-to-market method,
2. when calculating the net assessment basis for derivatives pursuant to section 211 (2) sentence 1, the difference between the positive and negative market values of the transactions included in the netting agreement is negative, and
3. the conditions pursuant to section 206 (2) numbers 3 to 5 in respect of the transactions included and the collateral posted have been met.

<sup>3</sup>If the option pursuant to sentence 1 is exercised, the IRBA assessment basis for the CCR exposure incurred by posting the collateral shall be calculated by multiplying the IRBA assessment basis which would result if the option pursuant to sentence 1 were not exercised by the market value volatility adjustment for CCR exposures pursuant to section 188 and deducting from this the absolute difference between the positive and negative market values of the transactions included in the netting agreement pursuant to sentence 2. <sup>4</sup>Where the absolute difference between the positive and negative market values of the transactions included in the netting agreement is deducted pursuant to sentence 3, it may not be recognised elsewhere for the purpose of reducing the capital charge.

(13) In the case of an IRBA exposure which is formed by a CCR exposure to the reference asset or the reference portfolio of a credit linked note, the assessment basis may be reduced by 8 per cent of the risk-weighted exposure amount for the CCR exposure with regard to the issuer of the credit linked note.

### Section 101

#### Calculating the IRBA conversion factor

(1) <sup>1</sup>The institution must use own estimates of the IRBA conversion factor pursuant to the provisions of sections 135 to 137 for IRBA exposures whose supervisory IRBA conversion factor pursuant to subsection (2) is less than 100 per cent and which

1. are assignable to one of the IRBA exposure classes Central governments, Institutions or Corporates and fall within the scope of a rating system which the institution has to use to calculate its own estimates of the IRBA conversion factor after being permitted to use IRBA, or
2. are assignable to the IRBA exposure class Retail claims.

<sup>2</sup>The institution shall not be permitted to use own estimates of the IRBA conversion factor for any other IRBA exposure but must use the supervisory IRBA conversion factor instead.

(2) The supervisory IRBA conversion factor

1. for the undrawn part of a credit line granted by an institution
  - a) is 0 per cent if the institution has granted an uncommitted credit line or if the institution can cancel it unconditionally at any time without prior notice or it effectively provides for automatic cancellation due to deterioration in the obligor's creditworthiness, and if the institution actively monitors the financial condition of the obligor and its internal control and monitoring systems enable the institution to immediately detect a deterioration in the obligor's credit quality,
  - b) otherwise it is 75 per cent,
2. for opening or confirming a documentary letter of credit
  - a) is 20 per cent if it is short-term or collateralised by securities,
  - b) otherwise it is 50 per cent,
3. for obligations arising out of a note issuance facility or a revolving underwriting facility, is 75 per cent,

4. for purchased receivables
  - a) is 0 per cent for the undrawn purchase commitments for a revolving purchase receivable if it is immediately cancellable pursuant to section 51,
  - b) is 75 per cent for the undrawn purchase commitments for a revolving purchase receivable if the requirements for the facility pursuant to letter (a) are not met,
  - c) otherwise it is 100 per cent,
5. is 50 per cent for a transaction pursuant to section 19 (1) sentence 3 number 4 of the Banking Act,
6. for an irrevocable loan guarantee
  - a) is 100 per cent, if it is a loan substitute,
  - b) otherwise it is 50 per cent,
7. and in all other cases it is 100 per cent.

(3) If a commitment refers to the extension of another commitment, the lower of the two conversion factors associated with the individual commitment shall be used.

## **Section 102**

### IRBA net equity exposures and proportional ownership shares

(1) <sup>1</sup>An IRBA net equity exposure may consist, at the institution's discretion, of long positions in IRBA equity exposures which have identical features and IRBA equity portfolio exposures to the same enterprise, on the one hand, and eligible short positions in IRBA equity exposures, on the other. <sup>2</sup>Such short positions in IRBA equity exposures are eligible if they

1. relate to the same enterprise and likewise have identical features,
2. are used by the institution expressly to hedge long positions in equity exposures and portfolio exposures, and,
3. if they are not cash positions, have a contractual residual maturity of at least one year.

(2) <sup>1</sup>The proportional ownership share of an IRBA equity exposure belonging to an IRBA net equity exposure shall be calculated as the percentage share of the subordinated residual claim on the assets or income of the enterprise in which the ownership share is held. <sup>2</sup>The percentage share of the subordinated residual claim is calculated,

1. for portfolio exposures, from the existing proportional ownership share,

2. for long positions in equity exposures, from the receivable proportional ownership share, in the case of conditional delivery claims in line with the delta equivalent for the likelihood of occurrence,
3. for short positions in equity exposures, from the deliverable proportional ownership share, in the case of conditional acceptance claims in line with the delta equivalent for the likelihood of occurrence,

### Section 103

#### IRBA net equity exposure assessment basis

(1) <sup>1</sup>The IRBA net equity exposure assessment basis shall be calculated as follows for an IRBA net equity exposure for which the sum of the proportional ownership shares of the portfolio exposures is no smaller than the sum of the proportional ownership shares of the short positions in equity exposures. <sup>2</sup>The difference between the sum of the proportional ownership shares of portfolio exposures and the sum of the proportional ownership shares of short positions in equity exposures is to be multiplied by the average IRBA assessment basis for portfolio exposures and increased by the sum of the IRBA assessment bases for the long positions. <sup>3</sup>The average IRBA assessment basis for portfolio positions is the sum of all weighted IRBA assessment bases for the portfolio positions across all portfolio positions. <sup>4</sup>The weighted IRBA assessment basis shall be the IRBA assessment basis for a given portfolio position multiplied by the quotient of the given proportional ownership share and the sum of all proportional ownership shares of the portfolio positions.

(2) For all other IRBA net equity exposures the IRBA net equity exposure assessment basis is the sum of the sub-assessment bases resulting for the equity exposures belonging to this IRBA net equity exposure as follows.

1. Portfolio exposures shall be netted fully with short positions in equity exposures by consecutively reducing for all portfolio positions the not yet netted proportional ownership shares of a portfolio exposure and of a short position in equity exposures by the same number of proportional ownership shares in each case.
2. Long positions in equity exposures shall be netted with short positions in equity exposures with at least the same contractual residual maturity by reducing the not yet netted proportional ownership shares of a long position in equity exposures and of a short position in equity exposures with at least the same contractual residual maturity by the same number of proportional ownership shares in each case.
3. The sub-assessment basis for an equity exposure for which all proportional ownership shares have been netted is zero; for all other equity exposures the sub-assessment basis shall be the product of the IRBA assessment basis for this equity exposure and the

quotient of the number of non-netted proportional ownership shares and of the original number of proportional ownership shares in that equity exposure.

## **Division 4**

### **Value adjustment offset and expected loss amount**

#### **Section 104**

##### **Expected loss amount**

(1) <sup>1</sup>The expected loss amount for each IRBA exposure which is not an IRBA securitisation position pursuant to section 227 (4) and whose IRBA risk weight is not calculated pursuant to section 85 (6) sentence 1 number 1 shall be calculated with the aim of determining the value adjustment offset pursuant to section 105 and calculating the eligible value adjustment surplus pursuant to section 10 (2b) sentence 1 number 9 of the Banking Act or the value adjustment deficit pursuant to section 10 (6a) number 1 of the Banking Act. <sup>2</sup>The expected loss amount is the product of the expected loss (EL) and the IRBA exposure value.

(2) <sup>1</sup>The EL for an IRBA exposure is the product of forecast PD and forecast LGD for this IRBA exposure. <sup>2</sup>The EL for an IRBA exposure whose IRBA risk weight is to be calculated pursuant to section 85 (6) sentence 1 number 2 is the difference of

1. the sum of the ELs of all the exposures contained in the basket to which the IRBA risk weight pursuant to section 85 (6) sentence 1 number 2 is not to be applied and
2. the sum of the ELs for the n-1 exposures of all the exposures contained in the basket to which the IRBA risk weight pursuant to section 85 (6) sentence 1 number 2 is not to be applied for which the lowest expected loss amount results.

(3) If an institution must use own estimates of LGD for an IRBA exposure in the exposure classes Central governments, Institutions, Corporates or Retail claims and if an obligor has defaulted on this IRBA exposure, the EL is the best estimate of EL for said IRBA exposure given current economic circumstances pursuant to the definition in section 132 (9).

(4) The EL for an IRBA specialised lending exposure for which the simple IRBA risk weight for specialised lending exposures is applied shall be calculated using Table 15 of Annex 1 depending on the residual maturity of the IRBA specialised lending exposure and its risk weight category.

(5) The EL for an IRBA exposure in the exposure class Equity claims is

1. the product of forecast PD and forecast LGD for said IRBA exposure if it belongs to an IRBA equity portfolio subject to the PD/LGD approach,

2. zero if it is an IRBA equity portfolio subject to the internal models approach,
3. 0.8 per cent
  - a) if it is an exchange-traded equity exposure, or
  - b) if it is a private equity exposure in a sufficiently diversified portfolio,

and

4. 2.4 per cent for all other equity exposures.

(6) The EL for an IRBA exposure in the exposure class Other non credit-obligation assets is 0 per cent.

(7) The EL for an IRBA exposure for which the IRBA risk weight subject to the PD/LGD approach is calculated pursuant to section 86 (3) is 0 per cent.

(8) The EL for part of a credit risk exposure hedged by unfunded credit protection for which the institution calculates the risk-weighted IRBA exposure amount pursuant to section 84 (1) sentence 2 is 0 per cent.

(9) If a trading book institution, for an IRBA exposure assigned to the trading book that is a free delivery risk exposure pursuant to section 14 (1), a derivative CCR exposure not traded with a central counterparty pursuant to section 11, a non-derivative CCR exposure with remargining pursuant to section 17 (3) or a netting position pursuant to section 12, can demonstrate to BaFin that it has adequately recognised the counterparty default risk in the IRBA assessment basis of this IRBA exposure pursuant to section 100, it may, subject to BaFin's permission, apply an EL of 0 per cent for this IRBA exposure.

## Section 105

### Value adjustment offset

<sup>1</sup>An IRBA institution must calculate the difference between the sum of the expected loss amounts for all IRBA exposures in the exposure classes Central governments, Institutions, Corporates and Retail claims and the provisions for actual or potential value impairments due to credit-related loss risk set up for these IRBA exposures and recognised in the annual or interim financial statements. <sup>2</sup>Discounts on balance-sheet exposures purchased when in default shall be assigned to the provisions set up for value impairments pursuant to sentence 1. <sup>3</sup>Where provisions set up for value impairments pursuant to sentence 1 are counted towards an institution's own funds or are assignable to CCR exposures which are deemed to be effectively securitised CCR exposures pursuant to section 9 (2) or for which the IRBA risk weight is calculated pursuant to section 85 (6) sentence 1 number 1, they may not

be included in the calculation pursuant to sentence 1. <sup>4</sup>If an institution has set up provisions for actual or potential deterioration of the counterparty's creditworthiness for an IRBA exposure for which it is allowed to use an EL of 0 per cent pursuant to section 104 (9), it may not recognise them towards the amounts pursuant to sentence 1.

## **Division 5**

### **Minimum requirements for using IRBA**

#### **Section 106**

##### **Minimum requirements for using IRBA**

<sup>1</sup>The institution's risk management and rating systems must be sound and their introduction must ensure system integrity. <sup>2</sup>In particular, the institution shall meet the following requirements in compliance with sections 107 to 153.

1. The institution's rating systems provide for a meaningful assessment of obligor and transaction characteristics, a meaningful differentiation of risk and accurate and consistent quantitative estimates of risk.
2. Internal ratings and default and loss estimates used in the calculation of capital requirements pursuant to section 2 and associated systems and processes play an essential role in the risk management and decision-making process, and in the credit approval, internal capital allocation and corporate governance functions of the institution.
3. The institution has a counterparty risk control unit responsible for its rating systems that is independent and free from undue influence.
4. The institution collects and stores all relevant data to provide effective support to its counterparty risk measurement and management process.
5. The institution documents its rating systems and the rationale for their design and validates its rating systems.

<sup>3</sup>Where the IRBA is used on a unified basis within a group of institutions or financial holding group, the requirements of section 107 to 153, subject to BaFin's permission, shall be regarded as met if these requirements are met by the institution and the other enterprises belonging to the group considered together.

## **Subdivision 1**

### **Rating systems**

#### **Section 107**

##### **Rating systems**

(1) If the institution uses multiple rating systems, the rationale for assigning an obligor or a transaction to a rating system must be applied in a manner that appropriately reflects the level of risk; this shall be documented.

(2) Assignment criteria and processes shall be periodically reviewed to determine whether they remain appropriate for the current portfolio and external conditions.

#### **Section 108**

##### **Scope of application of a rating system**

<sup>1</sup>A business unit within the meaning of this Regulation comprises transactions which incur the same type of credit risk exposures. <sup>2</sup>The scope of application of a rating system is constituted by that particular business unit whose transactions incur the type of credit risk exposures to which the rating system can be applied. <sup>3</sup>A business unit may be limited to a single enterprise belonging to a group if the same type of credit risk exposure is managed differently in different enterprises within the group.

## **Title 1**

### **Structure of rating systems**

#### **Section 109**

##### **Direct estimates of risk parameters**

Where an institution uses direct estimates of risk parameters for individual obligors or IRBA exposures, these may be seen as the outputs of grades on a continuous rating scale.

#### **Section 110**

##### **Requirements for the exposure classes Central governments, Institutions or Corporates and certain IRBA equity exposures**

(1) A rating system for IRBA exposures in the IRBA exposure classes Central governments, Institutions or Corporates and for IRBA equity exposures subject to the PD/LGD approach

shall take into account obligor and transaction risk characteristics.

(2) <sup>1</sup>A rating system shall have an obligor rating scale which reflects exclusively quantification of the risk of obligor default pursuant to section 125. <sup>2</sup>The obligor rating scale shall have a minimum of seven grades for non-defaulted obligors and one for defaulted obligors.

(3) <sup>1</sup>Each obligor grade shall mean a risk category within a rating system's obligor rating scale to which obligors are assigned on the basis of a specified and distinct set of rating criteria from which estimates of PD are derived. <sup>2</sup>The institution shall document the relationship between obligor grades in terms of the level of default risk each grade implies and the criteria used to distinguish that level of default risk.

(4) <sup>1</sup>An institution with portfolios concentrated in a particular market segment and range of default risk shall have enough obligor grades within that range to avoid undue concentrations of obligors in a particular grade. <sup>2</sup>Significant concentrations within a single grade shall be supported by convincing empirical evidence that

1. the obligor grade covers a reasonably narrow PD band, and
2. the default risk posed by all obligors in the grade falls within that band.

(5) To qualify for recognition by BaFin of the use of own estimates of LGDs for capital requirement calculation, a rating system shall incorporate a distinct facility rating scale which exclusively reflects LGD-related transaction characteristics.

(6) <sup>1</sup>Each facility grade shall mean a risk category within a rating system's facility scale, to which exposures are assigned on the basis of a specified and distinct set of rating criteria, from which own estimates of LGDs are derived. <sup>2</sup>The grade definition shall include both a description of how IRBA exposures are assigned to the grade and of the criteria used to distinguish the level of risk across grades.

(7) Significant concentrations within a single grade shall be supported by convincing empirical evidence that

1. the facility grade covers a reasonably narrow LGD band, and
2. the risk posed by all exposures in the grade falls within that band.

(8) An institution which uses the method for calculating the simple IRBA risk weight for specialised lending exposures to assign risk weights to such IRBA exposures is exempt from the requirement to have an obligor rating scale which reflects exclusively quantification of the risk of obligor default for these exposures pursuant to section 125. Notwithstanding subsection (5), this institution shall have for such IRBA exposures at least four grades for

non-defaulted obligors and at least one grade for defaulted obligors.

### **Section 111**

#### **Requirements for the exposure class Retail claims**

(1) Rating systems for IRBA exposures in the IRBA exposure class Retail claims shall reflect both obligor and transaction risk and shall capture all relevant obligor and transaction characteristics.

(2) <sup>1</sup>The level of risk differentiation shall ensure that the number of IRBA exposures in a given grade or pool is sufficient to allow for meaningful quantification and validation of the loss characteristics at the grade or pool level. <sup>2</sup>The distribution of exposures and obligors across grades or pools shall be such as to avoid excessive concentrations.

(3) <sup>1</sup>The institution shall demonstrate that the process of assigning IRBA exposures to grades or pools provides for a meaningful differentiation of risk, provides for a grouping of sufficiently homogenous IRBA exposures and allows for accurate and consistent estimation of loss characteristics at grade or pool level. <sup>2</sup>For purchased receivables the grouping shall reflect the seller's underwriting practices and the heterogeneity of its customers.

(4) <sup>1</sup>The institutions shall consider the following risk drivers when assigning IRBA exposures to grades or pools:

1. obligor risk characteristics,
2. transaction risk characteristics, including product or collateral types or both, whereby the institution shall explicitly address guidelines for dealing with cases where several IRBA exposure amounts benefit from the same collateral, and
3. payment delinquency, unless the institution demonstrates to BaFin that delinquency is not a material risk driver for the IRBA exposure.

<sup>2</sup> The guidelines to be laid down by the institution pursuant to sentence 1 number 2 must ensure that collateral is not recognised more than once.

## **Title 2**

### **Assignment to rating grades or risk pools**

#### **Section 112**

##### **Assignment to rating grades or risk pools**

(1) The institution shall have specific definitions, processes and criteria for assigning IRBA exposures to grades or pools within a rating system.

1. <sup>1</sup>The grade or pool definitions and criteria shall be sufficiently detailed to allow those charged with assigning ratings to consistently assign obligors or facilities posing similar risk to the same grade or pool. <sup>2</sup>This consistency shall exist across lines of business, departments and geographic locations.
2. The documentation of the rating process shall allow cognisant third parties to understand the assignments of IRBA exposures to grades or pools, to replicate grade and pool assignments and to evaluate the appropriateness of the assignments to a grade or a pool.
3. The assignment criteria shall also be consistent with the institution's internal lending standards and its policies for handling troubled obligors and facilities.

(2) <sup>1</sup>The institution shall take all relevant information into account in assigning obligors and facilities to grades or pools. <sup>2</sup>Information shall be current and shall enable the institution to forecast the future performance of the IRBA exposure. <sup>3</sup>The less information an institution has, the more conservative shall be its assignments of IRBA exposures to obligor and facility grades or pools. <sup>4</sup>If an institution uses an external rating as a primary factor determining an internal rating assignment to a grade or pool, it shall ensure that it also considers other relevant information.

## **Title 3**

### **Assignment of IRBA exposures**

#### **Section 113**

##### **Requirements for the exposure classes Central governments, Institutions or Corporates and certain IRBA equity exposures**

(1) Each obligor for IRBA exposures in the IRBA exposure classes Central governments, Institutions or Corporates and for IRBA equity exposures subject to the PD/LGD approach shall be assigned to an obligor grade as part of the credit approval process.

(2) For an institution that is permitted to use own estimates of LGDs and/or IRBA conversion factors for IRBA exposures assigned to the IRBA exposure classes Central governments, Institutions or Corporates, each of these IRBA exposures shall also be assigned to a facility grade as part of the credit approval process.

(3) The institution which uses the supervisory methods for assigning risk weights for specialised lending exposures shall assign each of these IRBA specialised lending exposures to a grade in accordance with section 110 (8) sentence 2.

(4) <sup>1</sup>Each natural or legal person or partnership to which the institution has IRBA exposures shall be separately rated. <sup>2</sup>The institution shall demonstrate to BaFin that it has acceptable policies regarding the treatment of individual obligors and groups of connected clients pursuant to section 4 (8).

(5) <sup>1</sup>Separate IRBA exposures to the same obligor shall be assigned to the same obligor grade, irrespective of any differences in the nature of each specific transaction. <sup>2</sup>Exceptions to this rule apply

1. where a country transfer risk exists, whereby the assignment of the obligor to multiple grades for separate IRBA exposures depends on whether the IRBA exposures are denominated in local or foreign currency,
2. where the treatment of associated guarantees to an IRBA exposure may be reflected in an adjusted assignment to an obligor grade; or
3. where bank secrecy or legislation prohibit the exchange of obligor data.

### **Section 114**

#### Requirements for the exposure class Retail claims

Each IRBA exposure in the IRBA exposure class Retail claims shall be assigned to a grade or a pool as part of the credit approval process.

### **Section 115**

#### Overrides

<sup>1</sup>For grade and pool assignments an institution shall document

1. the situations in which human judgement may overturn or alter the inputs or outputs of the assignment process,
2. the personnel responsible for approving these overrides and

3. the actual overrides and the personnel responsible.

<sup>2</sup>The institution shall analyse the actual payment performance of IRBA exposures whose assignments have been overridden. <sup>3</sup>This analysis shall include assessment of the performance of IRBA exposures whose rating has been overridden by a particular person, whereby all the personnel responsible for overrides shall be accounted for.

## **Title 4**

### **Integrity of the assignment process**

#### **Section 116**

Requirements for the exposure classes Central governments, Institutions or Corporates and certain IRBA equity exposures

(1) <sup>1</sup>For IRBA exposures in the IRBA exposure classes Central governments, Institutions or Corporates and for IRBA equity exposures subject to the PD/LGD approach, assignments and periodic reviews of assignments shall be completed or approved by an independent party.

<sup>2</sup>That independent party shall not directly benefit from decisions to grant the credit.

(2) <sup>1</sup>The institution shall review assignments at least annually and update them if the outcome of the review does not justify retaining the current assignment. <sup>2</sup>High-risk obligors and problem IRBA exposures shall be subject to more frequent review. <sup>3</sup>The institution shall undertake a new assignment if material information on the obligor or IRBA exposure becomes available.

(3) The institution shall have an effective process to obtain and update relevant information

1. on obligor characteristics that affect PDs, and

2. on transaction characteristics that affect LGDs and/or IRBA conversion factors

pursuant to numbers 1 and 2.

#### **Section 117**

Requirements for the exposure class Retail claims

<sup>1</sup>For IRBA exposures in the IRBA exposure class Retail claims the institution shall at least annually update obligor and facility assignments to grades or review the loss characteristics and delinquency status of each identified risk pool. <sup>2</sup>The institution shall also at least annually review in a representative sample the status of individual IRBA exposures within each pool as

a means of ensuring that IRBA exposures continue to be assigned to the correct pool, or shall take comparably effective measures to that end.

## **Title 5**

### **Use of mathematical-statistical models in rating systems**

#### **Section 118**

##### **Use of mathematical-statistical models in rating systems**

If the institution uses statistical models and algorithmic methods to assign IRBA exposures to obligor or facility grades or pools, it must meet the following requirements.

1. <sup>1</sup>The institution shall demonstrate to BaFin that the model has good predictive power and that the risk-weighted IRBA exposure amounts and expected loss amounts are not distorted as a result of its use. <sup>2</sup>The model's input variables shall form a reasonable and effective basis for the resulting predictions. <sup>3</sup>The model shall not have material biases.
2. <sup>1</sup>The institution shall have in place a process for vetting data inputs into the model. <sup>2</sup>The process shall include an assessment of the accuracy, completeness and appropriateness of the data.
3. The institution shall demonstrate that the data used to build the model are representative of the population of the institution's actual obligors or IRBA exposures.
4. The institution shall have a regular cycle of model validation that includes monitoring of model performance and stability; review of model specification; and testing of model outputs against outcomes.
5. <sup>1</sup>The institution shall complement the statistical model by human judgement and human oversight to review model-based assignments and to ensure that the models are used appropriately. <sup>2</sup>Review procedures shall aim at finding and limiting errors associated with model weaknesses. <sup>3</sup>Human judgements shall take into account all relevant information not considered by the model. <sup>4</sup>The institution shall define and document how human judgement and model results are to be combined.

**Title 6**

## Documentation of rating systems

**Section 119**

## Documentation of rating systems

- (1) <sup>1</sup>The institution shall document the design and operational details of its rating system. <sup>2</sup>The documentation shall evidence compliance with the minimum requirements for using the IRBA and suitability requirements for rating systems, and address topics including
1. portfolio differentiation,
  2. rating criteria,
  3. responsibilities of parties that rate obligors and IRBA exposures,
  4. frequency of assignment reviews, and
  5. management oversight of the rating process.
- (2) <sup>1</sup>The institution shall document the rationale for and analysis supporting its choice of rating criteria. <sup>2</sup>The credit institution shall document all major changes in the risk rating process. <sup>3</sup>Such documentation shall support identification of changes made to the risk rating process subsequent to the last review by BaFin. <sup>4</sup>The organisation of rating assignment including the rating assignment process and the internal control structure shall also be documented.
- (3) The institution shall document the specific definitions of default and loss used internally and demonstrate consistency with the definitions set out in this Regulation.
- (4) <sup>1</sup>If the institution employs statistical models in the rating process, it shall document their methodologies. <sup>2</sup>This material shall fundamentally
1. provide a detailed outline of the theory, assumptions and/or mathematical and empirical basis of the assignment of estimates to grades, individual obligors, IRBA exposures, or pools, and the data source(s) used to estimate the model;
  2. establish a rigorous statistical process (including out-of-time and out-of-sample performance tests) for validating the model; and
  3. indicate any circumstances under which the model does not work effectively.
- (5) <sup>1</sup>Use of a model obtained from a third-party vendor that claims proprietary technology is not a justification for exemption from documentation or any other of the requirements for

rating systems. <sup>2</sup>The burden is on the institution to satisfy the competent authorities of this.

## **Title 7**

### **Data collection and use**

#### **Section 120**

##### **Requirements for all IRBA exposures**

The institutions shall collect and store data on aspects of its internal ratings as required pursuant to sections 319 to 337.

#### **Section 121**

##### **Requirements for the exposure classes Central governments, Institutions or Corporates and certain IRBA equity exposures**

(1) <sup>1</sup>Institutions shall collect and store the following data on IRBA exposures in the IRBA exposure classes Central governments, Institutions or Corporates and on IRBA equity exposures subject to the PD/LGD approach:

1. complete rating histories on obligors and recognised guarantors,
2. the dates the ratings were assigned,
3. the key data and the methodology used to derive the rating,
4. the person responsible for the rating assignment,
5. the identity of obligors and IRBA exposures that defaulted within the meaning of section 125,
6. the dates and circumstances of such defaults,
7. data on the PDs and realised default rates associated with rating grades and migration of obligors and IRBA exposures between the various rating classes.

<sup>2</sup>An institution that does not use own estimates of LGDs and/or conversion factors for IRBA exposures shall collect and store data on comparisons of realised LGDs to the supervisory values and on comparisons of realised IRBA conversion factors to the supervisory IRBA conversion factors.

(2) An institution that uses own estimates of LGDs and/or IRBA conversion factors for IRBA exposures in the IRBA exposure classes Central governments, Institutions or Corporates shall

collect and store the following data for such IRBA exposures:

1. complete histories of data on the facility ratings and on LGD and IRBA conversion factor estimates associated with each rating scale,
2. the dates the ratings were assigned and the estimates were done,
3. the key data and methodology used to derive the facility ratings and LGD and IRBA conversion factor estimates,
4. the person who assigned the facility rating and the person who provided LGD and IRBA conversion factor estimates,
5. data on the estimated and realised LGDs and IRBA conversion factors associated with each defaulted IRBA exposure within the meaning of section 125,
6. data on the LGD of the IRBA exposure before and after evaluation of the effects of a guarantee/or credit derivative if the institution reflects the counterparty risk-mitigating effects of guarantees or credit derivatives through LGD, and
7. data on the components of loss for each defaulted IRBA exposure.

## **Section 122**

### **Requirements for the exposure class Retail claims**

For IRBA exposures in the IRBA exposure class Retail claims the institution shall collect and store the following data:

1. data used in the process of allocating IRBA exposures to grades or pools,
2. data on the estimated PDs, LGDs and IRBA conversion factors associated with grades or risk pools of IRBA exposures,
3. the identity of obligors and IRBA exposures that defaulted within the meaning of section 125,
4. for every defaulted IRBA exposure, data on the grades or pools to which the IRBA exposure was assigned over the year prior to default and the realised outcomes on LGD and conversion factor, and
5. data on loss rates for IRBA exposures assigned to the sub-portfolio qualifying revolving IRBA retail claims.

## **Title 8**

### **Use of stress tests in assessing capital adequacy**

#### **Section 123**

##### **Use of stress tests in assessing capital adequacy**

(1) <sup>1</sup>The institution shall have in place sound stress testing processes for use in the assessment of its capital adequacy. <sup>2</sup>Stress testing shall involve identifying possible events or future changes in economic conditions that could have unfavourable effects on an institution's credit risk exposures and assessment of the institution's ability to withstand such changes.

(2) <sup>1</sup>The institution shall regularly perform a credit risk stress test to assess the effect of certain specific conditions on its total capital requirements for credit risk. <sup>2</sup>The test shall be one chosen by the institution, subject to supervisory review by BaFin. <sup>3</sup>The test to be employed shall be meaningful and reasonably conservative, considering at least the effect of mild recession scenarios. <sup>4</sup>The institution shall assess migration in its ratings under the stress test scenarios. <sup>5</sup>Stressed portfolios shall contain the vast majority of an institution's total IRBA exposures.

(3) If the institution calculates the IRBA risk weight subject to the PD/LGD approach for an IRBA exposure pursuant to section 86 (3), it shall consider as part of its stress testing framework the impact of a deterioration in the credit quality of protection providers. <sup>2</sup>This shall apply in particular to the impact of protection providers falling outside the eligibility criteria of section 163 (5) number 3.

## **Subdivision 2**

### **Risk quantification**

#### **Section 124**

##### **Provisions for estimating risk parameters**

In estimating the risk parameters to be associated with rating grades or pools, institutions shall apply the requirements pursuant to sections 125 to 146.

## Title 1

### Definition of terms

#### Section 125

##### Default

(1) <sup>1</sup>A default shall be considered to have occurred with regard to a particular obligor when either or both of the two following events has taken place.

1. The institution has material reason to consider that the obligor is unlikely to pay its credit obligations in full to the institution or any group enterprise belonging to the group of institutions or financial holding group to which the institution belongs without recourse by the institution to actions such as realising security (if held).
2. The obligor is past due more than 90 successive calendar days on any material part of its overall credit obligation to the institution or to a group enterprise belonging to the group of institutions or financial holding group to which the institution belongs.

<sup>2</sup>An obligor shall be past due to the institution or a group enterprise pursuant to sentence 1 number 2 if the current overall obligation of that obligor exceeds the current advised limit by more than 2.5 per cent and at least 100 euro. <sup>3</sup>The current overall obligation shall be calculated as the sum of the amounts currently owed by this obligor to the institution or group enterprise pursuant to all existing legal contracts. <sup>4</sup>The current advised limit shall be calculated as the sum of the amounts made available and advised to the obligor pursuant to said legal contracts through current lending, irrespective of current drawings on said amounts. <sup>5</sup>For overdrafts, days past due pursuant to sentence 1 number 2 commence once an obligor has breached an advised limit, has been advised a limit smaller than current outstandings, or has drawn credit without authorisation and the underlying amount is material. <sup>6</sup>An advised limit shall mean a limit which has been brought to the knowledge of the obligor. <sup>7</sup>Days past due for credit card receivables commence on the earliest payment due date. <sup>8</sup>In the case of IRBA exposures in the IRBA exposure class Retail claims, the institution may use this definition of default at the level of individual legal contracts underlying these IRBA exposures. <sup>9</sup>In each of the cases mentioned in sentences 5 to 8 the threshold mentioned in sentence 2 must have been exceeded.

(2) Events to be taken as indications of unlikeliness to pay within the meaning of subsection (1) sentence 1 number 1 shall include the following.

1. The institution makes a value adjustment resulting from a significant perceived decline in credit quality subsequent to the institution taking on the IRBA exposure.
2. The institution sells the credit obligation at a material credit-related economic loss.

3. The institution consents to a distressed restructuring of the credit obligation where this is likely to result in a diminished financial obligation caused by the material forgiveness, or postponement of principal, interest or (where relevant) fees. This includes, in the case of equity exposures whose risk weight is assessed pursuant to a PD/LGD approach, distressed restructuring of the equity itself. Distressed restructuring is defined as a situation in which the institution, according to its usual credit standards, would not have been prepared to continue the legal contract underlying the obligation in its original form.
4. The institution has filed for the obligor's bankruptcy or a similar order in respect of an obligor's credit obligation to the institution itself or any group enterprise of the group of institutions or financial holding group to which the institution belongs.
5. The obligor has sought or has been placed in bankruptcy or similar protection where this would avoid or delay repayment of a credit obligation to the institution itself or to any group enterprise of the group of institutions or financial holding group to which the institution belongs.

(3) An institution that uses external data which are not themselves consistent with the definition of default shall demonstrate to BaFin that appropriate adjustments have been made to achieve broad equivalence with the definition of default.

(4) <sup>1</sup>If the institution considers that a previously defaulted IRBA exposure is such that no trigger of default continues to apply, the credit institution shall rate the obligor or facility as it would for a non-defaulted IRBA exposure. <sup>2</sup>Should the definition of default subsequently be triggered, another default would be deemed to have occurred.

(5) For IRBA exposures in the IRBA exposure class Retail claims and CCR exposures to public entities pursuant to section 25 (4), the institution may, for IRBA exposures to counterparties situated in other EEA states, apply the number of days past due set by the competent authorities there as the definition of default pursuant to subsection (1) sentence 1 number 2.

## **Section 126**

### **Loss**

Loss means economic loss, including material discount effects, and material direct and indirect costs associated with collecting on the instrument.

**Section 127**

## Own estimates of expected loss

<sup>1</sup>Own estimates of EL for an IRBA exposure shall mean the estimated ratio of the amount expected to be lost on an exposure from a potential default of a counterparty or dilution over a one-year period to the amount outstanding at default. <sup>2</sup>It shall be based on the definition of default pursuant to section 125 and of loss pursuant to section 126, and the minimum requirements for rating systems, risk quantification and validation of own estimates shall be observed. <sup>3</sup>Section 109 shall apply in cases of direct assignment of own estimates of EL to this IRBA exposure.

**Title 2**

## Overall requirements for estimation

**Section 128**

## Overall requirements for all estimates

(1) <sup>1</sup>The institution's own estimates of the risk parameters PD, LGD, IRBA conversion factor and EL shall incorporate all relevant data, information and methods. <sup>2</sup>The estimates shall be derived using both historical experience and empirical evidence, and not based purely on judgemental considerations. <sup>3</sup>The estimates shall be plausible and intuitive and shall be based on the material drivers of the respective risk parameters. <sup>4</sup>The less data the institution has, the more conservative it shall be in its estimation.

(2) <sup>1</sup>The institution shall be able to provide a breakdown of its loss experience in terms of default frequency, LGD, IRBA conversion factor, or loss where EL estimates are used, by the factors it sees as the drivers of the respective risk parameters. <sup>2</sup>The institution shall demonstrate that its estimates are representative of long-run experience.

(3) <sup>1</sup>Any changes in lending practice or the process for pursuing recoveries over the observation periods referred to in section 130 (8), section 131 (5), sections 133, 134 (4), sections 136 and 137 (2) shall be taken into account. <sup>2</sup>The institution's estimates shall reflect the implications of technical advances and new data and other information, as it becomes available. <sup>3</sup>The institution shall review its estimates when new information comes to light but at least on an annual basis.

(4) <sup>1</sup>The population of credit risk exposures represented in the data used for estimation, the lending standards used when the data were generated and other relevant characteristics shall be comparable with those of the institution's current IRBA exposures and lending standards. <sup>2</sup>The institution shall also demonstrate that the economic or market conditions that underlie the data are relevant to current and foreseeable conditions. <sup>3</sup>The number of credit risk

exposures in the sample and the data period used for quantification shall be sufficient to provide the institution with confidence in the accuracy and robustness of its estimates.

(5) <sup>1</sup>For purchased receivables the estimates shall reflect all relevant information available to the purchasing institution regarding the quality of the underlying receivables, including data for similar pools of purchased receivables provided by the seller, by the purchasing institution, or by external sources. <sup>2</sup>The purchasing institution shall evaluate any data relied upon which is provided by the seller.

(6) <sup>1</sup>The institution shall add to its estimates a margin of conservatism that is related to the expected range of estimation errors. <sup>2</sup>Where the quality of the methods or the quality or quantity of the data are less satisfactory and the expected range of errors is larger, the margin of conservatism shall be larger.

(7) If the institution uses different estimates for the calculation of risk weights and for internal purposes, it shall document this and demonstrate the reasonableness of the estimates and of their use to BaFin.

(8) If the institution can demonstrate to BaFin that, for data that have been collected prior to the date of implementation of this Regulation, appropriate adjustments have been made to achieve broad equivalence with the definitions of default pursuant to section 125 or loss pursuant to section 126, it may use them subject to BaFin's consent even if it does not fully meet the required standards for data pursuant to sections 125 and 126.

(9) If the institution uses data that is pooled across institutions it shall demonstrate that

1. the rating systems and criteria for rating of the other institutions in the pool are similar to its own,
2. the data population in the pool is representative of the portfolio for which the pooled data are used, and
3. the pooled data are used consistently over time by the institution for its continuous estimates.

(10) If an institution uses data that are pooled across institutions, it shall remain responsible for the integrity of its rating systems. The institution shall demonstrate to BaFin that it has sufficient in-house understanding of its rating systems, including effective ability to monitor and audit the rating process.

### **Title 3**

#### **Requirements specific to PD estimation**

#### **Section 129**

##### **Requirements for all IRBA exposures**

<sup>1</sup>The forecast PD for an IRBA exposure shall be calculated as the estimated probability that a counterparty will default within one year. <sup>2</sup>The definition of default pursuant to section 125 shall be used. <sup>3</sup>In cases of directly estimated PDs for individual obligors of IRBA exposures, section 109 shall apply. <sup>4</sup>The one-year default rate for a population of obligors is the ratio of the number of obligor defaults in a year to the total number of obligors.

#### **Section 130**

##### **Requirements for the exposure classes Central governments, Institutions or Corporates and certain IRBA equity exposures**

(1) For IRBA exposures in the exposure classes Central governments, Institutions and Corporates and for IRBA equity exposures subject to the PD/LGD approach, the institution shall estimate the PD per obligor grade for obligors from the long-run average of realised one-year default rates pursuant to section 129 sentence 4.

(2) For purchased receivables not assignable as CCR exposures to the IRBA exposure class Retail claims, the institution may estimate ELs by obligor grade from long-run averages of realised one-year default rates.

(3) <sup>1</sup>If the institution derives long-run average estimates of PDs or LGDs for purchased receivables not assignable as CCR exposures to the IRBA exposure class Retail claims from an estimate of EL and an appropriate estimate of LGD or PD, the process for estimating total losses shall meet the overall standards for estimating PD and LGD set out in the IRBA minimum requirements. <sup>2</sup>The outcome shall be consistent with the concept of LGD pursuant to section 132 (2).

(4) <sup>1</sup>The institution shall use PD estimation techniques only with supporting analysis. <sup>2</sup>Institutions shall recognise the importance of judgmental considerations in combining results of different techniques and in making adjustments for limitations of techniques and information.

(5) <sup>1</sup>To the extent that the institution uses data on internal default experience for the estimation of PDs, it shall demonstrate in its analysis pursuant to subsection (4) that the estimates are reflective of underwriting standards and of any differences between the rating

system that generated the data and the current rating system. <sup>2</sup>Where underwriting standards or rating systems have changed, the institution shall add a greater margin of conservatism in its estimates of PD.

(6) To the extent that the institution associates or maps its internal grades to the scale used by an ECAI or similar organisations and then attributes the default rates observed for the external organisation's grades to the institution's grades, it shall comply with the following conditions.

1. Associations and mappings of grades shall be based on a comparison of internal rating criteria to the criteria used by the external organisation and on a comparison of the internal and external ratings of any obligors rated both by the institution and the ECAI.
2. Biases or inconsistencies in the mapping approach or underlying data shall be avoided.
3. The external organisation's criteria underlying the data used for quantification shall be oriented to default risk only and not reflect transaction characteristics.
4. The institution's analysis shall include a comparison of the default definition used by the ECAI and the institution's implementation of the default definition pursuant to section 125.
5. The institution shall document the basis for the mapping.

(7) To the extent that an institution uses statistical default prediction models it is allowed to estimate PDs as the simple average of default probability estimates for individual obligors in a given grade; section 118 applies *mutatis mutandis*.

(8) <sup>1</sup>Irrespective of whether an institution is using external, internal, or pooled data sources or a combination of the three for its PD estimation, the length of the underlying historical observation period used for risk exposures for which the institution must use own estimates for LGD shall be at least five years for at least one source. <sup>2</sup>For risk exposures for which the institution is not permitted to use own LGD estimates, the historical observation period specified in sentence 1 shall be two years at the time a rating system is first used to calculate LGD estimates for IRBA and shall increase from that time by one year each year until it covers a period of five years. <sup>3</sup>If any historical observation period available for any of these data sources includes a longer time span and these data are relevant, the longer time span is to be used. <sup>4</sup>This subsection shall apply also to calculating risk weights for equity exposures using PD and LGD.

### **Section 131**

#### Requirements for the exposure class Retail claims

(1) For IRBA exposures in the IRBA exposure class Retail claims the institution shall

estimate PDs by obligor grade or pool from long-run averages of one-year default rates pursuant to section 129 sentence 4.

(2) Notwithstanding subsection (1), PD estimates for IRBA exposures in the IRBA exposure class Retail claims may also be derived from realised losses and appropriate estimates of LGDs.

(3) <sup>1</sup>The institution shall regard internal data for assigning IRBA exposures to grades or pools as the primary source of information for estimating loss characteristics. The institution is permitted to use external data (including pooled data) or statistical models for quantifying the estimates of loss characteristics, provided a strong link can be demonstrated between

1. the institution's process of assigning IRBA exposures to grades or pools and the process used by the external data source, and
2. the institution's internal risk profile and the composition of the external data.

For purchased receivables assignable as CCR exposures to the IRBA exposure class Retail claims, the institution may use external and internal reference data. <sup>4</sup>The institution shall use all relevant data sources as points of comparison.

(4) If the institution derives long-run average estimates of PD and LGD for IRBA exposures in the IRBA exposure class Retail claims from an estimate of total losses and an appropriate estimate of PD or LGD, the process for estimating total losses shall meet the overall standards for estimation of PD and LGD set out in this division, and the outcome shall be consistent with the concept of LGD pursuant to section 132 (2).

(5) <sup>1</sup>Irrespective of whether the institution is using external, internal, or pooled data sources or a combination of the three for its PD estimate, the length of the underlying historical observation period used for IRBA exposures in the IRBA exposure class Retail claims, at the time a rating system is first used for such estimates for IRBA, shall be at least two years for at least one source. <sup>2</sup>As from the time specified in sentence 1, the period specified in sentence 1 shall increase by one year each year until it covers a period of five years. <sup>3</sup>If any historical observation period available for any of these data sources includes a longer time span and these data are relevant, this longer time span is to be used. <sup>4</sup>The institution does not need to give historical data the same weight if it can demonstrate that the more current data have more predictive power for PDs.

(6) The institution shall identify and analyse expected changes of risk parameters over the life of IRBA exposures (seasoning effects).

## **Title 4**

### **Requirements specific to own LGD estimates**

#### **Section 132**

##### **Requirements for all IRBA exposures**

(1) <sup>1</sup>The LGD for an IRBA exposure shall be estimated as the expected ratio of the loss on an exposure due to the default of a counterparty to the amount outstanding at default. <sup>2</sup>The definitions of default and of loss are to be used, and the minimum requirements for rating systems, risk quantification and validation of own estimates are to be observed. <sup>3</sup>Section 109 shall apply in the case of LGDs estimated directly for individual IRBA exposures.

(2) The institution shall estimate LGDs by facility grade or pool on the basis of the average realised LGDs by facility grade or pool using all observed defaults within the data sources (default-weighted average).

(3) <sup>1</sup>The institution shall use LGD estimates that are appropriate for an economic downturn if those are more conservative than the long-run average. <sup>2</sup>To the extent a rating system is expected to deliver realised LGDs at a constant level by grade or pool over time, the institution shall make adjustments to its estimates of risk parameters by grade or pool to limit the capital impact of an economic downturn

(4) <sup>1</sup>The institution shall consider the extent of any dependence between the risk of the obligor and that of the collateral or collateral provider. <sup>2</sup>Cases where there is a significant degree of dependence shall be addressed in a conservative manner.

(5) Currency mismatches between the underlying obligation and the collateral shall be treated conservatively in the institution's assessment of LGD.

(6) <sup>1</sup>To the extent that LGD estimates take into account the existence of collateral, these estimates shall not solely be based on the collateral's estimated market value. <sup>2</sup>LGD estimates shall take into account the effect of the potential inability of institutions to expeditiously gain control of their collateral and liquidate it.

(7) To the extent that its LGD estimates take into account the existence of collateral, the institution must establish internal requirements for collateral management, legal certainty and risk management that are generally consistent with the minimum requirements for recognising collateral pursuant to sections 172 to 176 and to section 20a (4) and (6) to (8) of the Banking Act.

(8) To the extent that an institution recognises collateral for determining the exposure amount using the IMM pursuant to section 17 (1) sentence 1 number 1 or the SM pursuant to section

17 (1) sentence 1 number 2, any amount expected to be recovered from the collateral shall not be taken into account in the LGD estimates.

(9) For LGDs for IRBA exposures defaulted pursuant to section 125, the institution shall use the sum of its best estimate of EL for each exposure, given current economic circumstances and IRBA exposure status, and its estimate of the potential rise in EL owing to additional unexpected losses during the recovery period.

(10) To the extent that unpaid late fees have been capitalised in the institution's income statement, they shall be added to the institution's measure of the IRBA exposure value and loss.

### **Section 133**

Requirements for the exposure classes Central governments, Institutions or Corporates

<sup>1</sup>Estimates of LGD for IRBA exposures in the IRBA exposure classes Central governments, Institutions and Corporates shall, at the time a rating system is used for the first time for such IRBA estimates, be based on data over a minimum of five years for at least one data source.

<sup>2</sup>As from the time specified in sentence 1, the period specified in sentence 1 shall increase by one year each year until it covers a period of seven years. <sup>3</sup>If any historical observation period available for any of these data sources includes a longer time span and these data are relevant, this longer time span shall be used.

### **Section 134**

Requirements for the exposure class Retail claims

(1) Notwithstanding section 132 (2), LGD estimates for IRBA exposures in the IRBA exposure class Retail claims may be derived from realised losses and appropriate estimates of PDs.

(2) Notwithstanding section 135 (5), the institution may, for IRBA exposures in the IRBA exposure class Retail claims, reflect future drawings either in its estimates of IRBA conversion factors or in its LGD estimates.

(3) For purchased receivables assignable as a CCR exposure to the IRBA exposure class Retail claims, the institution may use both external and internal reference data to estimate LGDs.

(4) <sup>1</sup>Estimates of LGD for IRBA exposures in the IRBA exposure class Retail claims shall, at the time a rating system is used for the first time for calculating such IRBA estimates, be based on data over a minimum of two years. <sup>2</sup>As from the time specified in sentence 1, the

period specified in sentence 1 shall increase by one year each year until it covers a period of five years. <sup>3</sup>Irrespective of section 132 (2), the institution does not need to give historical data the same weight if it can demonstrate that the more current data have more predictive power for LGDs.

(5) Recovered amounts from collateral for a credit line in connection with a salary account, where the credit line is assigned as an IRBA exposure to the sub-portfolio Qualifying revolving IRBA retail claims pursuant to section 77 (1) number 1, may not be recognised when estimating LGD for this IRBA exposure.

## **Title 5**

### **Special requirements for own estimates of the IRBA conversion factor**

#### **Section 135**

##### **Requirements for all IRBA exposures**

(1) The own estimate of the IRBA conversion factor for IRBA exposures pursuant to section 101 (2) numbers 1 to 4 is the ratio of the estimated currently undrawn amount of a commitment that will be drawn and outstanding at default to the currently undrawn amount of the commitment.

(2) The own estimate of the IRBA conversion factor for IRBA exposures pursuant to section 101 (2) numbers 5 and 6 letter (b) shall be calculated in line with subsection (1).

(3) The institution shall estimate an IRBA conversion factor pursuant to subsection (1) or (2) by facility grade or pool on the basis of the average realised conversion factors by facility grade or pool using all observed defaults within the data sources (default-weighted average).

(4) <sup>1</sup>The institution shall use an estimate for an IRBA conversion factor pursuant to subsection (1) or (2) that is appropriate for an economic downturn if it is more conservative than the long-run average. <sup>2</sup>To the extent that a rating system is expected to deliver realised LGDs at a constant level by grade or pool over time, the institution shall make adjustments to its estimates of risk parameters by grade or pool to limit the capital impact of an economic downturn

(5) The institution's estimates of an IRBA conversion factor pursuant to subsection (1) or (2) shall reflect the possibility of additional drawings by the obligor up to and after the time a default event is triggered.

(6) The estimate for an IRBA conversion factor pursuant to subsection (1) or (2) shall incorporate a larger margin of conservatism where a stronger positive correlation can reasonably be expected between the default frequency and the magnitude of the IRBA

conversion factor.

(7) <sup>1</sup>In arriving at estimates of an IRBA conversion factor pursuant to subsection (1) or (2) the institution shall consider its specific policies and strategies adopted in respect of account monitoring and payment processing. <sup>2</sup>The institution shall also consider its ability and willingness to prevent further drawings in circumstances short of payment default pursuant to section 125, such as covenant violations or other technical default events.

(8) <sup>1</sup>To estimate an IRBA conversion factor pursuant to subsection (1) or (2), the institution shall have adequate systems and procedures in place to monitor facility amounts, current outstandings against committed lines and changes in outstandings per obligor and per grade. <sup>2</sup>The institution shall be able to monitor outstanding balances on a daily basis.

(9) If the institution uses different estimates of an IRBA conversion factor pursuant to subsection (1) or (2) for the calculation of risk-weighted exposure amounts and for internal purposes, this shall be documented and the reasonableness of the estimates and of their application shall be demonstrated to BaFin.

### **Section 136**

Requirements for the exposure classes Central governments, Institutions or Corporates

<sup>1</sup>Estimates of an IRBA conversion factor pursuant to section 135 (1) or (2) for IRBA exposures in the IRBA exposure classes Central governments, Institutions or Corporates shall, at the time a rating system is used for the first time for calculating such estimates for IRBA, be based on data over a minimum of five years for at least one data source. <sup>2</sup>As from the time specified in sentence 1, the period specified in sentence 1 shall increase by one year each year until it covers a period of seven years. <sup>3</sup>If any historical observation period available for any of these data sources includes a longer time span and these data are relevant, this longer time span shall be used.

### **Section 137**

Requirements for the exposure class Retail claims

(1) Notwithstanding section 135 (5), the institution may reflect, for IRBA exposures in the IRBA exposure class Retail claims, future drawings either in its estimate of the IRBA conversion factor or in its estimate of the LGD.

(2) <sup>1</sup>Estimates of an IRBA conversion factor pursuant to section 135 (1) or (2) for IRBA exposures in the IRBA exposure class Retail claims must, at the time the rating system is used for the first time to calculate such estimates for IRBA, be based on data over a period of at least two years. <sup>2</sup>As from the time specified in sentence 1, the period specified in sentence 1

shall increase by one year each year until it covers a period of five years.<sup>3</sup> Irrespective of section 135 (3), the institution does not need to give historical data the same weight if it can demonstrate that the more current data have more predictive power for drawings.

## **Title 6**

### **Minimum requirements for estimating the effect of guarantees and credit derivatives**

#### **Section 138**

Requirements for IRBA exposures for which own estimates of LGDs are used

(1) <sup>1</sup>Where IRBA exposures in the IRBA exposure classes Central governments, Institutions and Corporates for which own estimates of LGDs are used or IRBA exposures in the IRBA exposure class Retail claims are protected by guarantees or credit derivatives of protection providers whose credit risk exposures would be assignable to the IRBA exposure classes Central governments or Institutions or who are corporate entities which meet the requirements pursuant to section 163 (1) number 8, and if the institution is allowed to treat credit risk exposures of said protection providers as CRSA exposures, sections 139 to 141 shall not apply to these guarantees or credit derivatives. <sup>2</sup>In such cases, the guarantees or credit derivatives shall meet the eligibility criteria pursuant to sections 162 to 165, 167 and 168 and the minimum requirements pursuant to sections 172, 177 and 178. <sup>3</sup>For those IRBA exposures not assigned to the IRBA exposures class Retail claims, guarantees or credit derivatives must additionally meet the eligibility criteria in a maturity mismatch pursuant to section 184, and the eligible amount must be the product of the part of

1. the amount of the guarantee or credit derivative assigned to this IRBA exposure, and
2. the maturity mismatch adjustment factor pursuant to section 186 for this guarantee or this credit derivative in respect of this IRBA exposure.

(2) For guarantees or credit derivatives for IRBA exposures which are assigned to the IRBA exposure class Retail claims, sections 139 to 141 shall apply also for the assignment of IRBA exposures to grades or pools and the estimation of PD.

#### **Section 139**

Eligible guarantors and guarantees

(1) The institution shall have clearly specified criteria for the types of guarantors they recognise for the calculation of risk-weighted IRBA exposure amounts.

(2) For recognised guarantors the same rules for assignment to grades or pools, assignment to IRBA exposures and integrity of assignment shall apply as set out for obligors in sections 112 to 117.

(3) <sup>1</sup>The guarantee

1. shall be evidenced in writing,
2. shall be non-cancellable on the part of the guarantor,
3. shall be in force until the obligation is satisfied in full, to the extent of the amount and term of the guarantee, and
4. shall be legally enforceable against the guarantor in a jurisdiction where the guarantor has assets to attach and enforce a judgement.

<sup>2</sup>Guarantees prescribing conditions pursuant to which the guarantor may not be obliged to perform (conditional guarantees) may be recognised subject to BaFin's permission. <sup>3</sup>The institution shall demonstrate that the assignment criteria adequately address any potential reduction in the risk mitigation effect.

### **Section 140**

#### Adjustment criteria

(1) <sup>1</sup>The institution shall have clearly specified criteria for adjusting grades, pools or LGD estimates and, in the case of IRBA exposures in the IRBA exposure class Retail claims and purchased receivables eligible for treatment according to the requirements for retail exposures, the process of allocating IRBA exposures to grades or pools, to reflect the impact of guarantees for the calculation of risk-weighted IRBA exposure amounts. <sup>2</sup>These criteria shall comply with the minimum requirements for assigning grades or pools, the assignment of IRBA exposures and the integrity of assignment pursuant to sections 112 to 117.

(2) <sup>1</sup>The criteria pursuant to subsection (1) shall be plausible and intuitive. <sup>2</sup>They shall address

1. the guarantor's ability and willingness to perform under the guarantee,
2. the likely timing of any payments from the guarantor,
3. the degree to which the guarantor's ability to perform pursuant to the guarantee is correlated with the obligor's ability to repay, and
4. the extent to which residual risk to the obligor remains.

**Section 141**

## Credit derivatives

(1) <sup>1</sup>The minimum requirements for guarantees pursuant to section 139 shall apply also to single-name credit derivatives. <sup>2</sup>In relation to a mismatch between the underlying obligation and the reference obligation of the credit derivative or the obligation used for determining whether a credit event has occurred, the requirements for exposures for which a credit derivative is eligible pursuant to section 167 shall apply. <sup>3</sup>For IRBA exposures in the IRBA exposure class Retail claims and purchased receivables eligible for treatment as retail exposures pursuant to the requirements for risk parameter estimation, the requirements for exposures for which a credit derivative is eligible pursuant to section 167 shall apply to the process of assigning IRBA exposures to grades or pools.

(2) <sup>1</sup>The criteria shall address the payout structure of the credit derivative and conservatively assess the impact this has on the level and timing of recoveries. <sup>2</sup>The institution shall consider the extent to which other forms of residual risk remain.

**Title 7**

## Minimum requirements for purchased receivables

**Section 142**

## Legal certainty

<sup>1</sup>Where an institution purchases receivables, the structure of the facility shall ensure that, under all foreseeable circumstances, it has legal and effective ownership and control of all cash remittances from the receivables. <sup>2</sup>When the obligor makes payments directly to a seller or servicer, the institution shall verify regularly that payments are forwarded completely and within the contractually agreed terms. <sup>3</sup>A servicer is an entity that manages a pool of purchased receivables or the underlying IRBA credit exposures on a day-to-day basis. <sup>4</sup>The institution shall take all possible legal precautions to ensure that ownership over the receivables and cash receipts is protected against bankruptcy stays or legal challenges that could materially delay the lender's ability to liquidate or assign the receivables or retain control over cash receipts.

**Section 143**

## Monitoring systems

<sup>1</sup>The institution shall monitor both the quality of the purchased receivables and the financial condition of the seller and servicer. <sup>2</sup>In particular, the following provisions apply.

1. The institution shall assess the mutual dependence of the quality of the purchased receivables and the financial condition of both the seller and servicer, and have in place internal policies and procedures that provide adequate safeguards to protect against any contingencies due to that mutual dependence, including the assignment of an internal risk rating for each seller and servicer.
2. The institution shall have clear and effective policies and procedures for determining seller and servicer eligibility. The institution or its agent shall conduct periodic reviews of sellers and servicers in order to verify the accuracy of reports from the seller or servicer, detect fraud or operational weaknesses, and verify the quality of the seller's credit policies and servicer's collection policies and procedures. The findings of these reviews shall be documented.
3. The institution shall assess the characteristics of the purchased receivables pools, including overadvances; history of the seller's arrears, bad debts, and bad debt allowances; payment terms, and potential contra-accounts.
4. The institution shall have effective policies and procedures for monitoring on an aggregate basis single-obligor concentrations both within and across purchased receivables pools.
5. The institution shall ensure that it receives from the servicer timely and sufficiently detailed reports of receivables ageings and dilutions to ensure compliance with the credit institution's eligibility criteria and advancing policies governing purchased receivables, and provide an effective means with which to monitor and confirm the seller's terms of sale and of dilution risk.

### **Section 144**

#### Work-out systems

<sup>1</sup>The institution shall have systems and procedures for detecting deteriorations in the seller's financial condition and purchased receivables quality at an early stage, and for addressing emerging problems proactively. <sup>2</sup>In particular, the institution shall have clear and effective policies, procedures, and information systems to monitor covenant violations, and clear and effective policies and procedures for initiating legal actions and dealing with problem purchased receivables.

### **Section 145**

#### Systems for monitoring collateral, credit availability and payments

<sup>1</sup>The institution shall have clear and effective policies and procedures governing the monitoring of purchased receivables, credit availability and payments. <sup>2</sup>In particular, written

internal policies shall specify all material elements of the receivables purchase programme, including the advancing rates, eligible collateral, necessary documentation, concentration limits, and the way payment receipts are to be handled. <sup>3</sup>These elements shall take appropriate account of all relevant and material factors, including the seller and servicer's financial condition, risk concentrations, and foreseeable trends in the quality of the purchased receivables and the seller's customer base. <sup>4</sup>The internal systems shall ensure that funds are advanced only against specified supporting collateral and documentation.

### **Section 146**

#### Compliance with the institution's internal policies and procedures

<sup>1</sup>The institution shall have an effective internal process for assessing compliance with all internal policies and procedures. <sup>2</sup>The process shall include regular audits of all critical phases of the institution's receivables purchase programme. <sup>3</sup>The process shall include verification of the separation of duties between the assessment of the seller and servicer on the one hand and the assessment of the obligor on the other. <sup>4</sup>The process shall also include verification of the separation of duties between the assessment of the seller and servicer on the one hand and the field audit of the seller and servicer on the other. <sup>5</sup>The process shall also contain evaluations of back-office operations, with particular focus on qualifications, experience, staffing levels, and supporting automation systems.

### **Subdivision 3**

#### Validation of own estimates

### **Section 147**

#### Validation of own estimates

(1) <sup>1</sup>The institution shall have robust systems in place to validate the accuracy and consistency of rating systems and processes and to estimate all relevant risk parameters. <sup>2</sup>The institution shall demonstrate to BaFin that the internal validation process enables it to assess the performance of internal rating and risk estimation systems consistently and meaningfully.

(2) <sup>1</sup>The institution shall regularly compare realised default rates with estimated PDs for each grade and, where realised default rates are outside the expected range for that grade, it shall specifically analyse the reasons for the deviation. <sup>2</sup>If the institution uses own estimates of LGDs or IRBA conversion factors, it shall also perform analogous analysis for these estimates. <sup>3</sup>Such comparisons shall make use of historical data that cover as long a period as possible. <sup>4</sup>The institution shall document the methods and data used in such comparisons. <sup>5</sup>This analysis and documentation shall be updated at least annually.

(3) <sup>1</sup>The institution shall also use other quantitative validation tools and perform comparisons with relevant external data sources. <sup>2</sup>The analysis shall be based on data that are appropriate to the institution's portfolio, are updated regularly, and cover a relevant observation period. <sup>3</sup>The institution's internal assessments of the performance of its rating systems shall be based on as long a period as possible.

(4) <sup>1</sup>The methods and data used for quantitative validation shall be consistent through time. <sup>2</sup>Changes in estimation and validation methods and data (both data sources and periods covered) shall be documented.

(5) <sup>1</sup>The institution shall have sound internal standards for situations where deviations in realised one-year default rates pursuant to section 129 sentence 4, realised LGDs, realised IRBA conversion factors or, where EL estimates are used, realised total losses from expectations become significant enough to call the validity of the estimates into question. <sup>2</sup>These standards shall take account of business cycles and similar systematic variability in default experience. <sup>3</sup>Where realised values continue to be higher than expected values, the institution shall revise its estimates upward to reflect its default and loss experience.

#### **Subdivision 4**

#### **Calculation of risk-weighted IRBA exposure amounts for IRBA equity portfolios subject to the internal models approach**

#### **Section 148**

#### **Risk quantification**

The institution shall adhere to the following standards for calculating risk-weighted IRBA exposure amounts for IRBA equity portfolios subject to the internal models approach.

1. <sup>1</sup>The estimate of potential loss shall be robust to adverse market movements relevant to the long-term risk profile of the institution's specific holdings. <sup>2</sup>The data used to represent return distributions shall reflect the longest sample period for which data are available and meaningful in representing the risk profile of the institution's specific equity exposures. <sup>3</sup>The data used shall be sufficient to provide conservative, statistically reliable and robust loss estimates that are not based purely on subjective or judgmental considerations. <sup>4</sup>The institution shall demonstrate to BaFin that the shock employed provides a conservative estimate of potential losses over a relevant long-term market or business cycle. <sup>5</sup>The institution shall combine empirical analysis of available data with adjustments based on a variety of factors in order to attain model outputs that achieve appropriate realism and conservatism. <sup>6</sup>In constructing Value at Risk (VaR) models for estimating potential quarterly losses, the institution may use quarterly data or convert shorter horizon period data to a quarterly equivalent using an analytically appropriate method supported by

empirical evidence and through well-developed and documented theoretical considerations and analyses.<sup>7</sup> Such an approach shall be applied conservatively and consistently over time.<sup>8</sup> Where only limited relevant data are available the institution shall add appropriate margins of conservatism.

2. <sup>1</sup>The VaR models used shall be able to capture adequately all of the material risks embodied in equity returns, including both the general market risk and specific risk exposure of the institution's equity portfolio. <sup>2</sup>The internal models shall adequately explain historical price variation, capture both the magnitude and changes in the composition of potential concentrations and be robust to adverse market environments. <sup>3</sup>The population of risk exposures represented in the data used for estimation shall be closely matched to or at least comparable with those of the institution's equity exposures
3. <sup>1</sup>The internal model shall be appropriate for the risk profile and complexity of the institution's equity portfolio. <sup>2</sup>Where the institution has material holdings with values that are highly non-linear in nature, the internal VaR models shall be designed to capture appropriately the risks associated with such instruments.
4. Mapping of individual positions to proxies, market indices and risk factors shall be plausible, intuitive, and conceptually sound.
5. The institution shall demonstrate through empirical analyses the appropriateness of its choice of risk factors, including their ability to cover both general and specific risk.
6. <sup>1</sup>The estimates of the return volatility of equity exposures shall incorporate all relevant and available data, information, and methods. <sup>2</sup>Independently reviewed internal data or data from external sources (including pooled data) shall be used.
7. A rigorous and comprehensive stress-testing programme shall be in place.

## Section 149

### Risk management process and controls

<sup>1</sup>With regard to the development and use of internal models for capital requirement purposes, the institution shall establish policies, procedures and controls to ensure the integrity of the model and modelling process. <sup>2</sup>These policies, procedures, and controls shall include the following.

1. <sup>1</sup>Full integration of the internal model into the overall management information systems of the institution and in the management of the banking book equity portfolio. <sup>2</sup>Internal models shall be fully integrated into the institution's risk management infrastructure if they are particularly used in measuring and assessing equity portfolio performance

(including the risk-adjusted performance), allocating economic capital to equity exposures and evaluating overall capital adequacy and the investment management process.

2. <sup>1</sup>Established management systems, procedures, and control functions for ensuring the periodic and independent review of all elements of the internal modelling process, including approval of model revisions, vetting of model inputs, and review of model results, such as direct verification of risk computations. <sup>2</sup>These reviews shall assess the accuracy, completeness, and appropriateness of model inputs and results and focus on both finding and limiting potential errors associated with known model weaknesses and identifying unknown model weaknesses. <sup>3</sup>Such reviews may be conducted by an internal independent unit, or by an independent external third party.
3. Adequate systems and procedures for monitoring investment limits and the risk exposures of equity exposures.
4. The units responsible for the design and application of the model shall be functionally independent of the units responsible for managing individual investments.
5. <sup>1</sup>Parties responsible for any aspect of the modelling process shall be adequately qualified. <sup>2</sup>Management shall allocate sufficient skilled and competent resources to the modelling function.

## Section 150

### Validation and documentation

- (1) <sup>1</sup>The institution shall have a robust system in place to validate the accuracy and consistency of its internal models and modelling processes. <sup>2</sup>All material elements of the internal models and the modelling process and validation shall be documented.
- (2) The institution shall use the internal validation process to assess the performance of its internal models and processes in a consistent and meaningful way.
- (3) <sup>1</sup>The methods and data used for quantitative validation shall be consistent through time. <sup>2</sup>Changes in estimation and validation methods and data (both data sources and periods covered) shall be documented.
- (4) <sup>1</sup>The institution shall regularly compare actual equity returns (computed using realised and unrealised gains and losses) with modelled estimates. <sup>2</sup>Such comparisons shall make use of historical data that cover as long a period as possible. <sup>3</sup>The institution shall document in a meaningful way the methods and data used in such comparisons. <sup>4</sup>This analysis and documentation shall be updated at least annually.
- (5) <sup>1</sup>The institution shall make use of other quantitative validation tools and perform

comparisons with external data sources. <sup>2</sup>The analysis shall be based on data that are appropriate to the portfolio, are updated regularly, and cover a relevant observation period.

<sup>3</sup>The institution's internal assessments of the performance of its internal models shall be based on as long a period as possible.

(6) <sup>1</sup>The institution shall have sound internal standards for situations where comparison of actual equity returns with the model estimates calls the validity of the estimates or of the model as such into question. <sup>2</sup>These standards shall take account of business cycles and similar systematic variability in equity returns. All adjustments made to internal models in response to model reviews shall be documented and shall be consistent with the institution's model review standards.

(7) The internal model and the modelling process shall be documented, including the responsibilities of parties involved in the modelling and in the model approval and model review processes.

## **Subdivision 5**

### **Corporate governance and oversight**

#### **Section 151**

##### **Corporate governance**

(1) <sup>1</sup>All material aspects of the rating and estimation processes shall be approved by the institution's management body or a designated committee thereof and by senior management. <sup>2</sup>These parties shall be able to prove to BaFin that they possess a general understanding of the institution's rating systems and detailed comprehension of its associated management reports.

(2) Senior management shall provide notice to the management body or a designated committee thereof of material changes or exceptions from established policies that will materially impact the operations and outputs of the institution's rating systems.

(3) <sup>1</sup>Senior management shall ensure on an ongoing basis that the rating systems are operating properly. <sup>2</sup>Senior management shall be regularly informed by the credit risk control units about the performance of the rating process, areas needing improvement, and the status of efforts to improve previously identified deficiencies. <sup>3</sup>Senior management shall be able to prove to BaFin that it has a comprehensive understanding of the structure and function of the rating systems.

(4) <sup>1</sup>Internal ratings-based analysis of the institution's credit risk profile shall be an essential part of the management reporting to the management body and senior management.

<sup>2</sup>Reporting shall include at least risk profile by grade, migration across grades, estimation of

the relevant parameters per grade, and comparison of realised default rates, LGDs and IRBA conversion factors against expectations and stress-test results. <sup>3</sup>Reporting frequencies shall depend on the significance and type of information and the level the recipient has in the hierarchy.

## Section 152

### Credit risk control

(1) <sup>1</sup>The credit risk control unit shall be independent of the personnel and functional units responsible for originating or renewing IRBA exposures and report directly to senior management. <sup>2</sup>The unit shall be responsible for the design or selection, implementation, oversight and performance of the rating systems. <sup>3</sup>It shall regularly produce and analyse reports on the output of the rating systems.

(2) The areas of responsibility for a credit risk control unit shall particularly include

1. testing and monitoring grades and pools,
2. producing and analysing summary reports from the institution's rating systems,
3. implementing procedures to verify that grade and pool definitions are consistently applied across departments and geographic areas,
4. reviewing and documenting any changes to the process of assigning obligors and IRBA exposures to grades and pools, including the reasons for the changes,
5. reviewing the rating criteria on an ongoing basis to evaluate whether they remain predictive of risk, documenting and archiving changes to the process of assigning obligors and IRBA exposures to grades and pools, to rating criteria or to individual rating parameters,
6. participating in the design or selection, implementation and validation of models used in the process of assigning obligors and IRBA exposures to grades or pools,
7. overseeing and supervising models used in the process of assigning obligors and IRBA exposures to grades and pools, and
8. ongoing review of and alterations to models used in the process of assigning obligors and IRBA exposures to grades and pools.

(3) <sup>1</sup>Notwithstanding subsection (2), an institution that uses pooled data pursuant to section 128 (9) and (10) may outsource the following tasks:

1. production of information relevant to testing and monitoring grades or pools,

2. production of summary reports from the institution's rating systems,
3. production of information relevant to review of the rating criteria to evaluate whether they remain predictive of risk,
4. documentation of changes to the process of assigning obligors and IRBA exposures to grades and pools, to changes in rating criteria or individual rating parameters, and
5. production of information relevant to ongoing review of and alterations to models used in the process of assigning obligors and IRBA exposures to grades and pools.

<sup>2</sup>An institution which outsources such tasks shall ensure that BaFin, or the Deutsche Bundesbank acting on its behalf, have access to all relevant information from the third party that is necessary for examining compliance with these minimum requirements and that BaFin may perform on-site examinations to the same extent as within the institution.

### **Section 153**

#### Internal audit

<sup>1</sup>Internal audit or another comparable independent auditing unit shall review at least annually the institution's rating systems and its operations, including the operations of the credit function and the estimation of PDs, LGDs, ELs and IRBA conversion factors. The review shall include adherence to all applicable minimum requirements.

## **Chapter 5**

### Credit risk mitigation techniques

#### **Division 1**

#### Protection instruments

### **Section 154**

#### Eligible protection instruments

(1) <sup>1</sup>If an institution fulfils the minimum requirements for credit risk mitigation techniques, it may, when calculating the risk-weighted exposure amounts, apply

1. eligible financial collateral pursuant to sections 155 to 157,
2. eligible unfunded credit protection pursuant to section 162 and
3. other eligible IRBA collateral pursuant to sections 158 to 161,

as protection instruments for risk mitigation purposes. <sup>2</sup>Eligible protection instruments must be legally effective and legally enforceable. <sup>3</sup>Institutions which apply eligible protection instruments for risk mitigation purposes have to fulfil the disclosure requirements of section 336.

(2) <sup>1</sup>If part of the CCR from a CCR exposure is transferred by one or more protection instruments which are in a ranking relationship to one another or are in a ranking relationship to the unprotected portion of the risk as a consequence of the contractual terms, each of the risk exposures thereby created – the unprotected part and the parts created by the protection instruments – is to be treated as a securitisation position. <sup>2</sup>Sentence 1 applies *mutatis mutandis* to the protection seller in respect of the CCR exposure amounts assumed by the protection seller through the partial protection. <sup>3</sup>Materiality thresholds on losses below which no payment from the protection instrument may be expected are considered to be equivalent to retained first loss positions and to give rise to a tranching transfer of risk.

## **Subdivision 1**

### Eligible collateral

#### **Title 1**

### Financial collateral

#### **Section 155**

#### Generally eligible financial collateral

(1) <sup>1</sup>The following items are generally eligible financial collateral:

1. cash on deposit with the protection-buying institution,
2. certificates of deposit or similar instruments issued by and lodged with the protection-buying institution,
3. debt securities issued by a central government or a central bank whose securities have a credit assessment from an eligible ECAI with a credit quality step of 1 to 4 or an applicable country classification from an export credit agency with a minimum export insurance premium of 0 to 4 pursuant to Table 4 in Annex I,
4. debt securities issued by a regional government or local authority whose unprotected payment claims, if they were CRSA exposures of the protection-buying institution, would be assigned the CRSA risk weight of the central government of its country of domicile if these debt securities have a credit assessment from an eligible ECAI with a credit quality

step of 1 to 4 or an applicable country classification from an export credit agency with a minimum export insurance premium of 0 to 4 pursuant to Table 4 in Annex I,

5. debt securities issued by a public-sector entity in an EEA country whose unprotected payment claims, if they were CRSA exposures of the protection-buying institution, would be assigned the CRSA risk weight of the central government of its country of domicile if these debt securities have a credit assessment from an eligible ECAI with a credit quality step of 1 to 4 or an applicable country classification from an export credit agency with a minimum export insurance premium of 0 to 4 pursuant to Table 4 in Annex I,
6. debt securities issued by multilateral development banks or international organisations whose unprotected payment claims are assigned a CRSA risk weight of 0 per cent,
7. debt securities issued by a regional government or a local authority which do not fall under number 4 if the debt security has a credit assessment from an eligible ECAI which, pursuant to section 29 number 3, leads to a credit quality step of 1 to 3 as a CRSA exposure,
8. debt securities issued by a corporate whose unprotected payment claims, as CRSA exposures, would have to be assigned to the CRSA exposure class Institutions if the debt security has a credit assessment from an eligible ECAI which, pursuant to section 29 number 3, leads to a credit quality step of 1 to 3,
9. debt securities issued by a corporate whose unprotected payment claims, as CRSA exposures, would have to be assigned to the CRSA exposure class Institutions if the debt securities do not have a credit assessment from an eligible ECAI, if
  - a) these debt securities are listed on a stock or futures exchange,
  - b) these debt securities represent a senior payment claim of the issuer,
  - c) no other debt security of the same issuer with the same or higher seniority has a credit assessment from an eligible ECAI which, pursuant to section 29 number 3, is associated with a credit quality step of 4 to 6,
  - d) the protection-buying institution has no information to suggest that these debt securities would justify a credit assessment from an eligible ECAI which, pursuant to section 29 number 3, is associated with a credit quality step of 4 to 6,
  - e) the protection-buying institution demonstrates that a market for these debt securities exists which is sufficiently liquid for the purpose of collateralisation,
10. debt securities of a public-sector entity whose unprotected payment claims are permitted to be treated like unprotected payment claims owed by institutions which have a credit

assessment from an eligible ECAI which, pursuant to section 29 number 3, leads to a credit quality step of 1 to 3,

11. debt securities of a multilateral development bank whose unprotected payment claims are not assigned a CRSA risk weight of 0 per cent, which have a credit assessment from an eligible ECAI which, as a CRSA exposure, would lead to a credit quality step of 1 to 3,
12. debt securities of a corporate which have a credit assessment from an eligible ECAI which, as a CRSA exposure, would lead to a credit quality step of 1 to 3,
13. debt securities of corporates whose unprotected payment claims, as CRSA exposures, would be assigned to the CRSA exposure classes Corporates or Institutions if these debt securities have a short-term credit assessment from an eligible ECAI which, pursuant to section 33 number 1 letter (a), are to be assigned a credit quality step of 1 to 3,
14. equities and convertible bonds which can be converted at the bearer's discretion by delivery of equities if these equities are included in a widely used stock index of a stock or futures exchange,
15. gold bullion possessed by the protection-buying institution as well as each certificate deposited with the protection-buying institution which represents proportional ownership of gold bullion,
16. exposures in the form of CIUs within the meaning of section 25 (12)
  - a) for which repurchase prices are published each business day and
  - b) where the CIU is limited to investing in instruments which would represent eligible financial collateral pursuant to numbers 1 to 15 or which serve as derivatives to hedge these instruments which represent eligible financial collateral,

if the protection-buying institution meets the general requirements for the use of credit risk mitigation techniques pursuant to section 172 and the minimum requirements for eligible financial collateral pursuant to section 173 for this financial collateral.<sup>2</sup>For the purposes of this chapter, the institution shall not nominate any eligible ECAs or export credit agencies pursuant to section 41.<sup>3</sup>Only a credit assessment which meets the requirements for applicable credit assessments pursuant to section 46 sentence 1 numbers 1 to 4 may be used to determine the eligibility of financial collateral pursuant to sentence 1.<sup>4</sup>Where there is no credit assessment referring to the debt security from any eligible ECAI for financial collateral pursuant to sentence 1 numbers 3 to 5, the issuer credit assessment of the obligor of the financial collateral may be used instead.<sup>5</sup>The proceeds from the issue of a credit linked note may also be recognised as cash on deposit with the protection-buying institution pursuant to sentence 1 number 1 if the credit default swap embedded in the credit linked note *per se* would be eligible unfunded credit protection; for this purpose, it may be assumed that this

embedded credit default swap was issued by an eligible protection provider. <sup>6</sup>Section 205 sentence 1 number 3 applies *mutatis mutandis* to the calculation of the amount of the credit linked note.

(2)<sup>1</sup>A part may be split off from an exposure in the form of a CIU within the meaning of section 25 (12) for which the requirement pursuant to subsection (1) sentence 1 number 16 is not met and recognised separately as an exposure in the form of a CIU for which this requirement is met. <sup>2</sup>The non-eligible part of the exposure in the form of a CIU is defined as the maximum extent to which the CIU is allowed to invest under its mandate in those assets which do not belong to the assets listed in subsection (1) sentence 1 number 16 letter (b) plus the shortfall from non-eligible assets. <sup>3</sup>If the sum of the values of all non-eligible assets in which the CIU is invested is negative, the shortfall is the absolute amount of this sum; otherwise, the shortfall from non-eligible assets is zero. <sup>4</sup>It is necessary to verify whether the sum of all values of non-eligible assets is negative only in those cases in which a non-eligible asset can be negative, eg as a consequence of liabilities or contingent liabilities incurred by ownership of this asset.

### Section 156

#### Financial collateral eligible only at its volatility-adjusted value

<sup>1</sup>If an institution applies the Financial Collateral Comprehensive Method pursuant to section 180, the following items represent financial collateral that is eligible at its volatility-adjusted value in addition to the instruments listed in section 155:

1. equities and convertible bonds which can be converted at the bearer's discretion by delivery of equities if these equities are traded on a stock or futures exchange,
2. exposures in the form of CIUs within the meaning of section 25 (12)
  - a) for which repurchase prices are published every business day and
  - b) where the CIU is limited to investing in instruments listed in number 1 and in section 155 (1) sentence 1 number 16 letter (b),

if the protection-buying institution meets the general requirements for the use of credit risk mitigation techniques pursuant to section 172 and the minimum requirements for eligible financial collateral pursuant to section 173 for this financial collateral. <sup>2</sup>A part may be split off from an exposure in the form of a CIU within the meaning of section 25 (12) for which the requirement pursuant to sentence 1 number 2 letter (b) is not met and recognised separately as an exposure in the form of a CIU for which this requirement is met. <sup>3</sup>The non-eligible part of the exposure in the form of a CIU is defined as the maximum extent to which the CIU is

allowed to invest under its mandate in those assets which do not belong to the assets listed in sentence 1 number 2 letter (b) plus the shortfall from non-eligible assets.<sup>4</sup> If the sum of the values of all non-eligible assets in which the CIU is invested is negative, the shortfall is the absolute amount of this sum; otherwise, the shortfall from non-eligible assets is zero.<sup>5</sup> It is necessary to verify whether the sum of all values of non-eligible assets is negative only in those cases in which a non-eligible asset can be negative, eg as a consequence of liabilities or contingent liabilities incurred by ownership of this asset.

### **Section 157**

#### Eligible trading book collateral

<sup>1</sup>For CCR exposures from repurchase transactions and securities or commodities lending or borrowing transactions which a trading book institution assigns to its trading book, the trading book institution which uses the Financial Collateral Comprehensive Method may recognise financial instruments and commodities which are assignable to the trading book pursuant to section 1a (1) of the Banking Act as trading book collateral if these financial instruments or commodities collateralise at least one of these CCR exposures of the institution and are not already recognised towards the generally eligible financial collateral or the financial collateral eligible only at its volatility-adjusted value.<sup>2</sup> For derivative CCR exposures which a trading book institution assigns to its trading book, sentence 1 applies subject to the proviso that, for these CCR exposures, only commodities which are assignable to the trading book pursuant to section 1a (1) of the Banking Act may be recognised as trading book collateral.

## **Titel 2**

### Other eligible IRBA collateral

#### **Section 158**

#### Other eligible IRBA collateral

<sup>1</sup>Other eligible IRBA collateral is

1. any eligible IRBA real estate collateral pursuant to section 159,
2. any eligible IRBA collateral assignments pursuant to section 160 and
3. any eligible other IRBA physical collateral pursuant to section 161.

<sup>2</sup>These may be recognised as credit risk-mitigating for IRBA exposures for the IRBA exposure classes Central governments, Institutions and Corporates for which the institution is required to apply supervisory LGD.

## Section 159

### IRBA real estate collateral

(1) <sup>1</sup>Eligible collateral includes mortgages secured on

1. residential real estate property which is or will be occupied or let by the owner if, for this mortgage, the requirements pursuant to section 35 (2) sentence 1 are met; if the competent authorities in an EEA country exercise the waiver pursuant to Annex VIII Part 1 point 16 of Directive 2006/48/EC, the requirement pursuant to section 35 (2) sentence 1 number 4 for real estate property situated within this state is regarded as met;

2. commercial real estate property if, for this mortgage, the requirements of section 35 (3) sentence 1 are met; if the competent authorities in an EEA country exercise the waiver pursuant to Annex VIII Part 1 point 17 of Directive 2006/48/EC and announce, at least annually, that the maximum loss rates for mortgages secured by commercial real estate property in that country are being complied with, the requirement pursuant to section 35 (3) sentence 1 number 2 for real estate property situated within that state is regarded as met; for commercial real estate property situated within Germany, section 35 (4) applies *mutatis mutandis*.

<sup>2</sup>If the institution meets the minimum requirements pursuant to section 176 for treating lease exposures as collateralised by the leased asset, it may also recognise ownership of the real estate property which is the leased asset in the transaction giving rise to the IRBA exposure as a mortgage under the conditions of sentence 1.

(2) <sup>1</sup>For an IRBA exposure collateralised by real estate property for which it must use supervisory LGDs, an institution may recognise the alternative risk weight for real estate collateral pursuant to section 85 (5) for the split-off IRBA exposure pursuant to section 100 (8) if the mortgage

1. is secured on residential real estate property located within Germany and, within the jurisdictional reach of the Banking Act, the sum of the losses over the past calendar year relating to CCR exposures of institutions within the meaning of section 1

a) which are secured by mortgages on the lower of 60 per cent of the mortgage lending value, pursuant to section 16 (2) sentences 1 to 3 of the Pfandbrief Act in conjunction with the Regulation on calculating the mortgage lending value of 12 May 2006 (Federal Law Gazette I, page 1175), or of a continuously measurable figure obtained by other means, which meets the requirements of section 16 (2) sentences 1 to 3 of the Pfandbrief Act, and of 50 per cent of the market value of the residential real estate property located within Germany has not exceeded 0.3 per cent

and

b) which are secured by mortgages on residential real estate property located within Germany has not exceeded 0.5 per cent

of the sum of all CCR exposure values of institutions within the meaning of section 1 which are collateralised by mortgages on residential real estate property located within Germany,

2. is secured on commercial real estate property located within Germany and the maximum loss rates for mortgages on commercial real estate property located within Germany pursuant to section 35 (4) sentence 1 have not been exceeded or

3. is secured on residential or commercial real estate property located in another EEA country where the competent authorities of said country have exercised their option pursuant to Annex VIII Part 3 number 73 of Directive 2006/48/EC and institutions domiciled in this countries are permitted to use the alternative risk weight for real estate collateral for an IRBA exposure secured on this property .

<sup>2</sup> Section 35 (4) sentence 2 applies mutadis mutandis.

## **Section 160**

### Eligible IRBA collateral assignment of receivables

Receivables assigned or pledged as collateral to the protection-buying institution may be recognised as IRBA collateral assignment if

1. the receivables assigned or pledged as collateral have arisen from
  - a) a commercial transaction or
  - b) transactions whose original maturity does not exceed one year,
2. the receivables assigned or pledged as collateral are not from employees of the borrower or from a person who, together with the borrower, forms a group of connected clients pursuant to section 4 (8), and
3. the receivables assigned or pledged as collateral are not themselves protected by the IRBA exposure for which they are to be recognised as IRBA collateral assignment,

if the protection-buying institution meets the general requirements for the use of credit risk mitigation techniques pursuant to section 172 and the minimum requirements for the eligibility of IRBA collateral assignments of receivables pursuant to section 174 for this IRBA collateral assignment and the receivables assigned or pledged as collateral.

## Section 161

### Eligible other IRBA physical collateral

<sup>1</sup>A prior legal claim *in rem* on an asset protected by the protection-buying institution may be recognised as other IRBA physical collateral if

1. a liquid market exists for disposal of the asset in an expeditious and economically efficient manner,
2. well-established and publicly available market prices exist for the asset, and
3. the institution can show that the net price it receives when the collateral is realised will not deviate significantly from its valued market price, and

if the protection-buying institution meets the general requirements for the use of credit risk mitigation techniques pursuant to section 172 and the minimum requirements for the eligibility of other IRBA physical collateral pursuant to section 175. <sup>2</sup>If the institution meets the minimum requirements pursuant to section 176 for treating lease exposures as collateralised by the leased asset, it may also recognise as other IRBA physical collateral within the meaning of sentence 1 ownership of the asset which is the leased asset in the transaction underlying the IRBA exposure.

## Subdivision 2

### Eligible unfunded credit protection

## Section 162

### Eligible unfunded credit protection

<sup>1</sup>Unfunded credit protection may be recognised if

1. it constitutes a direct claim on the protection provider for the protection-buying institution subject to the proviso of section 177 (2),
2. its extent is clearly defined and incontrovertible,
3. it contains no contractual clause the fulfilment of which is outside the direct control of the institution and which
  - a) gives the protection provider a retroactive unilateral right to cancel the protection,
  - b) increases the effective costs of credit protection for the protection-buying institution as a result of deteriorating credit quality of the underlying exposure,

- c) allows the protection provider to unilaterally reduce the residual maturity of the credit protection in some other fashion, or
  - d) does not require the protection provider to pay out to the protection-buying institution in a timely manner if the credit protection event occurs; in particular, the credit protection event must be structured such that the institution can claim on the protection provider as soon as the obligor of the underlying exposure fails to make any payments due,
4. it was issued by an eligible protection provider,
  5. it meets the requirements for the following as eligible protection:
    - a) eligible guarantees or
    - b) eligible credit derivatives

and the protection-buying institution meets the general requirements for the use of credit risk mitigation techniques pursuant to section 172, the minimum requirements for unfunded credit protection pursuant to section 177 and, where the credit protection is a credit derivative, the minimum requirements for credit derivatives pursuant to section 178, for the credit protection.<sup>2</sup> Other claims pursuant to sections 169 and 171 may also be recognised if the protection-buying institution meets the general requirements for the use of credit risk mitigation techniques pursuant to section 172.

### **Section 163**

#### Eligible providers of unfunded credit protection

- (1) The following shall be regarded as eligible providers of unfunded credit protection:
1. central governments and central banks,
  2. regional governments and local authorities,
  3. multilateral development banks,
  4. public sector entities in an EEA country whose unprotected payment claims in their country of domicile are assigned the CRSA risk weight of the central government of their country of domicile,
  5. international organisations whose unprotected payment claims are assigned a CRSA risk weight of 0 per cent,

6. public sector entities whose unprotected payment claims in their country of domicile are assigned the CRSA risk weight which is given to unprotected payment claims on institutions in that country,
7. corporates whose unprotected payment claims, as CRSA exposures, would have to be assigned to the CRSA exposure class Institutions,
8. other corporates, including corporates which, together with the protection-buying institution, form a group of connected clients pursuant to section 4 (8), which
  - a) have an issuer credit assessment from an eligible ECAI which is associated with a credit quality step of 1 or 2 for long-term credit assessments of corporates, or
  - b) have no issuer credit assessment from an eligible ECAI, and where credit protection for an IRBA exposure is to be recognised, if the protection-buying institution has assigned the provider of unfunded credit protection to an obligor grade or pool within a suitable rating system and the PD for this obligor grade or this pool is not higher than the PD for credit assessments that are associated with a credit quality step of 1 or 2 for long-term credit assessments of corporates.

(2) Where unfunded credit protection is to be recognised for IRBA dilution risk, the seller of the receivable may also be recognised as an eligible provider of unfunded credit protection in addition to the parties listed in subsection (1) if it

- a) has a credit assessment from an eligible ECAI which is associated with a credit quality step of 1 to 3 for long-term credit assessments of corporates, or
- b) has no credit assessment from an eligible ECAI if the protection-buying institution has assigned the provider of unfunded credit protection to an obligor grade or a pool within a suitable rating system and the PD for this obligor grade or this pool is not higher than the PD for credit assessments that are associated with a credit quality step of 1 to 3 for long-term credit assessments of corporates.

(3) <sup>1</sup>Where unfunded credit protection is to be recognised for an IRBA exposure, the protection-buying institution must assign the protection provider to an obligor grade or a pool within a suitable rating system. <sup>2</sup>Sentence 1 does not apply to IRBA exposures which are protected by credit protection from providers of unfunded credit protection for which the institution must treat CCR exposures to these protection providers as CRSA exposures.

(4) For IRBA exposures with special recognition of unfunded credit protection pursuant to section 86 (3), only the following are recognised as eligible providers of unfunded credit protection:

1. protection providers listed under subsection (1) number 7,

2. insurance undertakings within the meaning of article 2 (2) of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35 of 11 February 2003, p 1), as amended,

3. reinsurance undertakings within the meaning of article 2 (6) of Directive 2002/87/EC and

4. export credit agencies if they do not have a counter-guarantee from a counter-guarantor for this unfunded credit protection obligation pursuant to section 164 (3) number 2.

(5) The protection providers listed in subsection (4) are eligible for the purposes of section 86 (3) if

1. the protection provider has expertise in providing unfunded credit protection,

2. the protection provider

a) is subject to a supervisory regime that is materially equivalent to that of the Banking Act or,

b) at the time the credit protection was provided, had a credit assessment pursuant to section 45 (1) number 2 by an eligible ECAI which is associated with a credit quality step of 1 to 3 for long-term credit assessments of corporates, or

3. the PD for the obligor grade of the suitable rating system which the protection-buying institution assigned to the protection provider

(a) since the credit protection was provided was at least once not higher than the PD applying to an obligor credit assessment from an eligible ECAI which is assigned a credit quality step of 2 for long-term credit assessments of corporates and

(b) is currently not higher than the PD applying to an obligor credit assessment by a recognised ECAI which is assigned a credit quality step of 3 for long-term credit assessments of corporates.

## **Title 1**

### **Guarantees and credit derivatives**

#### **Section 164**

##### Guarantees eligible as unfunded credit protection

(1) A guarantee is eligible as unfunded credit protection if

1. the protection-buying institution, upon the occurrence of the credit guarantee event, has the right to pursue, in a timely manner, the guarantor for any monies due under the claim in respect of which the protection is provided without first having to pursue the obligor of the exposure, and
2. the guarantee is an explicitly documented obligation assumed by the guarantor.

(2) Where a guarantee covers a CCR exposure collateralised by a residential mortgage, the requirements pursuant to subsection (1) number 1 and pursuant to section 162 sentence 1 number 3 letter (d) are deemed to be met if payment can be demanded not later than 24 months after occurrence of the credit guarantee event.

(3) <sup>1</sup>The requirements pursuant to subsection (1) number 1 and pursuant to section 162 sentence 1 number 3 letter (d) are considered to be satisfied where a guarantee

1. was provided under a mutual guarantee scheme or by a guarantee bank or
2. was provided as a guarantee or a counter-guarantee by
  - a) a central government or central bank,
  - b) a regional government or local authority whose unprotected payment claims in its country of domicile are assigned the CRSA risk weight of the central government of its country of domicile,
  - c) a public-sector entity in an EEA country whose unprotected payment claims in its country of domicile are assigned the CRSA risk weight of the central government of its country of domicile,
  - d) a multilateral development bank or international organisation whose unprotected payment claims are assigned a CRSA risk weight of 0 per cent, or
  - e) a public-sector entity whose unprotected payment claims in its country of domicile are assigned the CRSA risk weight which is assigned to unprotected payment claims owed by institutions in that country.

<sup>2</sup>This applies, however, only on condition that,

1. upon occurrence of the credit guarantee event, the protection-buying institution has the right to obtain in a timely manner a provisional payment by the guarantor calculated to represent a robust estimate of the economic loss from the underlying exposure, including the loss from non-payment of interest or other payments owed by the obligor of the underlying exposure, or
2. the protection-buying institution demonstrates that, for other reasons, the guarantee effectively protects all payments owed under the underlying exposure, including interest and other payments.

### **Section 165**

#### Credit derivatives eligible as unfunded credit protection

A credit derivative in the form of a credit default swap, total return swap or credit linked note, or an instrument that may be composed of such credit derivatives, is eligible as unfunded credit protection if

1. any of the events pursuant to letters (a) to (e) – where the event can occur for the obligor – has been contractually agreed as a credit derivative event and it is possible to assert a claim against the protection provider upon the occurrence of any of the events defined as a credit derivative event; the following are regarded as credit derivative events:

- a) following the elapse of a grace period which may not be longer than the grace period in the underlying exposure, the obligor of the underlying exposure has failed to pay the amounts due,
- b) insolvency proceedings have been initiated concerning the assets of the obligor of the underlying exposure,
- c) the obligor of the underlying exposure is unable to pay its debts or has generally stopped paying its debts,
- d) the obligor of the underlying exposure has admitted, in writing, its general inability to pay its debts as they become due,
- e) analogous events to those in letters (a) to (d) have occurred,

and

2. if the identity of the parties responsible for determining whether a credit event has occurred has been clearly defined, this determination is not the sole responsibility of the

protection provider and the protection-buying institution has the right to inform the protection provider of the occurrence of a credit derivative event.

### **Section 166**

Guarantees and credit derivatives eligible as unfunded credit protection for treatment pursuant to section 86 (3)

The risk weight subject to the PD/LGD approach for IRBA exposures which are protected by guarantees or credit derivatives can be calculated pursuant to section 86 (3) if the following conditions are met.

1. The unfunded credit protection meets the conditions pursuant to section 162 sentence 1 numbers 1 to 4 and sections 164, 165, 167, 177 and 178. Section 164 (3) shall not apply.
2. The underlying IRBA exposure
  - a) is to be assigned to the IRBA exposure class Corporates, but is not to an insurance undertaking within the meaning of Article 2 (2) of Directive 2002/87/EC or a reinsurance undertaking within the meaning of Article 2 number 6 of Directive 2002/87/EC, or
  - b) is to a regional government or local authority which, pursuant to section 75 number 5, is assigned to the IRBA exposure class Institutions or to another public-sector entity which is assigned to the IRBA exposure class Institutions pursuant to section 75 number 7, or
  - c) is to a small or medium-sized enterprise and is assigned to the IRBA exposure class Retail claims pursuant to section 76.
3. Neither the obligor nor, if the credit protection covers the hedging of dilution risks, the seller of the underlying exposure form, together with the provider of the unfunded credit protection, a group of connected clients pursuant to section 4 (8).
4. The credit protection consists of
  - a) a single-name guarantee or a single-name credit derivative, or
  - b) a credit derivative where payment is triggered as soon as a basket has undergone the nth credit event, thereby terminating the contract.
5. The IRBA risk weight of the IRBA exposure prior to application of section 86 (3) does not already factor in any aspect of the credit protection.

6. The unfunded credit protection hedges all types of loss risks of the protection-buying institution under the underlying exposure resulting from the occurrence of credit events outlined in the contract.
7. If the credit protection envisages, upon the occurrence of a credit protection event, that the cash settlement by the protection provider to the protection-buying institution is only rendered versus the transfer of a deliverable obligation of the obligor of the underlying exposure by the protection-buying institution to the protection provider, it must be agreed that the protection-buying institution can effectively fulfil its obligations by transferring a loan, bond or contingent liability of the obligor of the underlying exposure. If the protection-buying institution intends to deliver, instead of the underlying exposure, another obligation of the obligor of the underlying exposure, it must ensure that it has access to a liquid market for deliverable obligations of the obligor of the underlying exposure where it can purchase the obligation for delivery in order to fulfil the transfer obligation.
8. All terms and conditions of the credit protection arrangements between the protection provider and the protection-buying institution shall be legally effective and confirmed in writing.
9. The protection-buying institution must have internal processes in place to detect excessive correlation between the creditworthiness of the protection provider and that of the obligor of the underlying exposure due to their performance being dependent on common factors beyond the systematic risk factor.

### **Section 167**

#### Exposure for which a credit derivative is eligible

- (1) A credit derivative which represents eligible unfunded credit protection may only be used to hedge an exposure which
  1. is either the reference obligation of the credit derivative or is to be used to determine when a credit event has occurred, or
  2. in relation to the obligation listed under number 1
    - a) is not junior to this obligation,
    - b) shares the same obligor and
    - c) is linked through legally enforceable cross-default or cross-acceleration clauses.
- (2) For a credit derivative, the reference obligation is the obligation used to determine cash settlement value or the obligation designated in the credit derivative as the deliverable

obligation.

(3) If the protection provider of the credit derivative is required to deliver only against transfer of the underlying exposure, any required consent by the obligor of the exposure may not be unreasonably withheld under the terms of the contract.

(4) If the protection-buying institution records net payments received on a total return swap as net income, the deterioration in the value of the protected asset has to be recorded in the balance sheet.

(5) If the credit derivative may be drawn as soon as the basket has undergone the  $n$ th credit event, thereby terminating the contract, the requirements of subsections (3) and (4) must be met for each of the assets contained in the basket.

### **Section 168**

#### Exposure for which an $n$ th-to-default credit derivative is eligible

For a credit derivative where payment is triggered as soon as a basket has undergone the  $n$ th credit event, thereby terminating the contract ( $n$ th-to-default credit derivative), that part of an exposure is considered protected whose assessment basis is no greater than the amount of the credit protection pursuant to section 205 from this credit derivative and for which,

1. if  $n$  is equal to 1, this produces the smallest risk-weighted exposure amount in the absence of credit protection,
2. if  $n$  is greater than one, this produces the  $n$ th smallest risk-weighted exposure amount in the absence of credit protection if either
  - a) the protection-buying institution is also protected against the occurrence of the first  $n-1$  credit events through eligible credit derivatives or
  - b) the first  $n-1$  credit events have already occurred.

## **Titel 2**

### **Eligible other claims and life insurance policies**

#### **Section 169**

##### **Cash on deposit with a third-party institution**

Cash on deposit held with, or a certificate of deposit or similar instrument of the protection-buying institution held by, a third-party institution in a non-custodial arrangement may be recognised as eligible credit protection provided by the third-party institution if

1. the borrower's claim against the third-party institution is openly pledged or assigned as collateral to the protection-buying institution,
2. the pledge or assignment of collateral is unconditional and irrevocable,
3. the third-party institution is notified of the pledge or assignment of collateral, and
4. as a result of this notification, the third-party institution is able to make payments solely to the protection-buying institution or to other parties only with the prior consent of said institution.

#### **Section 170**

##### **Life insurance policies**

A life insurance policy may be recognised for CRSA exposures by adjusting the CRSA risk weight pursuant to section 40 and for IRBA exposures as other physical collateral if

1. the claim under the life insurance policy is openly pledged or assigned to the protection-buying institution and the pledge or assignment is legally effective and enforceable in all jurisdictions which are relevant at the time of the conclusion of the contract on which the underlying exposure is based,
2. the insurer is notified of the pledge or assignment of the claim under the life insurance policy and as a result may not pay amounts payable under the life insurance contract without the prior consent of the protection-buying institution,
3. the insurer is subject to requirements set forth in order to implement Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJ L 345, 19 December 2002, p 1) and Directive 2001/17/EC of the European Parliament and of the council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings (OJ L 110, 20 April 2001, p 28), as amended, or the insurer is supervised by a

competent authority of a third country which applies supervisory and regulatory provisions that are at least equivalent to those applied in the European Union,

4. the insurer has declared a non-reducible surrender value for the life insurance policy which is to be paid in a timely manner upon request,

5. the surrender value cannot be requested without the consent of the protection-buying institution and the protection-buying institution has the right to cancel the life insurance contract and to receive the surrender value upon the occurrence of the default event for the obligor of an exposure for which the life insurance contract is recognised,

6. the protection-buying institution is informed of any non-payments under the policy by the policy-holder, and

7. either the life insurance policy can serve as security until the maturity of the exposure to be protected or, if this is not possible because the insurance relationship already ends before the exposure to be protected has reached maturity, the institution has ensured that the amount deriving from the insurance contract serves as security until the exposure to be protected has reached maturity.

<sup>2</sup>The eligible amount of the life insurance is calculated the same way as the mismatch-adjusted amount for unfunded credit protection pursuant to section 204; the surrender value of this life insurance policy is the amount and the residual maturity of the underlying exposure is the residual maturity.

### **Section 171**

Debt securities which must be repurchased by the issuing third-party institution on request

Debt security exposures to third parties, whose unprotected payment obligations, as CRSA exposures, would have to be assigned to the CRSA exposure class Institutions, which are not generally eligible financial collateral and which at the holder's request must be repurchased by the issuer may be recognised as funded credit protection provided by the issuer.

### **Section 171a**

Payment commitments for the residual value of leased assets

If a third party which is not the lessee has undertaken to pay an amount for the residual value of a leased asset or if he may be obliged to make the payment, and if the respective obligation meets the requirements for eligible unfunded credit protection pursuant to section 162, notwithstanding the fact that the credit protection event is permitted to be restricted to the expiry of the lease agreement, this obligation may be recognised as a guarantee of the credit risk exposure created by the residual value of the leased asset.

## **Division 2**

### **Minimum requirements for credit risk mitigation techniques**

#### **Section 172**

##### **General requirements for the use of credit risk mitigation techniques**

(1) An institution must be able to demonstrate to BaFin that it has adequate risk management processes in place to control the risks associated with the use of credit risk mitigation practices.

(2) <sup>1</sup>An institution must undertake a full credit risk assessment also for those exposures for which credit risk mitigation techniques are taken into account for the purposes of calculating capital requirements, and be in a position to demonstrate the fulfilment of this requirement to BaFin. <sup>2</sup>In the case of securities repurchase transactions and securities or commodities lending or borrowing transactions, this credit risk assessment shall relate to the netted balance of the exposures.

(3) An institution shall establish legal effectiveness and enforceability pursuant to section 154 (1) sentence 2 and shall continuously ensure this by means of *ad hoc* reviews.

#### **Section 173**

##### **Minimum requirements for eligible financial collateral**

(1) In order to be allowed to recognise generally eligible financial collateral or financial collateral that is eligible for recognition only at its volatility-adjusted value, an institution shall satisfy the provisions for low correlation pursuant to subsection (2), legal certainty pursuant to subsection (3), and operational requirements pursuant to subsections (4) to (8).

(2)<sup>1</sup>The credit quality of the obligor of the protected exposure may not be materially positively correlated with the value of the financial collateral protecting this exposure.

<sup>2</sup>Securities issued by the obligor or a person who, together with the obligor, forms a group of connected clients pursuant to section 4 (8) may not be recognised as financial collateral unless the security

1. acts as collateral as part of a securities repurchase transaction and a securities or commodities lending or borrowing transaction and
  2. is a covered bond issued by a credit institution pursuant to section 25 (8).
- (3) For a collateral arrangement, an institution must meet all contractual and statutory requirements for its legal enforceability and take all the necessary steps to ensure its legal enforceability.
- (4) The collateral arrangement shall be properly documented, and clear and robust precautions taken for the timely liquidation of the financial collateral.
- (5) An institution shall have taken precautions for managing the risks resulting from the transfer of financial collateral, including
1. the risk of failed or reduced credit protection,
  2. valuation risks,
  3. risks associated with the termination of the credit protection, and
  4. concentration risks resulting from the use of collateral or its interaction with the institution's overall risk profile.
- (6) An institution shall have documented policies and practices concerning the types and amounts of collateral accepted.
- (7) An institution shall mark financial collateral it has accepted to market at least once every six months, and whenever the institution has reason to believe that the market value of the financial collateral has decreased significantly.
- (8) Where the financial collateral is held by a third party, an institution must have taken reasonable steps to ensure that the third party has sequestered the financial collateral from its creditors' legal access.

### **Section 174**

Minimum requirements for the recognition of IRBA collateral assignments of receivables

- (1) The requirements concerning legal certainty pursuant to subsection (2) and risk management pursuant to subsection (3) must be met for eligibility of IRBA collateral assignments of receivables.
- (2) The requirements concerning legal certainty comprise the following.

1. The collateral arrangement shall ensure that the protection-buying institution has a claim to the cash flows from the receivables assigned or pledged as collateral.
2. The institution shall have taken all steps to fulfil all the necessary requirements for the legal enforceability of its security interest; the collateral arrangement must ensure that the protection-buying institution's claim to the receivables assigned or pledged, both in the event of the assigner's or pledger's insolvency and of individual execution on the receivables assigned or pledged, has priority over the claims of all of the assigner's or pledger's creditors, with the sole exception of claims of preferential creditors provided for in legislative or implementing provisions.
3. The collateral arrangement shall be properly documented, with clear and robust procedures for the timely collection of receivables assigned or pledged; the institution shall have taken precautions to ensure that all legal requirements have been met in order to declare the protected event effective and ensure the timely collection of the receivables assigned or pledged; the protected event shall be agreed in such a way that, if the borrower is in default or financial distress, the protection-buying institution is entitled to sell the receivables assigned or pledged without requiring authorisation from the assigner or the consent of an obligor of the assigned or pledged receivables.

(3) The requirements for risk management comprise the following.

1. The institution shall apply sound processes for determining the credit risk associated with the receivables assigned or pledged; these shall comprise at least an analysis of the business operations and the industry of the assigner or pledger, as well as the type of obligors of the receivables assigned or pledged, or, if an institution relies on the assigner or pledger to determine the credit risk associated with the receivables assigned or pledged, the latter's credit practices shall be examined and their soundness and credibility confirmed.
2. The excess value of the receivables assigned or pledged over the IRBA assessment basis of the protected IRBA exposure shall reflect all appropriate factors, including the cost of collection, concentration within the receivables pool, as well as the potential concentration risk resulting from eligible collateral beyond that controlled by the institution's general credit risk assessment and management framework; the protection-buying institution shall appropriately monitor, on a continuous basis, the receivables assigned or pledged, particularly in respect of compliance with loan covenants and other legal constraints.
3. The receivables assigned or pledged as collateral to protect an IRBA exposure shall be sufficiently diversified, and their creditworthiness shall either not be unduly positively correlated with the borrower's credit quality, or else the resulting risks shall be taken into account when setting the required measure of excess cover.

4. A protection-buying institution shall have documented work instructions for the collection of receivables assigned or pledged in the event of distress on the part of the assigner or pledger; the requisite facilities for the orderly collection of receivables assigned or pledged shall be in place at the institution, even if the institution normally relies on the assigner or pledger for collection.

### Section 175

#### Minimum requirements for the recognition of other IRBA physical collateral

The following requirements must be met for other IRBA physical collateral to be recognised.

1. The collateral arrangement shall enable the protection-buying institution to realise the value of the physical collateral within a reasonable timeframe.
2. The protection-buying institution's prior legal claim *in rem*, as set out in the collateral arrangement, to the physical collateral assigned or pledged, both in the event of the borrower's insolvency and of individual execution on the physical collateral assigned or pledged, shall be subject to the sole exception of claims of preferential creditors provided for in legislative or implementing provisions.
3. The value of the physical collateral shall be monitored on a frequent basis and at least once a year; it shall be monitored more frequently if the market for the physical collateral is subject to significant changes in conditions.
4. The collateral arrangement shall include a detailed and precise description of the physical collateral and provisions allowing the protection-buying institution to demand the documentation and information required for valuing the physical collateral.
5. An institution shall have a documented business practice covering the types of physical collateral that are accepted and the amount of accepted physical collateral in relation to the IRBA assessment basis of exposures for which physical collateral is recognised.
6. The procedure to determine the appropriate collateral level in relation to the credit amount shall be clearly and verifiably documented in internal credit principles and procedures; taking the respective business structure into consideration, the institution's credit principles are to include the appropriate ratio of collateral to the respective exposures, the possibility of timely realisation of the collateral, the ability to determine an objective price or market value, the frequency of the valuation of each asset, including professional appraisals and estimates, and the volatility or a proxy of the volatility of the value of the collateral.

7. Any deterioration or obsolescence of the collateral is to be taken into account in both initial valuation and revaluation; this particularly applies to collateral where markets are subject to strong volatility.
8. The institution shall be entitled to inspect the collateral on site; the institution's policies and procedures shall address its exercise of this right.
9. The institution shall have procedures to monitor that the eligible physical collateral is adequately insured against damage.

### **Section 176**

Minimum requirements for treating lease exposures as collateralised by the leased asset

In order for a lease exposure to be treated as collateralised by the leased asset, the following requirements shall have been met.

1. If the leased asset is real estate property, the requirements pursuant to section 20a (4) to (8) of the Banking Act must be met.
2. If the leased asset is other IRBA physical collateral, the minimum requirements for the recognition of other IRBA physical collateral pursuant to section 175 must be met.
3. The leasing institution's risk measurement and management procedure shall include the location of the leased asset, its use, its age, and the planned duration of its use.
4. The lease agreement shall establish the leasing institution's legal ownership of the leased asset and its ability to exert its rights as owner of the leased asset in a timely fashion.

### **Section 177**

Minimum requirements for unfunded credit protection

(1) <sup>1</sup>The institution must be able to demonstrate that it has systems in place to manage potential concentrations of risk arising from the use of unfunded credit protection. <sup>2</sup>The institution must be able to demonstrate how its practice of recognising unfunded credit protection interacts with the management of its overall risk profile.

(2) An exposure which is protected by unfunded credit protection where the protection provider has a counter-guarantee provided by an entity pursuant to section 164 (3) number 2 may be treated as protected by this entity if

1. the counter-guarantee covers all payment claims arising from the protected exposure,

2. the credit protection and counter-guarantee meet all requirements of subsections (1) to (3) and those of section 162 sentence 1 numbers 1 to 3, and of sections 163 and 164, with the exception that the counter-guarantee need not establish any direct claim of the protection-buying institution against the counter-guarantor,

3. BaFin has no indication that the coverage is not robust, and

4. nothing in the historical evidence suggests that the coverage of the counter-guarantee is less than at least equivalent to a direct claim against the counter-guarantor for the protection-buying institution.

(3) Subsection (2) shall apply *mutatis mutandis* to counter-guarantors other than those specified in section 164 (3) if this entity's counter-guarantee is itself guaranteed by an entity listed in section 164 (3) number 2.

### **Section 178**

#### Minimum requirements for credit derivatives

<sup>1</sup>For a credit derivative which allows cash settlement to be recognised, the protection-buying institution shall apply a process to reliably estimate losses arising from a credit event. <sup>2</sup>The institution shall obtain estimates for the value of the protected exposure within a certain post-credit-event period.

### **Division 3**

#### Calculating the effects of credit risk mitigation

### **Section 179**

#### Exposures protected by protection instruments

A CCR exposure is regarded as protected by an eligible protection instrument if the protection instrument

1. may be contractually realised or claimed in the event of non-fulfilment or partial non-fulfilment of the obligations under the exposure, and

2. has not already been recognised elsewhere as a protection instrument.

## Section 180

### Choice of method for financial collateral

(1) <sup>1</sup>An institution that recognises

1. eligible financial collateral or
2. eligible netting agreements covering
  - a) reciprocal cash balances pursuant to section 208 or
  - b) non-derivative transactions with remargining pursuant to section 209

may, subject to sentence 2, recognise financial collateral either generally at its CRSA risk weight (Financial Collateral Simple Method) or at its volatility-adjusted value (Financial Collateral Comprehensive Method). <sup>2</sup>Only the Financial Collateral Comprehensive Method may be used for all CCR exposures which a trading book institution assigns to its trading book, as well as all IRBA exposures. <sup>3</sup>For all CCR exposures not covered by sentence 2, an institution may only choose the Financial Collateral Comprehensive Method on a permanent basis. <sup>4</sup>On a case-by-case basis, an institution, notwithstanding sentence 3, may apply the Financial Collateral Simple Method to individual types of CCR exposures which the institution has decided may be temporarily or, pursuant to section 70, permanently exempted from the use of IRBA as long as it demonstrates to BaFin that this exceptional application of both methods is not used selectively with the purpose of achieving reduced minimum capital requirements for credit risk and does not lead to regulatory arbitrage.

(2) <sup>1</sup>If an institution has chosen the Financial Collateral Simple Method pursuant to subsection (1), it may only recognise generally eligible financial collateral for all of its CRSA positions. <sup>2</sup>Moreover, in such cases, CCR exposures which are covered by netting agreements on

1. reciprocal cash balances where not all reciprocal cash balances included in the netting agreement are denominated in the netting currency, or
  2. non-derivative transactions with remargining
- are to be recognised as separate CRSA exposures.

(3) If an institution has opted to recognise financial collateral for CRSA exposures using the Financial Collateral Comprehensive Method pursuant to subsection (1), it may, for all of its CCR exposures, recognise

1. generally eligible financial collateral and financial collateral eligible only at its volatility-adjusted value as financial collateral, and

2. exposures from reciprocal cash balances and from non-derivative transactions with remargining as netting positions.

(4) If, pursuant to subsection (1) sentence 2, a trading book institution applies the Financial Collateral Comprehensive Method, it may, pursuant to section 157, additionally recognise eligible trading book collateral for all CCR exposures which it assigns to its trading book.

### **Section 181**

#### **Internal hedges**

<sup>1</sup>If an institution hedges a CCR exposure in the banking book with a credit derivative booked in the trading book, the credit risk transferred to the trading book shall first be transferred out to a third party or parties in order for the hedge to be recognised as eligible protection. <sup>2</sup>If the credit risk from the trading book has been transferred to an eligible protection provider, the hedge can be recognised as unfunded credit protection for the CCR exposure in the banking book.

### **Section 182**

#### **Residual maturity of CCR exposures and protection instruments to be recognised for credit protection**

(1) For each CCR exposure, the residual maturity to be recognised for credit protection shall be the longest possible remaining time before the obligor is scheduled to fulfil its obligations, up to a maximum of five years.

(2) <sup>1</sup>For each protection instrument, the residual maturity to be recognised for credit protection shall be the time to the earliest date at which the protection may terminate or be terminated. <sup>2</sup>If the protection seller has an option to terminate the protection, the maturity of the protection shall be the time to the earliest possible date at which the option of termination may be exercised. <sup>3</sup>Where the protection buyer has an option to terminate the protection and the terms of the arrangement at origination of the protection instrument contain an incentive for the protection buyer to terminate the protection instrument before contractual maturity, the residual maturity of the protection instrument shall be the time to the earliest date at which the protection may be terminated. <sup>4</sup>Other termination options on the part of the protection buyer shall not reduce the residual maturity of a protection instrument. <sup>5</sup>If a credit derivative may terminate prior to the expiration of any grace period required for a default on the underlying obligation to occur as a result of a failure to pay, the residual maturity of the protection instrument shall be reduced by the amount of the grace period.

### **Section 183**

#### Recognition of protection instruments subject to the maturity of the exposure

An exposure for which a protection instrument may be recognised subject to the maturity of that exposure is constituted by

1. any CCR exposure protected by the protection instrument that is not a short-term IRBA exposure for which a one-day floor in respect of the effective residual maturity value applies pursuant to section 96 (2) number 5 if the protection instrument is an eligible protection instrument in a maturity mismatch pursuant to section 184,
2. otherwise, only such CCR exposures whose residual maturity to be recognised for credit protection is no longer than that of the protection instrument.

### **Section 184**

#### Eligible protection instrument in a maturity mismatch

An eligible protection instrument in a maturity mismatch is any protection instrument that is

1. neither other eligible IRBA collateral pursuant to section 158,
2. nor financial collateral to be recognised in accordance with the Financial Collateral Simple Method pursuant to section 155

if its original maturity is at least one year and its residual maturity to be recognised for credit protection pursuant to section 182 (2) is at least three months.

### **Subdivision 1**

#### Financial Collateral Simple Method

### **Section 185**

#### Protection under the Financial Collateral Simple Method

(1) <sup>1</sup>In the Financial Collateral Simple Method, a CCR exposure collateralised by generally eligible financial collateral is assigned the CRSA risk weight of this financial collateral if the protection is available for the entire residual maturity of the CRSA exposure. <sup>2</sup>The financial collateral is to be recognised at its market value, which is to be adjusted pursuant to section 173 (7).

(2) <sup>1</sup>Subject to subsections (3) to (5), the risk weight of the collateralised portion shall be at least 20 per cent. <sup>2</sup>The uncollateralised portion of the CRSA exposure shall be given the

CRSA risk weight that would be assigned to an equivalent unprotected CRSA exposure.

(3) <sup>1</sup>Securities repurchase transactions and securities lending or borrowing transactions shall be assigned a 0 per cent CRSA risk weight if they meet all of the following conditions.

1. Both the exposure and the collateral are cash or such debt securities pursuant to section 155 (1) sentence 1 numbers 3 to 6 that would be eligible for a 0 per cent CRSA risk weight if they were unprotected CRSA exposures of the protection-buying institution.
2. Both the exposure and the collateral are denominated in the same currency.
3. Either the original maturity of the transaction is no more than one business day or both the exposure and the collateral are subject to daily marking-to-market and daily remargining.
4. If the counterparty fails to remargin as a result of a revaluation within four business days, it must be possible to liquidate the collateral not later than the end of the fourth business day.
5. The transaction is settled across a settlement system proven for that type of transaction.
6. The transaction is executed on the basis of standard framework agreements.
7. According to the terms of the contract, the transaction is immediately terminable if the counterparty fails to satisfy its obligation to deliver cash or securities, or to deliver margin, or otherwise defaults.
8. The counterparty is a “core market participant”; core market participants include
  - a) issuers of debt securities pursuant to section 155 (1) sentence 1 numbers 3 to 6 whose unprotected payment obligations are assigned a 0 per cent CRSA risk weight,
  - b) entities whose unprotected payment obligations, as CRSA exposures, would be assigned to the CRSA exposure class Institutions,
  - c) other financial and insurance companies whose unprotected payment obligations are assigned a maximum CRSA risk weight of 20 per cent,
  - d) regulated investment companies or regulated foreign collective investment undertakings which are subject to capital or leverage requirements from the supervisory authorities,
  - e) regulated pension funds.

<sup>2</sup>The CRSA risk weight for securities repurchase transactions and securities lending or borrowing transactions which meet all the conditions pursuant to sentence 1, with the exception of number 8, is 10 per cent. <sup>3</sup>If sentence 1 is applied by a competent authority of another country for securities repurchase transactions or securities lending or borrowing

transactions in securities which were issued by the central government or central bank of that country, institutions may adopt the same approach for securities repurchase transactions or securities lending or borrowing transactions in these securities.

(4) <sup>1</sup>Derivative CCR exposures subject to daily marking-to-market which are not based on derivatives traded on a stock or futures exchange, as long as they are collateralised by cash or cash-assimilated instruments, are assigned a 0 per cent risk weight if the obligations from the derivative are paid in the same currency as that of the financial collateral. <sup>2</sup>To the extent that the transactions stated in sentence 1 are, pursuant to section 155 (1) sentence 1 numbers 3 to 6, collateralised by debt securities issued by entities which are assigned a 0 per cent CRSA risk weight for their unprotected payment obligations, the collateralised portions of the CCR exposure shall be assigned a 10 per cent CRSA risk weight.

(5) CCR exposures may be recognised at a 0 per cent CRSA risk weight if the exposure and financial collateral are denominated in the same currency and as long as one of the following conditions is met.

1. The collateral is financial collateral pursuant to section 155 (1) sentence 1 numbers 1 or 2, or
2. the collateral is a debt security issued by an entity listed in subsection (4) sentence 2, and is recognised as financial collateral at a maximum amount of 80 per cent of its market value.

## **Subdivision 2**

### **Financial Collateral Comprehensive Method**

#### **Titel 1**

#### **Weighting method**

#### **Section 186**

##### **Maturity mismatch adjustment for a protection instrument**

The maturity mismatch adjustment for a protection instrument in relation to an exposure to be protected is

1. 1, if the residual maturity of the protection instrument to be recognised for credit protection pursuant to section 182 (2) is at least as long as the residual maturity to be recognised for credit protection of the protected exposure,
2. otherwise, the quotient of the residual maturity of the protection instrument TP to be recognised for credit protection pursuant to section 182 (2) reduced by 0.25 year (numerator)

and the residual maturity to be recognised for credit protection of the exposure to be protected TS pursuant to section 182 (1) reduced by 0.25 year (denominator):  $(TP-0.25)/(TS-0.25)$ .

### **Section 187**

#### Volatility-adjusted value of financial collateral

The volatility-adjusted value of financial collateral is calculated as the product of the market value of the financial collateral and the difference between 1 and the sum of the market value volatility adjustment pursuant to section 188 and the currency volatility adjustment pursuant to section 189 for this financial collateral ( $CVA = C \times [1-(HC+HFX)]$ ).

### **Section 188**

#### Market value volatility adjustment for financial collateral and CCR exposures

<sup>1</sup>The market value volatility adjustment for financial collateral, HC, or the market value volatility adjustment appropriate to a CCR exposure, HE, is the product of

1. the supervisory market value volatility adjustment pursuant to section 192 or
2. the institution's own estimate of volatility adjustment pursuant to section 196

and the adjustment for non-daily revaluations pursuant to section 194. <sup>2</sup>The market value volatility adjustment HE is zero for

1. eligible netting positions and
2. derivative CCR exposures.

### **Section 189**

#### Currency volatility adjustment for financial collateral and unfunded credit protection

The currency volatility adjustment HFX for eligible financial collateral or eligible unfunded credit protection where there is a currency mismatch between the protection and the protected CCR exposure is the product of either the supervisory currency volatility adjustment pursuant to section 195 or the own estimate of volatility adjustment pursuant to section 196 for the currency of the financial collateral or unfunded credit protection and the adjustment for non-daily revaluations pursuant to section 194.

**Section 190**

## Option of using own estimates of volatility adjustments

(1) Subject to subsection (2), an institution can opt to use, on a consistent and permanent basis, own estimates of volatility adjustments if it has suitable methods pursuant to section 198

1. for estimating market value volatility adjustments

a) for all CCR exposures

b) for all types of financial collateral and

c) for every type of security pursuant to section 216 (3), for all netting positions comprising non-derivative transactions with remargining for which it does not need to apply internal models-based volatility surcharges

as well as

2. for estimating currency volatility adjustments

a) for all financial collateral where there is a currency mismatch between the protection and the protected CCR exposure,

b) for all unfunded credit protection where there is a currency mismatch between the protection and the protected CCR exposure, and

c) for net amounts of currencies in the case of currency mismatch surcharges pursuant to section 214 for a netting position comprising reciprocal cash balances or for a netting position comprising non-derivative transactions with remargining for which the institution does not need to apply internal models-based volatility surcharges.

(2) Immaterial portions of all the exposures listed in subsection (1) may be exempted from the consistent use of own estimates of volatility adjustments.

**Section 191**

## Exemption for securities repurchase transactions and securities lending or borrowing transactions

<sup>1</sup>If the conditions stated in section 185 (3) are met, institutions may apply a volatility adjustment of 0 per cent for securities repurchase transactions and securities lending or borrowing transactions instead of the market value volatility adjustments calculated pursuant to section 188, irrespective of whether they use supervisory market value volatility

adjustments or own estimates of volatility adjustments. <sup>2</sup>Sentence 1 does not apply to netting positions comprising other non-derivative transactions with remargining for which internal models-based volatility surcharges are used pursuant to section 203.

## **Titel 2**

### **Supervisory market value volatility adjustments**

#### **Section 192**

##### **Supervisory market value volatility adjustment**

(1) <sup>1</sup>The supervisory market value volatility adjustment for

1. a CCR exposure,
2. eligible financial collateral, or
3. any type of security pursuant to section 216 (3) for eligible netting positions comprising non-derivative transactions with remargining

is the resulting market value volatility adjustment based on Table 16 of Annex 1 for an underlying liquidation period of 10 business days pursuant to section 193 (2) sentence 2. <sup>2</sup>If, pursuant to section 193 (2) sentence 1, an underlying liquidation period of 5 business days is to be used, the market value volatility adjustment pursuant to sentence 1 is to be divided by the square root of 2 to determine the supervisory market value volatility adjustment. <sup>3</sup>For an underlying liquidation period of 20 business days pursuant to section 193 (1), the market value volatility adjustment pursuant to sentence 1 is to be multiplied by the square root of 2 to determine the supervisory market value volatility adjustment. <sup>4</sup>The credit quality steps listed in Table 16 of Annex 1 refer to the supervisory mapping of specific credit assessments to credit quality steps for the purposes of sections 26 to 39.

(2) For financial collateral pursuant to section 155 (1) sentence 1 number 9, a credit quality step of 2 is to be assumed for calculating the market value volatility adjustment.

(3) For exposures in the form of CIUs within the meaning of section 25 (12) which would be generally eligible financial collateral or financial collateral eligible only up to its volatility-adjusted value, the supervisory market value volatility adjustment, if the actual composition of the CIU's underlying investments

1. is known, is the amount-weighted average of those market value volatility adjustments that would apply to the assets in which the CIU is invested, or,

2. if it is not known, it is the highest market value volatility adjustment that would apply to the assets in which the CIU is allowed to invest.

(4) In all other cases, including

1. securities or commodities sold or lent under securities repurchase transactions and securities lending or borrowing transactions and which are not eligible financial collateral, and

2. eligible trading book collateral,

the supervisory market value volatility adjustment is the same as for equities not included in a widely used stock index but listed on a stock or futures exchange.

### **Section 193**

#### Underlying liquidation period

(1) Subject to subsection (2), the underlying liquidation period for a protected CCR exposure is 20 business days.

(2) <sup>1</sup>If the protected CCR exposure relates to a securities repurchase transaction and securities lending or borrowing transaction for which margin can be demanded, the underlying liquidation period is 5 business days. <sup>2</sup>If the protected CCR exposure relates to another capital market-driven transaction for which margin can be demanded, the underlying liquidation period is 10 business days.

### **Section 194**

#### Adjustment for non-daily revaluation

(1) The adjustment for non-daily revaluations for

1. a CCR exposure,

2. eligible financial collateral or

3. a type of security for a netting position comprising non-derivative transactions with remargining

is the square root of the quotient of the sum of the number of business days between revaluations pursuant to subsection (2) minus 1 and the underlying liquidation period pursuant to section 193 as the numerator and the underlying liquidation period as the denominator.

(2) The number of business days between revaluations means the number of business days

that have elapsed since the day of the last preceding revaluation for every exposure pursuant to subsection (1) numbers 1 to 3.

### **Section 195**

#### Supervisory currency volatility adjustment

The supervisory currency volatility adjustment is, for the currency

1. of eligible financial collateral
2. of eligible unfunded credit protection, or
3. of the net amount of a currency in the case of volatility surcharges for currency mismatches pursuant to section 214 for a netting position comprising reciprocal cash balances or from non-derivative transactions with remargining,

8 per cent for an underlying liquidation period of 10 business days pursuant to section 193, the quotient of 8 per cent and the square root of 2 for a period of 5 business days, and the product of 8 per cent and the square root of 2 for a period of 20 business days.

## **Titel 3**

### Own estimates of volatility adjustments

#### **Section 196**

##### Own estimate of a volatility adjustment

The own estimate of a volatility adjustment for every own estimate of currency volatility adjustment or every own estimate of market value volatility adjustment is the product of

1. the volatility adjustment estimated by the institution using an appropriate method for estimating volatility adjustments and
2. the adjustment for own estimates of volatility adjustments to the applied liquidation period pursuant to section 197.

#### **Section 197**

##### Adjustment for own estimates of volatility adjustments to the applied liquidation period

The adjustment for own estimates of volatility adjustments to the applied liquidation period,

1. if the underlying liquidation period  $TM$  is greater than the liquidation period used by the institution in its internal risk management, is the square root of the quotient of the underlying liquidation period as the numerator and the liquidation period used for the estimate as the denominator,
2. otherwise, it is the square root of the quotient of the liquidation period used by the institution in its internal risk management as the numerator and the liquidation period used for the estimate as the denominator.

### Section 198

#### Appropriate procedure for estimating volatility adjustments

(1) <sup>1</sup>An appropriate procedure for estimating volatility adjustments shall meet the minimum requirements laid down in subsections (2) to (8). <sup>2</sup>Correlations between the unprotected exposure, the financial collateral and/or exchange rates may not be taken into consideration in estimating the volatility adjustments.

(2) <sup>1</sup>For debt securities which have an investment-grade credit assessment from an eligible ECAI, institutions may calculate the volatility adjustment for every category of security. <sup>2</sup>In determining categories of securities, institutions shall take into account the type of issuer, the external credit assessment of the securities, their residual maturity, and their modified duration. <sup>3</sup>Volatility adjustment estimates must be representative of the securities assigned to a category by the institution.

(3) For debt securities having a non-investment grade credit assessment from an eligible ECAI, and for eligible financial collateral which is not in the form of debt securities pursuant to subsection (2), the volatility adjustments must be calculated for each individual item.

(4) <sup>1</sup>In determining the volatility adjustments, a 99th percentile one-tailed confidence interval and an effective historical observation period of at least one year shall be used. <sup>2</sup>If institutions use weighting schemes or other methods, the effective observation period shall be at least one year; if the weighted average time lag between the observations and the reference point does not fall below six months, the effective observation period is at least one year. <sup>3</sup>BaFin may, in individual cases, set a shorter observation period if this is justified by a significant upsurge in price volatility.

(4a) Institutions must be able to establish whether the data used lead to an understatement of the volatility adjustment. If the data used lead to an understatement of the volatility adjustment, stress scenarios must be used.

(5) The data used for the estimate and, on that basis, the own estimates of volatility adjustments, shall be updated where there are material changes in market prices, and at least

quarterly.

(6) The volatility adjustment estimates must be used in the day-to-day risk measurement and management process, including the system of internal exposure limits.

(7) The institution shall have established procedures for ensuring and reliably monitoring compliance with its documented policies and controls for its own estimates of volatility adjustments and for integrating such estimates into its risk measurement and management process.

(8) <sup>1</sup>The institution's procedures for calculating its own estimates of volatility adjustments shall be reviewed regularly by the institution's internal audit unit. <sup>2</sup>The following issues are to be reviewed at least annually by internal audit:

1. the integration of own estimates of volatility adjustments into daily risk measurement and management,
2. the validation of any material change in the estimation process,
3. the verification of the consistency, timeliness, reliability and independence of the data sources used for the estimate, and
4. the accuracy and appropriateness of the volatility assumptions.

## **Titel 4**

### Internal models-based volatility surcharges

#### **Section 199**

Option of using volatility surcharges subject to the Internal Models approach

(1) <sup>1</sup>To calculate volatility surcharges for netting positions comprising non-derivative transactions with remargining, an institution may use internal models-based volatility surcharges pursuant to section 203 if it has a suitable internal model for determining volatility surcharges pursuant to section 200. <sup>2</sup>If the institution chooses to use internal models-based volatility surcharges, it must do so on a consistent and permanent basis.

(2) <sup>1</sup>Immaterial portions of all the netting positions comprising non-derivative transactions with remargining may be exempted from the consistent use of internal models-based volatility surcharges. <sup>2</sup>In accordance with section 190 (2), the institution may use own estimates of volatility adjustments or supervisory market value and currency volatility adjustments for these immaterial portfolios.

(3) <sup>1</sup>An institution that uses a suitable internal model to determine volatility surcharges

pursuant to section 200 may switch to using own estimates of volatility adjustments or supervisory market value and currency volatility adjustments only for material reasons and only upon permission from BaFin. <sup>2</sup>The institution must request permission for the intended switch from BaFin, stating the reasons.

### **Section 200**

#### Suitable model for determining internal models-based volatility surcharges

(1) A suitable internal risk measurement model within the meaning of section 313 (1) sentence 1, whose scope of application at least covers the risk factors to be included in a model to determine volatility surcharges, shall be appropriate for determining internal models-based volatility surcharges if an institution takes account of the transactions for which it uses its internal risk measurement model to determine volatility adjustments when assessing the accuracy of the risk measurement model pursuant to section 318.

(2) <sup>1</sup>If an institution does not have a suitable internal risk measurement model within the meaning of section 313 (1) sentence 1, it may, once BaFin has recognised the suitability in writing, use a model which meets the minimum requirements pursuant to sections 201 and 202 to determine internal models-based volatility surcharges. <sup>2</sup>BaFin shall confirm the suitability of such a model at the institution's request and on the basis of an audit pursuant to section 44 (1) sentence 2 of the Banking Act. <sup>3</sup>If a model which has been confirmed as suitable no longer meets the minimum requirements pursuant to sections 201 and 202, BaFin may revoke its confirmation of suitability.

### **Section 201**

#### Qualitative minimum standards for a suitable internal model for calculating volatility surcharges

<sup>1</sup>The system which the institution uses to manage risks arising from the transactions covered by a netting agreement covering non-derivative transactions with remargining shall be conceptually sound and integrated into the internal processes. <sup>2</sup>In particular, the following conditions must be met.

1. The internal risk measurement model used for calculating potential price volatility is closely integrated into the daily risk management process and serves as the basis for reporting risk exposures to the institution's senior management.
2. The institution has a risk control unit which is independent of business trading units and reports directly to senior management; this unit shall be responsible for designing and implementing the institution's risk management system; it shall produce and analyse daily

reports on the output of the risk measurement model and on the appropriate measures to be taken in terms of position limits.

3. The daily reports produced by the risk control unit are reviewed by a level of management with sufficient authority to order reductions of individual positions taken and of overall risk exposure.
4. The institution employs sufficient skilled staff trained in the use of sophisticated models in its risk control unit.
5. The institution has established procedures for monitoring and ensuring compliance with a documented set of internal policies and controls concerning the overall operation of the risk measurement system.
6. The institution's models have a proven track record of reasonable accuracy in measuring risks which can be demonstrated by backtesting the output of the model in terms of forecast versus actual changes in value using at least one year of data.
7. The institution regularly conducts a programme of stress testing and the results of these tests are reviewed by senior management and reflected in the policies and limits set by management.
8. As part of its internal auditing process, the institution subjects its risk measurement system to an independent review, which must include both the activities of the independent risk control unit and the business trading units.
9. The institution conducts a review of its risk management system at least once a year.
10. The institution's models meet the requirements set out in sections 224 (6) and 317 (4).

### **Section 202**

Quantitative minimum standards for a suitable internal model for calculating volatility surcharges

<sup>1</sup>The calculation of the potential change in value shall be subject to the following quantitative minimum standards.

1. The potential change in value shall be calculated at least daily.
2. The calculation of the potential change in value is to be based on
  - a) a one-tailed 99th percentile confidence interval;

- b) a liquidation period of 5 days for securities repurchase transactions and securities lending or borrowing transactions and of 10 days otherwise, and
  - c) an effective historical observation period of at least one year.
3. The empirical data set used shall be updated at regular intervals, and at least quarterly or, as appropriate, promptly.

<sup>2</sup>BaFin may set a shorter historical observation period if it believes this is justified by a significant upsurge in price volatility.

### **Section 203**

#### Internal models-based volatility surcharge

The internal models-based volatility surcharge is the estimated potential change in value using the previous business day's model output.

### **Subdivision 3**

#### Calculation method for unfunded credit protection

### **Section 204**

#### Unfunded credit protection adjusted for mismatches

For any eligible unfunded credit protection, the credit protection amount adjusted for mismatches assigned to an exposure is the product of

1. the portion of the value of the unfunded credit protection assigned to this exposure pursuant to section 205,
2. the maturity mismatch adjustment for this unfunded credit protection relating to this exposure pursuant to section 186 and,
3. if there is a currency mismatch for this unfunded credit protection relating to this exposure, the difference between 1 and the currency volatility adjustment pursuant to section 189.

### **Section 205**

#### Value of eligible unfunded credit protection

<sup>1</sup>The value of eligible unfunded credit protection, if it

1. has an upper limit, is the maximum amount,
2. is a guarantee that does not cover all types of payment the obligor is expected to make in respect of the guaranteed position, it is the amount less the value of uncovered payments or the maximum amount of the guarantee,
3. is a credit derivative where the credit events do not include the obligor restructuring his payment obligation of the position for which the credit derivative is to be recognised, involving forgiveness or postponement of principal, interest or fees at the expense of the protection-buying institution, where such restructuring results in a value adjustment or debit to the profit and loss account for the protection-buying institution,
  - a) if the sum of the assessment bases of all exposures for which the credit derivative is to be recognised is not less than the amount to be paid on the occurrence of a credit event, it is 60 per cent of this amount,
  - b) otherwise it is 60 per cent of the sum of the assessment bases of all exposures for which the credit derivative is to be recognised,
4. is cash on deposit with a third-party institution to be recognised as other eligible funded credit protection or a certificate of deposit of the protection-buying institution held by a third party institution pursuant to section 169, it is the nominal amount of cash on deposit or the certificate of deposit,
5. is a debt security to be recognised as other eligible funded credit protection pursuant to section 171 which is repurchased on request by the issuer,
  - a) it is its face value if the debt instrument would have to be repurchased at its face value, or
  - b) it is the value at which it would be recognised as generally eligible financial collateral pursuant to section 155 (1) sentence 1 number 9 if the debt instrument would have to be repurchased at market price.

<sup>2</sup>In all other cases, the amount to be paid to the protection-buying institution on the occurrence of a credit default event is decisive.

**Division 4**

## Netting agreements

**Subdivision 1**

## Eligible netting agreements

**Section 206**

## Eligible netting agreements

(1) Eligible netting agreements which must meet the requirements pursuant to subsection (2) are netting agreements covering derivatives pursuant to section 207, netting agreements covering reciprocal cash balances pursuant to section 208, netting agreements covering non-derivative transactions with remarking pursuant to section 209 and cross-product netting agreements pursuant to section 210.

(2) An eligible netting agreement may be recognised only if

1. it is a bilateral netting agreement between an institution and its counterparty with regard to the included transactions,
2. it is in standard use either domestically or internationally or has been recommended for use by a central association of credit institutions,
3. it ensures that, if insolvency proceedings are initiated, only a single net amount is owed by one party to the other from the netting of all claims and liabilities,
4. it gives the institution the right to terminate all transactions under the agreement unilaterally with effect pursuant to number 3 if the counterparty does not render the service owed under an individual transaction, and
5. it contains no provisions which permit a non-defaulting party to make limited payments only, or no payments at all, to the estate of the defaulter if the defaulter is a net creditor.

(3) <sup>1</sup>To be recognised as eligible pursuant to subsection (2), the institution must maintain the necessary documentation to validate, in a legal challenge, the conclusion of the netting agreement and the inclusion of the transactions concluded on this basis and must also have satisfied itself of the legal validity of the agreement and of the transactions included therein on the basis of an appropriate legal opinion drawn up by an expert agency and, where a foreign jurisdiction is concerned, by an expert and independent agency. <sup>2</sup>The legal validity must be kept under review in the light of possible changes in the relevant laws. <sup>3</sup>The effects of eligible netting arrangements are to be factored into both the overall credit risk measurement and management of each individual party to the contract and the overall credit risk

measurement and management of the institution. <sup>4</sup>Institutions which apply eligible netting agreements for risk mitigating purposes have to fulfil the disclosure requirements of section 336.

(4) BaFin may deny institutions permission to recognise a netting agreement if the requirements set forth in subsections (2) or (3) or in sections 207 to 210 are not met or if there are grounds for doubting the legal validity of the bilateral netting agreement.

### **Section 207**

#### Eligible netting agreement covering derivatives

(1) An eligible netting agreement covering derivatives is any bilateral netting agreement covering derivatives between an institution and its counterparty if the derivative CCR exposures under this netting agreement, if they were exposures to the netting institution, would be recognised exclusively as either CRSA positions or exclusively as IRBA positions.

(2) <sup>1</sup>An institution shall report, on paper and electronically, its intention to calculate the net assessment basis for derivatives pursuant to section 211, taking into account a certain type of netting agreement, to BaFin and the Deutsche Bundesbank, specifying the title of the netting agreement and the legal opinion pursuant to section 206 (3) sentence 1 and including any existing updates; the institution is permitted to submit subsequent updates solely electronically if it so wishes. <sup>2</sup>BaFin shall be sent a copy of the netting agreement either directly or via a central association of credit institutions. <sup>3</sup>If the netting agreement specified in sentence 2 is not written in German, BaFin may request the submission of a translation prepared by a publicly appointed translator. <sup>4</sup>This shall be without prejudice to section 23 of the Act on Administrative Procedures (*Verwaltungsverfahrensgesetz*). <sup>5</sup>At BaFin's request, the institution shall submit to it the legal opinion pursuant to section 206 (3) sentence 1.

### **Section 208**

#### Eligible netting agreements covering reciprocal cash balances

(1) An eligible netting agreement covering reciprocal cash balances is any bilateral netting agreement which exclusively covers claims and obligations between counterparties resulting from the payment of cash and to be settled in cash.

(2) An institution shall report, on paper and electronically, its intention to calculate the net assessment basis for reciprocal cash balances pursuant to section 212, taking into account a certain type of netting agreement, to BaFin and the Deutsche Bundesbank, specifying the title of the netting agreement and the legal opinion pursuant to section 206 (3) sentence 1 and including any existing updates; the institution is permitted to submit subsequent updates

solely electronically if it so wishes. <sup>2</sup>A copy of the netting agreement and legal opinion pursuant to section 206 (3) sentence 1, including any available updates, shall be sent to BaFin either directly or via a central association of credit institutions. <sup>3</sup>If the documentation specified in sentence 2 is not written in German, BaFin may request the submission of a translation prepared by a publicly appointed translator. <sup>4</sup>This shall be without prejudice to section 23 of the Act on Administrative Procedures.

(3) A netting agreement covering reciprocal cash balances shall be eligible only if the institution

1. enjoys unrestricted use of the received cash amounts throughout the term of the agreement and these amounts cannot be unilaterally repossessed by the counterparty during the term of the agreement,
2. can determine at any time the CCR associated with the paid cash amounts on a net basis,
3. can identify at any time those cash amounts that are subject to the netting agreement.

### **Section 209**

Eligible netting agreement covering non-derivative transactions with remargining

(1) An eligible netting agreement covering non-derivative transactions with remargining is any bilateral netting agreement which

1. either exclusively covers non-derivative transactions with remargining which are securities repurchase transactions and securities or commodities lending or borrowing transactions, or exclusively covers non-derivative transactions with remargining which are not securities repurchase transactions and securities and commodities lending or borrowing transactions, and
2. entitles the institution to regularly demand margin from the counterparty as soon as the value of the institution's relevant claims on the counterparty and the collateral posted by the institution exceed the value of the institution's relevant obligations to the counterparty and the collateral posted by the counterparty, and the institution has the right to repossess from the counterparty collateral posted within the framework of non-derivative transactions with remargining if and to the extent that the value of the posted collateral exceeds the value of the protected obligations from the non-derivative transactions with remargining by an amount fixed in the netting agreement.

(2) If a netting agreement covers non-derivative transactions with remargining assignable to both the trading book and the banking book, the institution may recognise this netting agreement in its entirety for calculating the net assessment basis for non-derivative

transactions with remargining pursuant to section 215 only if exclusively eligible financial collateral pursuant to section 155 has been recognised. Otherwise, the institution may recognise the netting agreement only if this netting agreement splits up the non-derivative transactions with remargining into those assigned to the trading book and those assigned to the banking book.

(3) If an institution intends to calculate the net assessment basis for non-derivative transactions with remargining pursuant to section 215, taking into account a certain type of netting agreement, section 207 (2) shall apply *mutatis mutandis*.

## **Section 210**

### Eligible cross-product netting agreement

(1) <sup>1</sup>A cross-product netting agreement excluding derivatives is any bilateral netting agreement between an institution and a counterparty which covers claims and obligations from non-derivative transactions with remargining or other securities repurchase transactions and securities or commodities lending or borrowing transactions and is not covered by section 209 (1) sentence 1 number 1. <sup>2</sup>A cross-product netting agreement including derivatives is any bilateral netting agreement between an institution and a counterparty which covers claims and obligations from derivatives and also claims and obligations from non-derivative transactions with remargining as well as other securities repurchase transactions and securities or commodities lending or borrowing transactions. <sup>3</sup>Claims and obligations can also be a single net amount pursuant to section 206 (2) number 3 arising from netting agreements pursuant to sections 207 and 209.

(2) <sup>1</sup>For the purposes of recognising reduced a weighting of a cross-product netting agreement, the legal opinion pursuant to section 206 (3) sentence 1 must invariably be drawn up by a qualified and independent legal agency. <sup>2</sup>If an institution intends to calculate the net assessment basis for cross-product netting positions pursuant to section 217, taking into account a certain type of netting agreement, section 208 (2) shall apply *mutatis mutandis*.

## **Subdivision 2**

### Net assessment bases for netting agreements

## **Section 211**

### Net assessment basis for derivatives

(1) <sup>1</sup>The institution may opt, on a consistent and permanent basis, to calculate the net assessment basis for derivatives for each netting set comprising derivatives

1. in accordance with the SM pursuant to section 218,
2. subject to the permission of BaFin, in accordance with the IMM pursuant to section 223,
3. pursuant to subsection (2) if the captured derivatives are recognised in accordance with the marking-to-market method, or
4. pursuant to subsection (3) if the captured derivatives are recognised pursuant to the original exposure method.

<sup>2</sup>The consistent and permanent option may be exercised differently for individual entities belonging to a group. <sup>3</sup>In the case of claims and obligations from transactions that are included in a netting set from foreign exchange derivatives, the netting set comprising foreign exchange derivatives is to be treated as a single transaction. <sup>4</sup>A netting set comprising foreign exchange derivatives results from the netting of offsetting obligations with claims arising from forward foreign exchange transactions and comparable transactions

1. that are included in the same eligible netting agreement concerning derivatives,
2. that are in the same currency and settled on the same value date, and
3. whose nominal value equals the existing claim for payment.

<sup>5</sup>Subject to section 220 (4) and section 222 (3) and (4), an institution that uses the IMM for net assessment bases pursuant to section 217 for cross-product netting sets including derivatives pursuant to section 210 (1) sentence 2 or the SM or the IMM for determining assessment bases for derivative CCR exposures pursuant to section 17, must use the same method also for determining all net assessment bases for derivatives.

(2) <sup>1</sup>If the derivative CCR exposures captured by an eligible netting set comprising derivatives are recognised at the replacement cost calculated in accordance with the mark-to-market method pursuant to section 18, the net assessment basis for derivatives for each netting set comprising derivatives is the sum of the difference between the positive and negative market values of the transactions included in the netting agreement (zero in the case of a negative difference) plus the surcharge Z. <sup>2</sup>Negative market values from written option positions which do not constitute derivative CCR exposures pursuant to section 11 but are included in the netting agreement underlying the netting set for derivatives may also be recognised. <sup>3</sup>Z shall be determined pursuant to Formula 7 of Annex 2. <sup>4</sup>The market values shall be determined each business day.

(3) <sup>1</sup>If the derivative CCR exposures captured from an eligible netting set comprising derivatives are recognised at the replacement cost calculated in accordance with the original exposure method pursuant to section 23, the net assessment basis for derivatives for each netting set comprising derivatives is the sum of the products from the claim calculated in

accordance with the mark-to-market method from the derivative pursuant to section 21 and the volatility adjustment resulting from Table 17 of Annex 1 in accordance with the relevant maturity of the transaction pursuant to section 22 for all derivative CCR exposures captured by the netting set. <sup>2</sup>The market values shall be determined each business day.

### **Section 212**

#### Net assessment basis for cash balances

The net assessment basis for cash balances in an eligible netting set comprising monetary claims and debts is the sum of the maturity-adjusted net assessment basis pursuant to section 213 and the currency mismatch surcharge pursuant to section 214 for this netting set.

### **Section 213**

#### Maturity-adjusted net assessment basis for a netting set

(1) <sup>1</sup>For each netting set comprising cash balances and each netting set comprising non-derivative transactions with remarking, the maturity-adjusted net assessment basis for the netting set shall be determined as follows. <sup>2</sup>First, all claims and obligations from the netting set which have the same maturity date shall be aggregated to subtotals. <sup>3</sup>For each of these subtotals, the net assessment basis is to be formed from the difference between the sum of the individual assessment bases for the claims and obligations. <sup>4</sup>The procedure for determining the individual assessment bases is based on whether the claims would be CRSA positions or IRBA positions if they were not included in the netting agreement.

(2) <sup>1</sup>Each subtotal with a positive net assessment basis constitutes an unprotected position in the amount of its net assessment basis. <sup>2</sup>Each subtotal with a negative net assessment basis constitutes a protection position in the absolute amount of its net assessment basis. <sup>3</sup>If a protection position with a later maturity date exists for an unprotected position, a partial amount of the protection position no higher than the net assessment basis of the unprotected position is to be aggregated with this position to form a new unprotected position. <sup>4</sup>The net assessment basis of the remaining protection positions is to be reduced by the amount of the obligations which, if they were available as a protection instrument, would not be eligible protection instruments in a maturity mismatch pursuant to section 184. <sup>5</sup>Finally, where an unprotected position with a positive net assessment basis and a later maturity date exists for a protection position with a net assessment basis that is not equal to zero, a partial amount of the protection position no higher than the quotient of the net assessment basis of the unprotected position and the maturity mismatch adjustment for the protection position in relation to the unprotected position is to be aggregated with the latter to form a new unprotected position. <sup>6</sup>The maturity-adjusted net assessment basis is the difference between the sums of the net assessment bases of all remaining unprotected positions and protection

positions.

### **Section 214**

#### Currency mismatch surcharge for a netting set

(1) <sup>1</sup>In the case of a netting set comprising cash balances or from non-derivative transactions with remargining, a surcharge shall be calculated pursuant to subsection (3) for the net amount of every currency that is not the netting currency. <sup>2</sup>The sum of the surcharges results in the currency mismatch surcharge.

(2) The absolute difference between

1. the monetary claims and debts to be settled in one currency in the case of a netting set comprising cash balances, or

2. the market values of all transferred and received securities denominated in one currency plus the transferred and received monetary amounts in this currency in the case of a netting set comprising non-derivative transactions with remargining

is the net amount for this currency, converted into the reporting currency.

(3) The product of the net amount and the currency volatility adjustment pursuant to section 189 for this currency results in the surcharge for this currency.

(4) The netting currency is the currency stipulated in an eligible netting agreement in which the net claim or obligation arising from the netting must be settled.

### **Section 215**

#### Net assessment basis for non-derivative transactions with remargining

(1) If an institution has chosen neither the option of calculating internal models-based volatility surcharges for netting sets comprising non-derivative transactions with remargining nor the option pursuant to subsection (4), the net assessment basis for non-derivative transactions with remargining shall be the sum of the maturity-adjusted net assessment basis, the currency mismatch surcharge and the market value volatility surcharge for each of the types of securities in this netting set, provided that the sum is positive, otherwise it shall be zero.

(2) If an institution has chosen the option of calculating internal models-based volatility surcharges for netting sets comprising non-derivative transactions with remargining, the net assessment basis shall be the sum of the maturity-adjusted net assessment basis and the internal models-based volatility surcharge for this netting set, provided that this sum is

positive, otherwise it shall be zero.

(3) If netting sets have been excluded from the application of internal models-based volatility surcharges as immaterial pursuant to section 199 (2), their net assessment basis shall be determined pursuant to subsection (1).

(4) <sup>1</sup>Subject to BaFin's permission, an institution may opt, on a consistent and permanent basis, to calculate the net assessment basis for netting sets comprising non-derivative transactions with remargining in accordance with the IMM. <sup>2</sup>The consistent and permanent option may be exercised differently for individual entities belonging to a group. <sup>3</sup>Subject to section 220 (4) and section 222 (3) and (4), an institution that uses the IMM pursuant to section 17 for calculating assessment bases for non-derivative transactions with remargining, for other repurchase transactions and securities or commodities lending or borrowing transactions or for net assessment bases pursuant to section 217, must also use the IMM for determining all net assessment bases for non-derivative transactions with remargining.

(5) In addition to eligible financial collateral pursuant to sections 155 and 156, eligible trading book collateral pursuant to section 157 may also be recognised for calculating the net assessment basis pursuant to subsections (1), (2) and (4), provided that the netting agreement refers exclusively to transactions that are assignable to the trading book of a trading book institution.

## Section 216

### Market value volatility surcharge for securities in a netting set

(1) <sup>1</sup>The market value volatility surcharge for securities in a netting set comprising non-derivative transactions with remargining is the sum of the products of the market value volatility adjustment and the net market value for each of the security types of this netting set. <sup>2</sup>The net market value for a given security type is the absolute difference between the sum of the market values of the transferred securities of this type and the sum of the market values of the received securities of this type, converted into the reporting currency.

(2) For a netting set comprising non-derivative transactions with remargining, the market value volatility adjustment for securities is

1. the supervisory market value volatility adjustment pursuant to section 192 for this type of security unless an institution has opted to use own volatility adjustments or this netting set belongs to the immaterial portion of all the positions for which the institution uses own volatility adjustments,
2. otherwise it is the own volatility adjustment for the securities in the netting set belonging to this type of security.

(3) A type of security means securities

1. which are issued by the same natural or legal person,
2. whose maturity starts on the same day and ends on the same day,
3. which have the same contractual or statutory terms and conditions of issue, and
4. which either are all repurchase transactions and securities lending or borrowing transactions or which are all not such transactions, or
5. which, where the institution uses own volatility adjustments, have the same liquidation period that is used by the institution in its internal risk management pursuant to section 197.

### **Section 217**

#### Net assessment basis for cross-product netting sets

As soon as an institution recognises a cross-product netting set, its net assessment basis is to be determined pursuant to the IMM following permission by BaFin.

### **Section 218**

#### Net assessment basis pursuant to the SM

(1) <sup>1</sup>The net assessment basis is to be calculated separately for each netting set pursuant to Formula 8 of Annex 2. <sup>2</sup>Each derivative CCR exposure that is not included in a netting set with other CCR exposures, including posted or received financial collateral, constitutes a netting set by itself. <sup>3</sup>The assessment basis for this CCR exposure is its net assessment basis pursuant to the SM. <sup>4</sup>The inclusion of posted collateral is permitted only if the collateral arrangement fulfils the minimum requirements pursuant to section 206 (2) numbers 3 to 5 regarding the included transactions and posted collateral. <sup>5</sup>Received financial collateral may be included in the calculation only if it is eligible. <sup>6</sup>Financial collateral received that is recognised pursuant to the SM may not be recognised elsewhere for the purpose of reducing the capital charge.

(2) <sup>1</sup>The derivative CCR exposures must be split into SM risk positions pursuant to section 219. <sup>2</sup>These SM risk positions are to be uniquely assigned to the risk categories pursuant to column 1 of Table 26 of Annex 1. <sup>3</sup>In this case, posted and received financial collateral is also to be assigned to the risk categories as SM risk positions. Written option positions which do not constitute derivative CCR exposures pursuant to section 11 but are included in the netting agreement underlying the netting set for derivatives may also be recognised.

(3) <sup>1</sup>The relevant amount for each SM risk position is to be determined pursuant to

section 220. <sup>2</sup>If the relevant amount of a risk position constitutes a delivery or payment claim for the institution, this is indicated by a plus sign, and if it constitutes a delivery or payment obligation, this is indicated by a minus sign.

(4) Received financial collateral shall be recognised with a plus sign, posted financial collateral with a minus sign.

(5) The SM risk positions that belong to one netting set are to be aggregated with their relevant amounts to form hedging sets pursuant to section 221.

### **Section 219**

#### Splitting into SM risk positions

(1) <sup>1</sup>SM risk positions are the underlying instruments of the derivative CCR exposures (underlying legs) and/or the cash flows linked to derivative CCR exposures (payment legs). <sup>2</sup>Interest-rate-related underlying legs and payment legs constitute SM interest rate risk positions.

(2) An institution may disregard SM interest rate risk positions in payment legs with a residual maturity of less than one year.

(3) If an SM interest rate risk position is denominated in a foreign currency, an additional SM risk position shall be recorded in this foreign currency.

(4) <sup>1</sup>Received financial collateral is recognised as an SM risk position which constitutes a delivery or payment claim on the counterparty that is due today. <sup>2</sup>Posted financial collateral is recognised as an SM risk position which constitutes a delivery or payment obligation to the counterparty that is due today.

### **Section 220**

#### Relevant amounts of SM risk positions

(1) <sup>1</sup>In the case of SM risk positions in derivative CCR exposures with a linear risk profile, it is the current market values of the underlying instruments that are relevant for non-interest-related underlying legs. <sup>2</sup>In the case of SM interest rate risk positions, subject to subsection (2), the relevant amount is the current market values or present values of the underlying instruments or cash flows multiplied by the respective modified duration. <sup>3</sup>In the case of SM risk positions in derivative CCR exposures with a non-linear risk profile, the amounts mentioned in sentences 1 and 2 are to be delta-weighted.

(2) In the case of SM risk positions in underlying legs from credit default swaps, the relevant

amount is the nominal value of the liability of the reference unit multiplied by the residual maturity in years of the credit default swap.

(3) In the case of SM risk positions in financial collateral, subsection (1) applies *mutatis mutandis*.

(4) <sup>1</sup>If the institution cannot determine the delta factor and/or the modified duration for individual SM risk positions, BaFin shall determine the relevant amount and the risk factor pursuant to column 2 of Table 26 of Annex 1 for the SM risk positions in question or shall request the institution to determine the assessment basis for the derivative CCR exposure pursuant to the mark-to-market method. <sup>2</sup>These SM risk positions may not be included in eligible netting agreements.

## Section 221

### Assigning SM risk positions to hedging sets

(1) Each SM risk position constitutes a separate hedging set unless it is to be aggregated with other SM risk positions to a hedging set pursuant to subsections (2) to (5).

(2) <sup>1</sup>The SM interest rate risk positions assigned to risk category 1 pursuant to Table 26 of Annex 1 are to be assigned to one of the six cases depending on the maturity and type of their underlying reference interest rate pursuant to Table 27 of Annex 1. <sup>2</sup>The SM interest rate risk positions in each of the cases in Table 27 of Annex 1 constitute a hedging set provided that they are denominated in the same currency.

(3) <sup>1</sup>A separate hedging set is to be formed for each reference obligor of an underlying leg from a credit default swap. <sup>2</sup>Nth-to-default credit default swaps shall be treated as follows:

1. The size of the risk position from an underlying leg in a basket underlying an nth-to-default credit default swap is the notional value of the liability of the reference unit multiplied by the modified duration of the nth-to-default credit default swap with respect to a change in the credit spread of the reference unit.

2. For each underlying leg in a basket underlying a given nth-to-default credit default swap, a separate hedging set shall be formed. Risk positions from different nth-to-default credit default swaps shall not be included in the same hedging set.

3. For each hedging set formed for an underlying leg of an nth-to-default credit default swap, the risk factor is 0.3 for underlying legs that have received a credit assessment corresponding to credit quality steps 1 to 3 from a recognised ECAI and 0.6 for other underlying legs.

(4) <sup>1</sup>A separate hedging set is to be formed for each obligor of an SM interest rate risk

position whose specific risk pursuant to section 303 would have to be recognised with a weight of more than 1.6 per cent. <sup>2</sup>Notwithstanding subsection (3), SM risk positions in underlying legs from credit default swaps are also to be assigned to the separate hedging set pursuant to sentence 1 if their reference obligor is identical to the obligor pursuant to sentence 1.

(5) <sup>1</sup>SM risk positions other than SM interest rate risk positions may be assigned to the same hedging set only if they have the same underlying financial instruments, commodities or precious metals. <sup>2</sup>Notwithstanding this, the following may each be aggregated within one hedging set:

1. SM risk positions in equities of the same issuer,
2. SM risk positions in delivery rights or obligations for electric power, provided that they refer to the same peak or off-peak load time interval within any 24-hour interval,
3. SM risk positions in commodities which refer to the same commodity, and
4. SM risk positions in precious metals which refer to the same precious metal.

<sup>3</sup>Indices may not be aggregated within one netting set together with the financial instruments, commodities or precious metals included in them but must each be assigned to a separate hedging set.

## **Section 222**

### Use of the IMM

(1) <sup>1</sup>An institution may use the IMM only after obtaining permission from BaFin. <sup>2</sup>Permission may be granted only if BaFin has established the institution's compliance with the minimum requirements pursuant to section 224, based on an audit pursuant to section 44 (1) sentence 2 of the Banking Act. <sup>3</sup>For the purpose of a partial use of the IMM pursuant to subsections (3) and (4), BaFin may grant a corresponding restricted permission. <sup>4</sup>Following permission by BaFin, an institution must use the IMM permanently. <sup>5</sup>Material changes and extensions to the IMM require renewed permission. <sup>6</sup>Significant and insignificant changes do not require a renewed suitability examination but must be notified in writing to BaFin and the Deutsche Bundesbank; significant changes have to be coordinated with BaFin prior to the use of the amended IMM.

(2) <sup>1</sup>If an institution no longer meets the requirements pursuant to section 224, it must inform BaFin and the Deutsche Bundesbank promptly and

1. present a plausible plan showing how it will be able to meet the requirements again in a timely manner and implement this plan on time, or

2. demonstrate that the effects of non-compliance are immaterial.

<sup>2</sup>Otherwise, BaFin may revoke the permission for IMM use.

(3) An institution may permanently exclude CCR exposures and netting sets that are of lesser importance with reference to their assessment bases or net assessment bases from IMM use.

(4) <sup>1</sup>The institution may include the assessment or net assessment bases of positions in the IMM in sequential stages only on the basis of a corresponding plan and with BaFin's permission. <sup>2</sup>BaFin shall grant permission only in cases where a material part of the positions specified in sentence 1 are already included when the IMM is first used and the other positions are captured according to the IMM within a reasonable timeframe, subject to subsection (1).

(5) <sup>1</sup>An institution that uses the IMM to determine assessment bases or net assessment bases of netting sets may switch to a different approach for these positions only if there are material reasons for doing so and only following permission by BaFin. <sup>2</sup>The institution must request permission for the intended switch from BaFin, stating the reasons.

### **Section 223**

#### Net assessment basis according to the IMM

(1) <sup>1</sup>For IMM purposes, each CCR exposure that is not included in an eligible netting set constitutes an own netting set. <sup>2</sup>The assessment basis for this CCR exposure is its net assessment basis according to the IMM.

(2) <sup>1</sup>The net assessment basis according to the IMM is the average of the effective expected exposure value of the distribution of the positive market values weighted pursuant to subsection (6) and multiplied by a factor to be determined pursuant to subsection (7).

<sup>2</sup>Notwithstanding this, an institution may, subject to BaFin's permission, use calculation measures that lead to higher net assessment bases.

(3) <sup>1</sup>The net assessment basis must be determined separately for each netting set. <sup>2</sup>For this purpose a model is to be used that estimates the distribution of future positive market values of the netting set as the result of changes in market prices. <sup>3</sup>If the negative simulated market values of the individual netting sets are set to zero in the estimation of the distribution of the positive market values, all netting sets with a single counterparty may be treated as a single netting set.

(4) <sup>1</sup>In addition to financial collateral posted and received as part of non-derivative transactions with remargining, the model may also capture the market values of further financial collateral posted and eligible financial collateral received in connection with the

netting set.<sup>2</sup>The inclusion of posted collateral pursuant to sentence 1 is permitted only if the collateral arrangement meets the minimum requirements pursuant to section 206 (2) numbers 3 to 5 regarding the included transactions and posted collateral.<sup>3</sup>Financial collateral received that is recognised according to the IMM may not be recognised elsewhere for the purpose of reducing the capital charge.<sup>4</sup>Written options which do not constitute derivative CCR exposures pursuant to section 11 (1) number 1 letter (b) but are included in the netting agreement underlying the netting set for derivatives may likewise be recognised.<sup>5</sup>If the transactions included in the IMM are subject to remargining and the institution's model is able to capture this, future posted and received collateral margins are to be included in addition to future changes in market value.<sup>6</sup>If the model cannot capture these, the institution must either not recognise them or recognise the threshold under the margin agreement plus an add-on as the net assessment basis.<sup>7</sup>This add-on is, starting from a current positive exposure of zero, the expected increase in the positive market value of the netting agreement from the time of the last margin payment to when the existing transactions with the counterparty would terminate and be closed out upon the latter's default.<sup>8</sup>In this case, a floor of five days applies to this period for netting sets that solely comprise non-derivative transactions with daily remargining and revaluations and ten days for all other netting sets.

(5)<sup>1</sup>To establish the effective expected exposure of the distribution of the positive market values, the institution must first determine a series of sequential points

1. during the year beginning on the day the net assessment basis is calculated, or
2. if the residual maturity of all transactions of the netting set is less than a year, during the period beginning on the day the net assessment basis is calculated and ending on the due date of the transaction with the longest residual maturity.

<sup>2</sup>The start and the end of the period must each constitute one of the points, while the institution shall determine the other points such that they adequately reflect the time structure of cash flows and maturities of the transactions included in the IMM and also mirror the materiality and composition of the netting sets.<sup>3</sup>The effective expected exposure of the distribution of the positive market values is to be determined for each of these points.<sup>4</sup>The effective expected exposure of the distribution of the positive market values on the day the net assessment basis is calculated is the current positive exposure.<sup>5</sup>For every subsequent point, the effective expected exposure of the distribution of the positive market values is either the respective expected exposure of the distribution of the positive market values at this point or, if this is greater, the effective expected exposure of the distribution of the positive market values of the immediately preceding point.

(6)<sup>1</sup>The weighted average of the effective expected exposure of the distribution of the positive market values is determined by weighting every effective expected exposure of the distribution of the positive market values with the time period between the point in time for which this effective expected exposure of the distribution of the positive market values was

determined and the immediately preceding point in time in the series. <sup>2</sup>The effective expected exposure of the distribution of the positive market values on the day the net assessment basis is calculated is counted as one day in the weighting.

(7) <sup>1</sup>The weighted average of the effective expected exposure of the distribution of the positive market values shall be multiplied by the factor 1.4, subject to sentence 2.

<sup>2</sup>Notwithstanding sentence 1, an institution may make its own estimate for this factor, subject to a floor of 1.2, following permission by BaFin. <sup>3</sup>The factor is to be estimated by the institution by dividing the internal capital for the CCR of the netting sets, based on a full simulation across all counterparties, by the internal capital determined on the basis of the weighted average of the expected exposure of the distribution of the positive market values.

<sup>4</sup>In the denominator of this division, the weighted average of the expected exposure of the distribution of the positive market values is to be used as if it were a fixed outstanding amount. <sup>5</sup>The institution shall demonstrate that its internal capital in the numerator of the equation captures material sources of stochastic dependency of the distribution of market value of individual transactions, financial collateral or hedging sets as well as the granularity of the hedging sets. <sup>6</sup>If the market value distribution is dependent on counterparty credit risks, the choice of volatilities and correlations of the market prices used in the joint simulation of market and counterparty credit risks must reflect potential increases in volatilities and correlations in the event of an economic downturn. <sup>7</sup>The institution must ensure that the numerator and denominator of the division are computed in a consistent fashion with respect to the modelling, parameter specifications and portfolio composition. <sup>8</sup>The approach used shall be based on the internal capital allocation, be well documented and subject to validation. <sup>9</sup>Persons who are directly involved in developing the internal model must not be prominently involved in validation. <sup>10</sup>The institution must review its estimate at least quarterly. <sup>11</sup>The frequency of the reviews is to be increased appropriately if the composition of the portfolio varies over time. <sup>12</sup>The institution shall also assess the model risk.

## Section 224

### Minimum requirements for using the IMM

(1) <sup>1</sup>Before using the IMM, the institution shall demonstrate that it has been using a model to calculate the distributions of future positive market values, on which the calculation according to the IMM is based, that broadly meets the minimum requirements for at least one year prior to authorisation by BaFin. <sup>2</sup>This requirement shall also be deemed to be met if the institution has used other measures for measuring the credit risk arising from those types of risk positions for which the institution wants to use the IMM which are based on the distribution of replacement costs generated by the same model.

(2) <sup>1</sup>The model used for the IMM shall employ current market data to compute current exposures. <sup>2</sup>When using historical data to estimate volatility and correlations, at least three

years of historical data shall be used and shall be updated quarterly or more frequently if market conditions warrant this.<sup>3</sup> If the model is based on market data that are used as a proxy for non-existent historical data, internal rules must regulate which market data are recognised as suitable proxies.<sup>4</sup> Moreover, the institution shall demonstrate empirically that these market data provide a conservative representation of the underlying risk under adverse market conditions.

(3) <sup>1</sup>The internal model that is used to determine the distributions of future positive market values must be an integral part of the institution's decision-making process for lending, for credit risk management, internal capital allocation and corporate governance. <sup>2</sup>The institution must at least measure and manage the expected exposure of the distributions of future positive market values and its current positive exposure from derivatives as well as non-derivative transactions with remargining. <sup>3</sup>The current positive exposure must be measured both gross and net of collateral received. <sup>4</sup>In the case of non-derivative transactions with remargining as well as other repurchase transactions and securities or commodities lending or borrowing transactions, an institution may refrain from the measurement net of collateral received.

(4) Section 317 (4) shall apply *mutatis mutandis*.

(5) <sup>1</sup>The forecasting quality of the distributions of future positive market values shall be reviewed regularly on a number of representative netting agreements using static back-testing. <sup>2</sup>If back-testing shows that the model used for the IMM is not sufficiently accurate, BaFin may revoke its authorisation for it to be used.

(6) <sup>1</sup>Every exposure shall be monitored over the life of all contracts in a netting set. <sup>2</sup>The institution shall have procedures in place to identify and control the risks for counterparties where the exposure extends beyond the one-year horizon. <sup>3</sup>The forecast increase in exposure shall be an input into the institution's internal capital allocation model.

(7) <sup>1</sup>The institution shall have in place stress-testing processes for use in the assessment of the adequacy of the internal capital allocation for credit risk arising from derivatives as well as from non-derivative transactions with remargining. <sup>2</sup>For this purpose, the institution must subject the expected exposure of the distributions of future market values to strict and routine stress tests by means of a simultaneous variation of market and credit risk factors.

(8) <sup>1</sup>The institution must adequately recognise exposures that give rise to a significant degree of general wrong-way risk. <sup>2</sup>General wrong-way risk is the correlation between the counterparty's PD and general market risk factors.

(9) <sup>1</sup>The institution shall have procedures in place to monitor cases of specific wrong-way risk throughout the life of the transaction. <sup>2</sup>Specific wrong-way risk occurs when, owing to the type of transactions with a certain counterparty, the PD of this counterparty and the future replacement costs of the transactions with the counterparty are positively correlated.

(10) The internal audit unit shall review compliance with the requirements pursuant to subsections (2) to (9) regularly, and at least once a year.

## Chapter 6

### Securitisations

#### Division 1

##### Scope of application of the securitisation provisions, definitions

#### Section 225

##### Target groups

(1) <sup>1</sup>An institution that is the originator, investor or sponsor of a securitisation transaction must determine risk-weighted exposure amounts for all of its securitisation positions.

<sup>2</sup>Notwithstanding sentence 1, no risk-weighted exposure amount has to be determined for securitisation positions which the institution deducts during the calculation of its available modified capital pursuant to section 10 (6a) number 3 of the Banking Act. <sup>3</sup>An institution that is the originator of a securitisation transaction does not have to recognise any risk-weighted exposure amount for the securitisation positions belonging to this securitisation transaction if it does not claim any reduction in the capital charge from this securitisation transaction.

(2) An institution must comply with the disclosure rules pursuant to section 334 for each securitisation transaction it recognises pursuant to subsection (1).

#### Section 226

##### Securitisation transaction

(1) (Repealed)

(2) A securitisation transaction involving the transfer of exposures (true-sale securitisation) is defined as the legal transfer of a securitised portfolio by an originator.

(3) A securitisation transaction not involving the transfer of exposures (synthetic securitisation) is defined as the transfer of the CCR from a securitised portfolio by an originator through the use of guarantees, credit derivatives or eligible financial collateral, without legally transferring the securitised portfolio.

(4) <sup>1</sup>For an institution, a CRSA securitisation transaction is any securitisation transaction

whose securitised portfolio, measured in terms of the assessment bases, consists mostly of CCR exposures which,

1. if the institution is deemed to be the originator of the securitisation transaction, are CRSA exposures, or,
2. if the institution is deemed to be the sponsor or investor of the securitisation transaction, as CCR exposures of the institution would not constitute IRBA-compatible exposures pursuant to sentence 2.

<sup>2</sup>IRBA-compatible exposures within the meaning of sentence 1 number 2 are exposures which, as CCR exposures of the institution, would be IRBA exposures or, where the institution would have to apply the Internal Assessment Approach pursuant to section 259 if the exposure were classified as an IRBA securitisation transaction, would have to be assigned to the same IRBA exposure class as CCR exposures of the institution which are IRBA exposures.

(5) For an institution, an IRBA securitisation transaction is any securitisation transaction that is not a CRSA securitisation transaction and for which it is deemed to be the originator, sponsor or investor.

### **Section 227**

#### CRSA and IRBA securitisation positions

(1) <sup>1</sup>An institution that completely, or proportionately in a non-subordinate fashion, guarantees or hedges securitisation<sup>n</sup> positions shall treat the risk exposure created by this guaranteed or hedged securitisation position as though either of the latter were held directly.

(2) (Repealed)

(3) A CRSA securitisation position is any securitisation position that is part of a securitisation tranche belonging to a CRSA securitisation transaction.

(4) An IRBA securitisation position is any securitisation position that is part of a securitisation tranche belonging to an IRBA securitisation transaction.

(5) A partially collateralised CRSA securitisation position is any CRSA securitisation position with the exception of securitisation positions pursuant to subsection (1) sentence 2 number 3 to which eligible unfunded credit protection pursuant to section 162 or eligible financial collateral pursuant to section 154 (1) sentence 1 number 1 is assigned and for which an unprotected partial exposure value pursuant to section 40 (4) sentence 2 remains after recognising the unfunded credit protection and eligible financial collateral according to the Financial Collateral Simple Method pursuant to section 241.

(6) A partially collateralised IRBA securitisation position is any IRBA securitisation position with the exception of securitisation positions pursuant to subsection (1) sentence 2 number 3 that is collateralised by eligible unfunded credit protection or by eligible financial collateral pursuant to section 154 (1) sentence 1 number 1 to be recognised at its volatility-adjusted value for financial collateral pursuant to section 187 and for which an unprotected partial exposure value pursuant to section 254 (5) sentence 2 remains after recognising the unfunded credit protection and the eligible financial collateral to be recognised at its volatility-adjusted value for financial collateral assigned to it.

## **Section 228**

### Securitised portfolio

(1) (Repealed)

(2) When following one of the approaches pursuant to section 243 (2) to (4) or section 260, notwithstanding subsection (1) an institution may opt, on a consistent and permanent basis for a securitisation transaction, to disregard CCR exposures in a securitised portfolio that were incurred by the ancillary business of this securitisation transaction specified in subsection (3).

(3) The following constitute ancillary business within the meaning of subsection (2):

1. alternative investments if the resulting payment claims are not subordinate and the securitisation position is either part of a securitisation transaction for which there is a credit assessment pursuant to sections 235 to 237 for at least one securitisation tranche or compliance with the following requirements is contractually ensured;

a) the payment claims resulting from the alternative investments may only be exposures to counterparties whose unprotected payment obligations would have to be assigned as CRSA positions to one of the CRSA exposure classes Central governments, Institutions or Corporates;

b) in the case of a CRSA securitisation transaction, the counterparty of the payment claim resulting from an alternative investment must have a relevant issuer credit assessment pursuant to section 45 (1) number 2 from an eligible ECAI; this issuer credit assessment must be prudentially mapped to one of the credit quality steps 1 to 2 pursuant to section 26 number 1 letter (a) in the case of assignment to the CRSA exposure class Central governments, pursuant to section 29 number 3 in the case of assignment to the CRSA exposure class Institutions or pursuant to section 33 number 1 letter (b) in the case of assignment to the CRSA exposure class Corporates;

c) in the case of an IRBA securitisation transaction, there must either be an issuer credit assessment pursuant to section 45 (1) number 2 from an eligible ECAI which meets the

requirements pursuant to letter (b), or the forecast PD determined by the institution pursuant to section 88 shall not be higher than the highest one-year PD of a specific credit assessment that meets the requirements for relevant issuer credit assessments as stipulated in letter (b);

2. derivative CCR exposures pursuant to section 1b (3) sentence 2 number 1 of the Banking Act, provided that no claim for compensation for the market price-based claim pursuant to section 21 from the derivative or netting situation involving such a claim has arisen for any of the counterparties to these derivatives, and provided the issuer of the securitisation position may be exposed via these derivative CCR exposures or counterparty CCR exposures from derivatives only to counterparties for which, in the case of a CRSA securitisation transaction, the requirements stipulated in number 1 letters (a) and (b) and, in the case of an IRBA securitisation transaction, the requirements stipulated in number 1 letters (a) and (c) are met.

(4) Notwithstanding subsection (1), when following one of the approaches pursuant to section 243 (2) to (4) or section 260, an institution may disregard CCR exposures in the securitised portfolio where it is contractually ensured that their CCR can no longer be realised at the expense of this securitisation position.

(5) <sup>1</sup>Notwithstanding subsection (1), when applying section 249 (1) and (3) sentence 1 or section 263 (1) to determine the maximum risk-weighted exposure amount for the purpose of calculating the risk-weighted exposure amounts and expected loss amounts, an institution need only recognise pursuant sentence 2 the CCR exposures within the meaning of subsection (3) number 1 contained in the securitised portfolio for all securitisation positions belonging to a securitisation transaction. <sup>2</sup>The CCR exposures within the meaning of subsection (3) number 1 contained in the securitised portfolio shall,

1. when calculating risk-weighted exposure amounts pursuant to sentence 1, be recognised as the product of their exposure value and the average risk weight, or
2. when calculating expected average loss amounts pursuant to sentence 1, be recognised as the product of their exposure value and the average expected loss

of those CCR exposures of the securitised portfolio that are neither alternative investments within the meaning of subsection (3) number 1 nor ancillary business within the meaning of subsection (3) number 2 excluded pursuant to subsection (6).

(6) Notwithstanding subsection (1), an institution may disregard CCR exposures contained in the securitised portfolio within the meaning of subsection (3) number 2 for all securitisation positions belonging to a securitisation transaction in the following cases:

1. when calculating the risk-weighted exposure amounts and the expected loss amounts if the institution applies the provisions of section 249 (1) and (3) or of section 263 (1) for calculating the maximum risk-weighted exposure amount;

2. when calculating the IRBA securitisation risk weight pursuant to section 258 for an IRBA securitisation position recognised according to the Supervisory Formula.

**Section 229**

(Repealed)

**Section 230**

Securitisation liquidity facility

(1) (Repealed)

(2) A securitisation liquidity facility is deemed to be eligible if

1. the circumstances under which the facility may be drawn are specifically defined in the documentation on which it is based,
2. the facility cannot be drawn to finance CCRs already incurred at the time of the draw, in particular for financing exposures in default or buying exposures at above their market value,
3. it is not used to provide permanent or regular funding of the securitised portfolio,
4. the repayment of amounts drawn on it is not subordinate to any claims other than those arising from securitisation positions pursuant to section 1b (3) sentence 2 number 1 of the Banking Act, regular fees or other such payments, and their repayment is not subject to a waiver of claims or a deferral,
5. it may no longer be drawn after its subordinate credit enhancements are exhausted, and
6. its available amount is automatically reduced by the amount of the CCR exposures that are deemed to be in default after the transaction, and at least by the amount of the CCR exposures of the securitised portfolio that are more than 90 calendar days past due or, if the securitised portfolio includes CCR exposures for which credit assessments are available from eligible ECAIs, it contains a provision which automatically terminates the possibility of drawing on the facility as soon as the average credit quality of the securitised portfolio falls below investment grade.

**Section 231**

Additional definitions in connection with securitisations

(1) (Repealed)

(2) <sup>1</sup>A securitisation special-purpose entity is an enterprise whose unprotected payment obligations, as a CRSA position, would not be assigned to the CRSA exposure class Institutions and that was set up for the sole purpose of carrying out one or more securitisation transactions with the intention of isolating the obligations of the securitisation special-purpose entity from those of the originator and whose shareholders have the right to pledge or exchange their interests in the securitisation special-purpose entity without restriction. <sup>2</sup>The activities of the securitisation special-purpose entity are limited to those appropriate to accomplishing that objective.

## **Division 2**

### Requirements for institutions that are deemed to be the originator or sponsor of securitisation transactions

#### **Section 232**

##### Minimum requirements for significant and effective risk transfer

(1) An institution that is deemed to be the originator of a securitisation transaction can achieve a reduction in the capital requirements from this only if the securitisation transaction provides an effective transfer of risk and

1. the institution recognises all the securitisation positions it holds in this securitisation transaction either with a risk weight of 1,250 per cent when calculating the total capital charge for counterparty risks or, pursuant to section 265, as deductible securitisation positions in the deduction amount for securitisation positions, or
2. the risk transfer is regarded as significant within the meaning of subsection (2).

(2) <sup>1</sup>A significant risk transfer is usually deemed to be provided if

1. the ratio of the sum of the risk-weighted exposure amounts for the securitisation positions in the relevant mezzanine securitisation tranches held by the institution to the sum of the risk-weighted exposure amounts for all relevant mezzanine securitisation tranches belonging to this securitisation transaction is not greater than 50 per cent or
2. the originator in a securitisation transaction without relevant mezzanine securitisation tranches does not hold more than 20 per cent, in terms of the exposure value, of the first-loss position of this securitisation transaction and can demonstrate that the exposure value of the first-loss position substantially exceeds the expected loss on the securitised exposure.

<sup>2</sup>In a specific instance, BaFin may decide, even though the preconditions of sentence 1 are provided, that the possible reduction in the capital requirements through the securitisation transaction which the originator would achieve is not justified by a significant risk transfer to third parties and may, for that reason, deny the originator the right to claim a reduction in the capital requirements. <sup>3</sup>The relevant mezzanine securitisation tranches of a securitisation transaction are the securitisation tranches in the following interval whose securitisation risk weight is less than 1,250 per cent; the interval starts with the securitisation tranche that carries the risk of first losses and ends exactly one securitisation tranche below the securitisation tranche which

1. is the most senior securitisation tranche of this securitisation transaction, or
2. for which there is either a relevant credit assessment from an eligible ECAI which, in supervisory terms, is assigned to
  - a) credit quality step 1, if it is a CRSA securitisation transaction, or
  - b) credit quality step 1 or 2 in an IRBA securitisation transaction.

<sup>4</sup>A first-loss position within the meaning of sentence 1 number 2 is any securitisation tranche to which a securitisation risk weight of 1,250 is to be applied or which can be recognised in the deduction for securitisation positions pursuant to section 265.

(2a) <sup>1</sup>The institution may also furnish proof to BaFin of the existence of significant risk transfer in other cases than those mentioned in subsection 2 sentence 1. <sup>2</sup>To this end, the institution must have policies and methodologies in place which ensure that the reduction in the capital requirements which the originator credit institution intends to achieve is justified by a commensurate transfer of CCR to third parties. <sup>3</sup>The institution must demonstrate, in particular, that the transfer of CCR to third parties is also recognised for purposes of the institution's internal risk management and internal capital allocation.

(3) An institution that is deemed to be the originator of a securitisation transaction involving the transfer of exposures may disregard CCR exposures in the securitised portfolio when calculating the total capital charge for counterparty risks and the expected loss amount pursuant to section 104 if a significant risk transfer pursuant to subsection (2) is assured and the following minimum requirements for an effective risk transfer are met.

1. The documentation of the securitisation transaction reflects the economic substance of the transaction.
2. The CCR exposures transferred by the institution to the securitised portfolio are put beyond the reach of the institution and its creditors, including in the event of the institution's

insolvency or in the event of individual execution on the exposures, which shall be supported by the opinion of a qualified legal counsel.

3. The securities issued do not represent payment obligations of the institution.
4. The CCR exposures transferred by the institution to the securitised portfolio are legally transferred to a securitisation special-purpose entity or another entity.
5. The institution does not maintain effective or indirect control over the CCR exposures transferred to the securitised portfolio; the institution shall be deemed to maintain effective control, in particular, if it has the right to repurchase transferred CCR exposures from the transferee in order to realise associated benefits or if it is obligated to reassume risk that was transferred.
6. A contractually agreed right granted to the institution to prematurely repurchase or redeem securitisation positions or a securitised portfolio as soon as the outstanding CCR exposures of the securitised portfolio fall below a certain amount (clean-up call option) shall be deemed not to contravene an effective risk transfer only if the clean-up call option may solely be exercised at the discretion of the institution and only if the amount of the securitised portfolio does not exceed 10 per cent of its original value; the clean-up call option is not structured to avoid allocating losses to securitisation positions nor to provide credit enhancement.
7. Other than in the case of a creditworthiness-related early amortisation provision, the documentation of the securitisation transaction does not contain a clause that requires the institution to improve securitisation positions if the credit quality of the securitised portfolio deteriorates, in particular by altering the CCR underlying the securitised portfolio or increasing the yield payable to investors in the securitisation positions in response to the deterioration in the credit quality of the securitised portfolio.

(4) <sup>1</sup>An institution that is deemed to be the originator of a synthetic securitisation transaction may determine risk-weighted CRSA exposure amounts or risk-weighted IRBA exposure amounts and expected loss amounts pursuant to sentence 2 for the CCR exposures contained in the securitised portfolio if a significant risk transfer pursuant to subsection (2) is achieved and the following minimum requirements for an effective risk transfer are met.

1. The documentation of the securitisation transaction reflects the economic substance of the transaction.
2. The protection instruments used for transferring the CCR are eligible for the CCR exposures contained in the securitised portfolio and the institution meets the minimum requirements for these protection instruments pursuant to sections 172 and 173, 177 and 178; in this context, notwithstanding section 163, securitisation special-purpose entities shall under no circumstances be recognised as eligible providers of unfunded credit protection.

3. The instruments used for transferring the CCR must not contain any terms or conditions that
- a) impose significant materiality thresholds below which the protection instrument cannot be triggered if a credit default occurs in the CCR exposures contained in the securitised portfolio,
  - b) allow for or trigger the termination of the protection due to a deterioration of the credit quality of the CCR exposures of the securitised portfolio, other than in the case of a creditworthiness-related provision triggering early amortisation,
  - c) require the institution to improve securitisation positions, in particular by altering the underlying CCR, or
  - d) increase the institution's cost of protection or the yield payable to holders of securitisation positions in response to a deterioration in the credit quality of the securitised portfolio.
4. An opinion is obtained from qualified legal counsel confirming the enforceability of the protection instruments in all relevant jurisdictions.

<sup>2</sup>In calculating the risk-weighted CRSA exposure amount or the risk-weighted IRBA exposure amount as well as the expected loss amount pursuant to section 104 for the CCR exposures contained in the securitised portfolio, the institution shall replace all of its CCR exposures contained in the securitised portfolio with all of the securitisation tranches created from this securitised portfolio; each of these securitisation tranches constitutes one of the institution's securitisation positions, for which it must determine risk-weighted exposure amounts pursuant to sections 238 to 268, taking the protection instruments that exist for the securitisation tranches into account. <sup>3</sup>In this case, any maturity mismatch of the protection is to be recognised pursuant to section 233.

(5) If an institution that is deemed to be the originator of a securitisation transaction achieves no significant or effective risk transfer through this securitisation transaction, it need not recognise any risk-weighted exposure amounts for the securitisation positions of this securitisation transaction which it holds.

### **Section 233**

#### Recognising a protection maturity mismatch of the originator

(1) <sup>1</sup>An institution that is deemed to be the originator of a synthetic securitisation transaction for which there is a protection maturity mismatch shall recognise each of the securitisation positions of this securitisation transaction at its risk-weighted exposure amount RW\*

determined pursuant to Formula 9 of Annex 2 and adjusted to the maturity mismatch. <sup>2</sup>A protection maturity mismatch occurs when the shortest contractual residual maturity of one of the protection instruments by which the tranching is achieved is shorter than the longest contractual residual maturity of a CCR exposure that is currently or potentially contained in the securitised portfolio. <sup>3</sup>The contractual residual maturity of the protection instrument is to be determined pursuant to section 182 (2). <sup>4</sup>The residual maturity of the CCR exposures currently or potentially contained in the securitised portfolio that is eligible for protection purposes is the longest residual maturity of a position currently or potentially contained in the securitised portfolio, stated in years and limited to five years.

(2) <sup>1</sup>Subsection (1) shall not apply to an institution's securitisation positions arising from a synthetic securitisation transaction for which it is deemed to be the originator and for which there is a protection maturity mismatch if they are unprotected and their risk weight is 1,250 per cent. <sup>4</sup>These securitisation positions shall be recognised at their risk-weighted exposure amount determined pursuant to sections 238 to 268 or as deductible securitisation positions pursuant to section 265.

### **Section 234**

#### Prohibition of providing implicit support to securitisation transactions

(1) An institution that is deemed to be the originator of a securitisation transaction which leads or has led to a reduction in its capital requirements, or that is deemed to be the sponsor of a securitisation transaction may not provide implicit support to this securitisation transaction.

(2) Implicit support means any measure beyond the institution's contractual obligations which for the institution leads to an increase in risk or an assumption of losses from the CCR exposures of the securitised portfolio and which the institution does not carry out on market terms.

(3) <sup>1</sup>An institution that is deemed to be the originator of a securitisation transaction and that provides implicit support to it must recognise the CCR exposures of the securitised portfolio when calculating the total capital charge for counterparty risks as if the CCR exposures in the portfolio securitised by this securitisation transaction constituted direct exposures of the institution, and it must disclose the fact that, as the originator, it has provided implicit support to one of its securitisation transactions and therefore must fully recognise the CCR exposures of the portfolio securitised by this securitisation transaction when calculating its total capital charge for counterparty risks. <sup>2</sup>The institution need not calculate risk-weighted exposure amounts for the securitisation positions which it holds in the relevant securitisation transaction.

(4) Subsection (3) applies *mutatis mutandis* to an institution that is deemed to be the sponsor

of a securitisation transaction and that provides implicit support to it.

### Division 3

#### Use of credit assessments for securitisations

##### **Section 235**

###### Nominating ECAIs for securitisations

<sup>1</sup>An institution that wants to use securitisation risk weights for securitisation positions arising from securitisation transactions pursuant to section 242 or section 257 must nominate to BaFin at least one ECAI that is recognised as being prudentially eligible for securitisations.

<sup>2</sup>BaFin shall recognise ECAIs pursuant to section 52 as being prudentially eligible for securitisations only if they enjoy a strong market acceptance for securitisation transactions placed on the capital market.

##### **Section 236**

###### Requirements for using credit assessments for securitisations

<sup>1</sup>Relevant credit assessments from nominated ECAIs shall be used consistently. <sup>2</sup>Credit assessments available from several nominated ECAIs for securitisation positions arising from the same securitisation transaction may not be used selectively, even if a credit assessment from a nominated ECAI is not available for each of these securitisation positions.

##### **Section 237**

###### Relevant credit assessment for securitisations

(1) <sup>1</sup>The relevant credit assessment for a securitisation tranche shall be determined pursuant to section 44 from the credit assessments of nominated ECAIs eligible for securitisations pursuant to subsection (2) which do not constitute issuer credit assessments pursuant to section 45 (1) number 2. <sup>2</sup>Notwithstanding section 44 sentence 4, to determine the relevant credit assessment of the reference securitisation tranche for an IRBA securitisation position recognisable with a derived credit assessment pursuant to section 256, the institution may rely on the credit assessment of a nominated ECAI that is eligible for securitisations pursuant to subsection (2) whose specific credit assessment is prudentially mapped to the lowest credit quality step pursuant to section 257 (2). <sup>3</sup>If, for a securitisation tranche, only one applicable credit assessment from a nominated ECAI is available, this credit assessment, notwithstanding section 44 sentence 3, is only regarded as relevant if this ECAI had previously been named by

the institution as the leading ECAI for this securitisation transaction.

(2) <sup>1</sup>An applicable credit assessment for securitisations means any credit assessment from an ECAI recognised as being prudentially eligible for securitisations which

1. does not constitute an unsolicited credit assessment or, if the credit assessment is unsolicited, is approved for use by BaFin; section 46 sentence 3 applies *mutatis mutandis*;
2. is a credit assessment of all types of payment to which the institution is entitled from its share of the securitisation tranche assigned this credit assessment,
3. is publicly available; a credit assessment shall be considered to be publicly available only if it is published in a publicly accessible forum containing, at least, an explanation of how the performance of the securitised portfolio's CCR exposures affects the credit assessment, and is included by this ECAI in the reporting population for the transition matrix of credit assessments of this type.

<sup>2</sup>A credit assessment pursuant to sentence 1 that takes account of available protection instruments in addition to the securitised portfolio shall be eligible if this solely concerns protection instruments that were provided directly to the issuer of the securitisation tranche and which would be recognisable for the issuer of the securitisation tranche pursuant to section 154 (1) if it were an institution within the scope of application of section 1. <sup>3</sup>If the protection instruments are provided directly for a securitisation tranche, the credit assessment shall not be eligible; the provisions of sections 154 to 224 on recognising protection instruments for the purpose of reducing the capital charge remain unaffected.

## **Division 4**

### Calculation method for CRSA securitisation transactions

#### **Section 238**

##### CRSA assessment basis of a CRSA securitisation position

(1) The CRSA assessment basis of a CRSA securitisation position corresponds to its CRSA assessment basis excluding financial collateral pursuant to section 49 (2).

(2) <sup>1</sup>Notwithstanding subsection (1), the CRSA assessment basis of a CRSA securitisation position that is protected by financial collateral recognisable at its volatility-adjusted value for financial collateral corresponds to the CRSA assessment basis including financial collateral pursuant to section 49 (3). <sup>2</sup>If the institution is deemed to be the originator of the CRSA securitisation transaction to which the CRSA securitisation position belongs, and if the financial collateral is the protection instrument by which the securitisation tranche of which the CRSA securitisation position forms part is created, and if there is a protection maturity

mismatch pursuant to section 233 (1) sentence 2, then sentence 1 shall apply subject to the proviso that a maturity mismatch adjustment of 1 is used for determining the CRSA assessment basis pursuant to section 49 (3) sentence 3 number 2. <sup>3</sup>A protection maturity mismatch with reference to this financial collateral shall be recognised pursuant to section 233 (1) sentence 1.

(3) <sup>1</sup>The CRSA assessment basis of a CRSA securitisation position that is an investor's interest in securitisation transactions to be recognised by the originator shall be calculated pursuant to section 248. Subsections (1) and (2) do not apply.

### **Section 239**

#### CRSA exposure value of a CRSA securitisation position

(1) The CRSA exposure value of a CRSA securitisation position is the product of its CRSA assessment basis and its CRSA conversion figure pursuant to subsection (2).

(2) The CRSA conversion figure of a CRSA securitisation position amounts to

1. 0 per cent for the undrawn portion of a qualified securitisation liquidity facility which

a) (Repealed)

b) grants the institution an unconditional right of cancellation at any time without notice and for which the repayment of amounts drawn under the facility is senior to all other claims on the cash flows of the assets it finances,

2. 50 per cent for the undrawn portion of a qualified securitisation liquidity facility with no relevant credit assessment, and

3. 100 per cent for all other CRSA securitisation positions.

(3) The CRSA conversion figure of a CRSA securitisation position that is an investor's interest in securitisation transactions to be recognised by the originator shall be determined pursuant to section 247.

### **Section 240**

#### Risk-weighted CRSA exposure amount of a CRSA securitisation position

(1) <sup>1</sup>The risk-weighted CRSA exposure amount of a CRSA securitisation position shall be determined as the product of its CRSA exposure value and its CRSA securitisation risk weight. <sup>2</sup>Notwithstanding sentence 1, the risk-weighted CRSA exposure amount of an investor's interest in securitisation transactions to be recognised by the originator is to be

determined pursuant to section 246.

(2) <sup>1</sup>If a CRSA securitisation position is protected by eligible unfunded credit protection or by financial collateral recognisable by the institution according to the Financial Collateral Simple Method, the risk-weighted CRSA exposure amount shall be modified pursuant to section 241.

<sup>2</sup>Sentence 1 does not apply to a securitisation position that is an investor's interest in securitisation transactions to be recognised by the originator.

(3) If an institution holds two or more CRSA securitisation positions in the same CRSA securitisation transaction for which it is contractually agreed that no more than one of these CRSA securitisation positions may incur the same losses from the portfolio securitised by this CRSA securitisation transaction, the CRSA securitisation positions, to the extent that they overlap, shall be included in the calculation of the risk-weighted CRSA exposure amount solely with the CRSA securitisation position that has the highest risk-weighted CRSA exposure amount.

### **Section 241**

Recognising unfunded credit protection and financial collateral at their CRSA risk weight

(1) <sup>1</sup>For a CRSA securitisation position that is protected by eligible unfunded credit protection or by financial collateral recognisable according to the Financial Collateral Simple Method, a modified risk-weighted CRSA exposure amount adjusted to CRSA risk weights for unfunded credit protection and financial collateral recognisable according to the Financial Collateral Simple Method shall be calculated. <sup>2</sup>It shall be calculated pursuant to section 40.

(2) <sup>1</sup>If the institution is deemed to be the originator of the CRSA securitisation transaction to which the CRSA securitisation position belongs, and if the credit protection is the protection instrument by which the securitisation tranche of which the CRSA securitisation position forms part is created, and if there is a protection maturity mismatch pursuant to section 233 (1) sentence 1 with reference to the credit protection, then subsection (1) applies subject to the proviso that a maturity mismatch adjustment of 1 is used for calculating the adjusted amount of the unfunded credit protection pursuant to section 40 (3) sentence 1 number 1. <sup>2</sup>The protection maturity mismatch with reference to this credit protection shall be recognised pursuant to section 233 (1) sentence 1.

## Subdivision 1

### CRSA securitisation risk weight of CRSA securitisation positions

#### Section 242

##### CRSA securitisation risk weight of rated CRSA securitisation positions

The CRSA securitisation risk weight of a CRSA securitisation position for which there is a relevant credit assessment depends on the credit quality step to which the specific credit assessment of the relevant credit assessment is prudentially mapped, pursuant to Table 11 of Annex 1 in the case of a long-term credit assessment or pursuant to Table 10 of Annex 1 in the case of a short-term credit assessment.

#### Section 243

##### CRSA securitisation risk weight of unrated CRSA securitisation positions

(1) The CRSA securitisation risk weight of a CRSA securitisation position for which there is no relevant credit assessment (unrated CRSA securitisation position) is 1,250 per cent.

(2) <sup>1</sup>Notwithstanding subsection (1), the CRSA securitisation risk weight for an unrated CRSA securitisation position may be derived as the product of the CRSA average risk weight of the securitised portfolio of this CRSA securitisation transaction pursuant to sentence 2 and the risk concentration ratio pursuant to sentence 3, if the institution has access to sufficient current information about the composition of the securitised portfolio underlying the securitisation transaction and is therefore able to determine the CRSA average risk weight of the securitised portfolio of the CRSA securitisation transaction. <sup>2</sup>The CRSA average risk weight of the securitised portfolio of a CRSA securitisation transaction is the ratio of the sum of the risk-weighted CRSA exposure amounts to the sum of the CRSA exposure amounts of all the CCR exposures contained in the securitised portfolio of this CRSA securitisation transaction, if these CCR exposures were CRSA exposures of the institution. <sup>3</sup>The risk concentration ratio is the ratio of the sum of the nominal amounts of all securitisation tranches to the sum of the nominal amounts of all junior or *pari passu* securitisation tranches, including the securitisation tranche in which the CRSA securitisation position is held. <sup>4</sup>If the risk weight that is to be applied to an unrated CRSA securitisation position pursuant to sentence 1 is lower than the CRSA securitisation risk weight for a securitisation tranche senior to this CRSA securitisation position in the same securitisation transaction for which there is a relevant credit assessment, the CRSA securitisation risk weight of this securitisation tranche shall be applied. <sup>5</sup>The CRSA securitisation risk weight that is to be applied pursuant to sentence 1 shall not be higher than 1,250 per cent.

(3) <sup>1</sup>Notwithstanding subsection (1), for an unrated CRSA securitisation position from an

ABCP programme that

1. is part of a securitisation tranche that is economically in a second-loss or better position and the first-loss tranche provides meaningful credit enhancement to this securitisation tranche,
2. has a credit quality that at least corresponds to the credit quality of a securitisation position for which there is a relevant credit assessment that is prudentially mapped to credit quality step 3 or lower, and
3. is held by an institution that does not simultaneously hold a share of the first-loss tranche,

an institution may apply the highest CRSA risk weight that would have to be applied as a CRSA position for a CCR exposure contained in the securitised portfolio, and at least a risk weight of 100 per cent. A first-loss position pursuant to sentence 1 number 3 is any securitisation tranche for which a CRSA securitisation risk weight of 1,250 per cent is applicable or which is recognised in the deduction amount for CRSA securitisation positions pursuant to section 267.

(4) For an unrated CRSA securitisation position that is a qualified securitisation liquidity facility, an institution may apply the highest CRSA risk weight that would be applicable to a CCR exposure contained in the securitised portfolio as a CRSA exposure.

#### **Section 244**

CRSA securitisation risk weight for partially protected CRSA securitisation positions

(1) The CRSA securitisation risk weight for the unprotected part of a partially protected CRSA securitisation position shall be determined pursuant to sections 242 and 243 where the protection-buying institution's claim regarding the unprotected partial exposure amount pursuant to section 40 (4) sentence 2 is not subordinate to its protection claim regarding the eligible unfunded credit protection or financial collateral assigned to the CRSA securitisation position.

(2) If the institution's claim regarding the unprotected partial exposure amount is subordinate to its protection claim regarding the protection mentioned in subsection (1), the CRSA securitisation risk weight for the unprotected part of the partially protected CRSA securitisation position shall be determined as follows.

1. If there is a relevant credit assessment for the subordinate CRSA securitisation position that comprises the institution's subordinate claim regarding the unprotected partial exposure amount pursuant to section 40 (4) sentence 2, its CRSA securitisation risk weight is to be determined pursuant to section 242.

2. If there is no relevant credit assessment for the subordinate CRSA securitisation position pursuant to number 1 and the institution has access to sufficient current information about the composition of the portfolio securitised by this CRSA securitisation transaction and is thus able to determine the CRSA average risk weight of the securitised portfolio of this CRSA securitisation transaction, its CRSA securitisation risk weight may be determined pursuant to section 243 (2); in this case, for the purpose of determining the risk concentration ratio, the sum of the sub-assessment bases pursuant to section 49 (3) sentence 3 and the sub-assessment bases of the CRSA securitisation position substituted pursuant to section 40 (3) sentence 1, for which the subordinate CRSA securitisation position pursuant to number 1 exists, is to be treated as being senior to this subordinate CRSA securitisation position.

(3) In all other cases than the ones mentioned in subsections (1) and (2), the CRSA securitisation risk weight for the unprotected part of a partially protected CRSA securitisation position shall be 1,250 per cent.

## **Subdivision 2**

Special provisions for originators of CRSA securitisation transactions which include an investor's interest in securitisation transactions to be recognised by the originator

### **Section 245**

Calculating risk-weighted CRSA exposure amounts for investors' interests in securitisation transactions to be recognised by originators

(1) An institution that is deemed to be the originator of a CRSA securitisation transaction whose securitised portfolio includes revolving CCR exposures must recognise a risk-weighted CRSA exposure amount for the CRSA securitisation position in this CRSA securitisation transaction which comprises the investor's interest in securitisation transactions to be recognised by the originator, if

1. the CRSA securitisation transaction includes a creditworthiness-related early amortisation provision, and
2. the CCR exposures incurred after the provision is triggered which result from revolving CCR exposures that, at this time, belong to the portfolio assigned to the securitisation transaction pursuant to section 248 sentence 2 do not invariably or do not completely belong to the securitised portfolio of this securitisation transaction.

(2) The investor's interest in a securitisation transaction to be recognised by the originator in the case a securitisation transaction pursuant to subsection (1) is the CRSA exposure value of the *pro rata* amounts drawn on revolving CCR exposures whose cash flows are used to

service the claims of the holders of securitisation positions in this securitisation transaction.

(3) <sup>1</sup>Revolving CCR exposures are exposures under which the obligor's outstanding balances are permitted to fluctuate up to an agreed limit. <sup>2</sup>Revolving CCR exposures include both the balance sheet CCR exposures incurred within such a limit and the off-balance sheet CCR exposures of the undrawn portion of the limit.

(4) A creditworthiness-related early amortisation provision is any provision which, upon the occurrence of a defined event linked to the quality of the securitised portfolio or to the originator's creditworthiness, requires investors' securitisation positions to be redeemed before the originally stated maturity of the securities issued.

### **Section 246**

Risk-weighted CRSA exposure amount of an investor's interest in securitisation transactions to be recognised by the originator

(1) The risk-weighted CRSA exposure amount to be determined for an investor's interest in securitisation transactions to be recognised by the originator pursuant to section 245 (1) is the product of its CRSA assessment basis pursuant to section 248, its CRSA conversion figure pursuant to section 247 and the average CRSA risk weight of the revolving securitised portfolio pursuant to subsection (2).

(2) The average CRSA risk weight of the revolving securitised portfolio pursuant to subsection (1) is the ratio of the sum of the risk-weighted CRSA exposure amounts pursuant to section 24 sentences 2 and 3 or the risk-weighted IRBA exposure amounts pursuant to section 72 sentences 2 and 3 and 12.5 times the expected loss amounts pursuant to section 104 for all revolving CCR exposures of the securitised portfolio of this securitisation transaction to the sum of the CRSA assessment bases pursuant to section 49 or the IRBA assessment bases pursuant to section 100 for all revolving CCR exposures of the securitised portfolio of this securitisation transaction.

### **Section 247**

CRSA conversion figures for an investor's interest in securitisation transactions to be recognised by the originator

(1) <sup>1</sup>The CRSA conversion figure to be applied to an investor's interest in securitisation transactions to be recognised by the originator depends on the type of the securitised revolving CCR exposures and on whether the redemption triggered by the creditworthiness-related early amortisation provision is deemed to be controlled or uncontrolled. <sup>2</sup>Early amortisation shall be deemed to be controlled if

1. the institution has an appropriate capital and liquidity plan in place to ensure that it has sufficient modified capital and liquidity available in the event of an early amortisation to be able to finance the balance sheet CCR exposures incurred from the start of early amortisation, assuming the securitised revolving CCR exposures are drawn at a constant rate, and to be able to meet regulatory capital requirements for this purpose,
2. throughout the duration of the transaction there is *pro rata* sharing between the originator's interest and the investor's interest of payments of interest and principal, expenses, losses and recoveries based on the balance of securities receivables outstanding at one or more reference points during each month,
3. the early amortisation period is sufficient for it to be expected that at least 90 % of amounts receivable outstanding at the beginning of the early amortisation period will either have been repaid or will be recognised as in default for the securitisation transaction, and
4. the scheduled speed of early amortisation is no more rapid than would be achieved by straight-line amortisation over the period determined pursuant to number 3.

<sup>3</sup>Otherwise early amortisation shall be deemed to be uncontrolled.

(2) As long as the event triggering early amortisation has not yet occurred, the CRSA conversion figure shall be 90 per cent for early amortisations deemed to be controlled and 100 per cent for early amortisations that are deemed to be uncontrolled.

(3) As soon as the event triggering early amortisation has occurred, a CRSA conversion figure of 100 per cent must always be applied.

(4) <sup>1</sup>Notwithstanding subsection (2), the relevant CRSA conversion figure pursuant to Table 28 of Annex 1 may be applied to a CRSA securitisation position resulting from the investor's interest in a CRSA securitisation transaction to be recognised by the originator where the securitised portfolio solely comprises revolving CCR exposures that result from directly cancellable retail exposures and for which the creditworthiness-related early amortisation provision may only be triggered if the excess spread falls to a specified level. <sup>2</sup>A directly cancellable retail exposure is any exposure which, as a CCR exposure, could be assigned to the CRSA exposure class Retail business and grants the institution an unconditional right of cancellation at any time without notice. <sup>3</sup>The same applies to CRSA securitisation transactions which do not require excess spread to be trapped, subject to the proviso that the trapping point is deemed to be 450 basis points greater than the excess spread level at which early amortisation is triggered. <sup>4</sup>The excess spread is the excess of interest and fees received for a securitisation transaction over expenses and costs.

(5) <sup>1</sup>Where a CRSA securitisation position that meets the requirements laid down in subsection (4) but for which the creditworthiness-related early amortisation provision is triggered not by the excess spread level but by a different quantitative value, an institution

may apply to BaFin to use this different quantitative value within the meaning of subsection (4). <sup>2</sup>In its application, the institution must demonstrate that the requirements laid down in subsection (4) are met and explain how a different suitable quantitative value triggering early amortisation is to be defined and to what extent its economic effect corresponds to a creditworthiness-related clause pursuant to subsection (4). <sup>3</sup>BaFin shall decide on the application after having given information to and, if necessary, consulting the competent authorities of all the other member states of the European Union.

### Section 248

CRSA assessment basis for an investor's interest in securitisation transactions to be recognised by the originator

<sup>1</sup>The CRSA assessment basis for a CRSA securitisation position that is an investor's interest in securitisation transactions to be recognised by the originator is the product of

1. the distribution key pursuant to sentence 3,
2. the revolving rate of the portfolio assigned to this securitisation transaction pursuant to sentence 4, and
3. the CRSA exposure value of all CCR exposures belonging to the portfolio assigned to this securitisation transaction which are balance sheet CCR exposures.

<sup>2</sup>The portfolio assigned to a securitisation transaction comprises all the CCR exposures whose cash flows are contractually used, either wholly or partially, to determine the payments to the holders of securitisation tranches of this securitisation transaction. <sup>3</sup>The distribution key is the ratio as per the documentation of the securitisation transaction according to which cash flows from the CCR exposures belonging to the portfolio assigned to this securitisation transaction are considered to be payable to the holders of securitisation tranches of this securitisation transaction; if such a relationship is not determined contractually, the distribution key shall be the ratio of

1. the sum of the CRSA assessment bases of all securitisation tranches of this securitisation transaction and
2. the CRSA exposure value of all CCR exposures belonging to the portfolio assigned to this securitisation transaction which are balance sheet CCR exposures.

<sup>4</sup>The revolving rate of the portfolio assigned to a securitisation transaction shall be the ratio of

1. the sum of the CRSA exposure values of all CCR exposures belonging to the portfolio assigned to this securitisation transaction which are revolving balance sheet CCR exposures, and

2. the sum of the CRSA exposure values of all balance sheet CCR exposures belonging to the portfolio assigned to this securitisation transaction.

### Subdivision 3

#### Upper limits for calculating CRSA securitisation transactions

##### Section 249

Maximum risk-weighted CRSA exposure amount of a CRSA securitisation transaction

(1) <sup>1</sup>Subject to sentence 2, institutions that are deemed to be the originator or sponsor of a CRSA securitisation transaction may limit the sum of the risk-weighted CRSA exposure amounts for all CRSA securitisation positions belonging to the same CRSA securitisation transaction pursuant to subsections (2) and (3) to the sum of the risk-weighted exposure amounts plus 12.5 times the expected loss amounts for all CCR exposures of the securitised portfolio. <sup>2</sup>Section 250 applies to institutions that are deemed to be the originator of a CRSA securitisation transaction and have a CRSA securitisation position that comprises the investor's interest in securitisation transactions to be recognised by the originator.

(2) <sup>1</sup>The total risk-weighted CRSA exposure amount to be applied by an originator for all CRSA securitisation positions pursuant to section 1b (3) sentence 1 and 2 numbers 1 and 2 of the Banking Act from the same CRSA securitisation transaction may be limited to the sum of the risk-weighted CRSA exposure amounts pursuant to section 24 sentence 2 of all CRSA positions pursuant to section 24 sentence 1 in the securitised portfolio and the risk-weighted IRBA exposure amounts pursuant to section 84, plus 12.5 times the expected loss amounts pursuant to section 104 of all IRBA exposures in the securitised portfolio, minus 12.5 times the deduction amount pursuant to section 267 for CRSA securitisation positions, provided that the deduction amount is attributable to the CRSA securitisation positions belonging to this CRSA securitisation transaction. <sup>2</sup>A CRSA risk weight of 150 per cent must always be applied to CCR exposures contained in the securitised portfolio which, as CCR exposures of the institution, would be assignable to the CRSA exposure class Past due items pursuant to section 25 (16).

(3) <sup>1</sup>Subsection (1) applies *mutatis mutandis* to an institution that is deemed to be the sponsor of a CRSA securitisation transaction. <sup>2</sup>Subsections (1) and (2) do not apply if a sponsor does not comply with the minimum requirements for IRBA use pursuant to sections 106 to 153 relevant for calculating risk-weighted IRBA exposure amounts and expected loss amounts for the IRBA-compatible claims of the securitised portfolio.

**Section 250**

Maximum risk-weighted CRSA exposure amount for originators of CRSA securitisation transactions which include an investor's interest in securitisation transactions to be recognised by the originator

(1) An institution that is deemed to be the originator of a CRSA securitisation transaction which includes an investor's interest in securitisation transactions to be recognised by the originator may limit the risk-weighted CRSA exposure amount calculated for all the CRSA securitisation positions belonging to this CRSA securitisation transaction to the higher of the following two amounts:

1. the sum of the risk-weighted CRSA exposure amounts for those CRSA securitisation positions held by the originator of the securitisation transaction which are not an investor's interest in securitisation transactions to be recognised by the originator plus 12.5 times the deduction amount for CRSA securitisation positions pursuant to section 267, provided that the deduction amount is attributable to the CRSA securitisation positions belonging to this CRSA securitisation transaction, or
2. the risk-weighted CRSA exposure amount for the investor's interest in securitisation transactions to be recognised by the originator which results from applying a CRSA conversion figure of 100 per cent.

(2) The net gains from the capitalisation of the future income from the CCR exposures of the securitised portfolio, which pursuant to section 10 (3a) sentence 4 of the Banking Act are not part of the reserves pursuant to section 10 (3a) sentence 1 of the Banking Act, shall be treated outside the maximum amount calculated pursuant to subsection (1).

## Division 5

### Method of calculation for IRBA securitisation transactions

#### Section 251

##### Assessment basis of an IRBA securitisation position

(1) The assessment basis of an IRBA securitisation position is the IRBA assessment basis pursuant to section 100.

(2) <sup>1</sup>Notwithstanding subsection (1), the assessment basis of an IRBA securitisation position which is protected by financial collateral pursuant to section 154 (1) sentence 1 number 1, to be recognised at its volatility-adjusted value for financial collateral pursuant to section 187, is the positive difference between the following amounts:

1. the product of its IRBA assessment basis pursuant to subsection (1) and the market value volatility adjustment pursuant to section 188 increased by 1 and expressed as a decimal number for the IRBA exposure which is incurred by this IRBA securitisation position, and
2. the sum of the protected sub-assessment bases determined pursuant to sentence 2.

<sup>2</sup>An amount equivalent to the product of

1. the volatility-adjusted value for financial collateral for that part of the financial collateral's market value assigned to this IRBA securitisation position, and
2. the maturity mismatch adjustment pursuant to section 186 for the financial collateral in relation to this IRBA securitisation position

shall be split off as a protected sub-assessment basis from the IRBA assessment basis of this IRBA securitisation position which has been increased pursuant to sentence 1 number 1 for each portion of the market value assigned to it of financial collateral which is to be recognised at its volatility-adjusted value for financial collateral. <sup>3</sup>The market value of the financial collateral shall be reduced by the portion assigned to this IRBA securitisation position pursuant to sentence 2 number 1.

(3) <sup>1</sup>If the institution is deemed to be the originator of the IRBA securitisation transaction to which this IRBA securitisation position belongs, and if the financial collateral is the protection instrument by which the securitisation tranche, of which the IRBA securitisation position forms part, is created, and if there is a protection maturity mismatch pursuant to section 233 (1), then subsection (2) applies subject to the proviso that a maturity mismatch adjustment of 1 shall be used to determine the IRBA assessment basis pursuant to subsection (2) sentence 2 number 2. <sup>2</sup>A protection maturity mismatch in relation to this financial

collateral shall be recognised pursuant to section 233 (1) sentence 1.

(4) <sup>1</sup>The IRBA assessment basis of an IRBA securitisation position that is an investor's interest in securitisation transactions to be recognised by the originator shall be determined pursuant to section 262 sentence 2. <sup>2</sup>Subsections (1) and (2) do not apply.

### **Section 252**

#### **IRBA exposure value of an IRBA securitisation position**

(1) The IRBA exposure value of an IRBA securitisation position is the product of its IRBA assessment basis and its IRBA conversion figure pursuant to subsection (2).

(2) The IRBA conversion figure of an IRBA securitisation position amounts to

1. 0 per cent for the undrawn portion of a qualified securitisation liquidity facility that grants the institution an unconditional right of cancellation at any time without notice and for which the repayment of amounts drawn is senior to any other claims on the cash flows of the assets it finances, and

2. 100 per cent for all other IRBA securitisation positions.

(3) The IRBA conversion figure of an IRBA securitisation position that is an investor's interest in securitisation transactions to be recognised by the originator shall be determined pursuant to section 247.

### **Section 253**

#### **Risk-weighted IRBA exposure amount of an IRBA securitisation position**

(1) The risk-weighted IRBA exposure amount of an IRBA securitisation position shall be determined as the product of its IRBA exposure value and its IRBA securitisation risk weight.

(2) <sup>1</sup>If protection instruments in the form of eligible unfunded credit protection pursuant to section 162 are assigned to an IRBA securitisation position, the risk-weighted IRBA exposure amount shall be modified pursuant to section 254. <sup>2</sup>Sentence 1 does not apply to an IRBA securitisation position that is an investor's interest in securitisation transactions to be recognised by the originator.

(3) The risk-weighted IRBA exposure amount of an IRBA securitisation position may be reduced by 12.5 times the amount of the value adjustments made for this IRBA securitisation position down to zero provided these value adjustments are not part of the institution's liable capital pursuant to section 10 (2) sentence 2 of the Banking Act.

(4) For an IRBA securitisation position whose IRBA securitisation risk weight is 1,250 per cent and which belongs to an IRBA securitisation transaction for which the institution is deemed to be the originator, the value adjustments made for the CCR exposures contained in the securitised portfolio, provided they do not constitute part of the institution's liable capital pursuant to section 10 (2) sentence 2 of the Banking Act, may be recognised as a value adjustment made for this IRBA securitisation position if subsection (3) is applied.

(5) If an institution holds several IRBA securitisation positions in the same IRBA securitisation transaction for which it is contractually ensured that no more than one of these IRBA securitisation positions can incur the same losses from the portfolio securitised by this IRBA securitisation transaction, the IRBA securitisation positions, to the extent that they overlap, shall be recognised for the purpose of determining the risk-weighted exposure amount solely with the IRBA securitisation position that has the highest risk-weighted IRBA exposure amount.

### **Section 254**

#### Recognition of unfunded credit protection at its IRBA risk weight

(1) <sup>1</sup>For an IRBA securitisation position which is protected by eligible unfunded credit protection and which is not an investor's interest in securitisation transactions to be recognised by the originator, a risk-weighted IRBA exposure amount modified to IRBA risk weights of unfunded credit protection shall be calculated. <sup>2</sup>The risk-weighted IRBA exposure amount modified to IRBA risk weights of unfunded credit protection is calculated by adding the following two sub-amounts:

1. the sum of the products of the protected partial exposure value determined pursuant to subsections (3) to (5) for any unfunded credit protection pursuant to sentence 1 and the protection provider's IRBA risk weight pursuant to sentence 3, and
2. the product of the unprotected partial exposure value calculated pursuant to subsections (3) to (5) and the IRBA securitisation risk weight of partially protected IRBA securitisation positions pursuant to section 261.

<sup>3</sup>The protection provider's IRBA risk weight is the IRBA risk weight subject to the PD/LGD approach which would be determined as the IRBA exposure for the contingent claim arising from the unfunded credit protection owed by this protection provider.

(2) <sup>1</sup>If the institution is deemed to be the originator of the IRBA securitisation transaction to which the IRBA securitisation position belongs, and if the unfunded credit protection is the protection instrument by which the securitisation tranche, of which the IRBA securitisation position forms part, is created, and if there is a protection maturity mismatch pursuant to section 233 (1) sentence 2 in relation to the unfunded credit protection, then subsection (1)

applies subject to the proviso that a maturity mismatch adjustment of 1 shall be used to determine the modified amount of the unfunded credit protection pursuant to section 204.

<sup>2</sup>The protection maturity mismatch in relation to this unfunded credit protection shall be recognised pursuant to section 233 (1) sentence 1.

(3) <sup>1</sup>To calculate the protected partial exposure values and the unprotected partial exposure value of an IRBA securitisation position pursuant to subsection (1) sentence 2, the non-substituted assessment basis of the IRBA securitisation position must first be determined.

<sup>2</sup>The non-substituted assessment basis is the IRBA assessment basis of the IRBA securitisation position, taking account of financial collateral pursuant to section 251 (2) if financial collateral pursuant to section 154 (1) sentence 1 number 1 recognised at its volatility-adjusted value for financial collateral pursuant to section 187 is assigned to the IRBA securitisation position, otherwise it is its IRBA assessment basis pursuant to section 251 (1).

(4) <sup>1</sup>For each portion of the amount of eligible unfunded credit protection assigned to this IRBA securitisation position, the mismatch-adjusted amount of the unfunded credit protection pursuant to section 204 shall be split off from the non-substituted assessment basis pursuant to subsection (3) and recorded as the substituted assessment basis of the IRBA securitisation position for this unfunded credit protection. <sup>2</sup>The value of the unfunded credit protection shall be reduced by the amount assigned to the IRBA securitisation position. <sup>3</sup>The difference between the non-substituted assessment basis and the assessment basis of the IRBA securitisation position substituted for unfunded credit protection shall be set as the non-substituted assessment basis of the IRBA securitisation position for recognising additional unfunded credit protection pursuant to sentence 1.

(5) <sup>1</sup>The protected partial exposure value of an IRBA securitisation position pursuant to subsection (2) is, for all recognised unfunded credit protection pursuant to subsection (4), the product of the substituted assessment basis of this IRBA securitisation position for this unfunded credit protection and the IRBA conversion figure of this IRBA securitisation position. <sup>2</sup>The unprotected partial exposure value of an IRBA securitisation position pursuant to subsection (1) is the product of the non-substituted assessment basis of this IRBA securitisation position which remains after recognising all unfunded credit protection assigned to this IRBA securitisation position, and the IRBA conversion figure for this IRBA securitisation position.

## **Subdivision 1**

### IRBA securitisation risk weight of IRBA securitisation positions

#### **Section 255**

##### Procedures for determining the IRBA securitisation risk weight

(1) <sup>1</sup>The following procedures can be used to determine the IRBA securitisation risk weight of an IRBA securitisation position.

1. Ratings-Based Method pursuant to section 257 if there is a credit assessment for an IRBA securitisation position from an ECAI nominated pursuant to section 235 or an inferred credit assessment pursuant to section 256,
2. Supervisory Formula Method pursuant to section 258, or
3. Internal Assessment Approach pursuant to section 259.

<sup>2</sup>IRBA securitisation positions to which none of the methods listed under numbers 1 to 3 are applied and which are not recognised pursuant to sections 260 or 261 shall be assigned an IRBA securitisation risk weight of 1,250 per cent. <sup>3</sup>The IRBA securitisation risk weight for an IRBA securitisation position that is an investor's interest in securitisation transactions to be recognised by the originator shall be determined pursuant to section 262.

(2) <sup>1</sup>Notwithstanding subsection (1) sentence 2, an institution may apply the securitisation risk weight pursuant to section 243 (2) or (3) as the IRBA securitisation risk weight to an unrated IRBA securitisation position which is not an asset-backed money market paper and which relates to an ABCP programme and which falls within the scope of application of an Internal Assessment Approach for which approval is being sought. <sup>2</sup>An institution may invoke the exception clause described in sentence 1 only if, in BaFin's estimation, the ratio of the sum of all IRBA exposure values calculated pursuant to sentence 1 to the sum of the exposure values of all IRBA securitisation positions is immaterial and, in particular, does not exceed 10 per cent of the aggregated IRBA exposure values of all this institution's IRBA securitisation positions to be recognised in connection with applying section 259.

#### **Section 256**

##### Inferred credit assessment

(1) <sup>1</sup>For an IRBA securitisation position which forms part of a securitisation tranche for which there is no relevant credit assessment pursuant to sections 235 to 237 (unrated IRBA securitisation position), an institution shall use the relevant credit assessment available for a reference securitisation position as an inferred credit assessment. <sup>2</sup>A reference securitisation

position is any of the securitisation tranches belonging to the same IRBA securitisation transaction which is, in all respects, subordinate to the securitisation tranche of which the unrated IRBA securitisation position forms part and whose residual maturity is not shorter than that of the securitisation tranche of which the unrated IRBA securitisation position forms part.<sup>3</sup> An inferred credit assessment is the credit assessment from an ECAI nominated pursuant to section 235 which is available for the most senior reference securitisation position.<sup>4</sup> If several credit assessments by nominated ECAIs are available for this reference securitisation position, the relevant credit assessment shall be that which has been prudentially mapped to the lowest credit quality step pursuant to section 257.

(2) The credit assessment reached using the Internal Assessment Approach may be applied to an IRBA securitisation position within the meaning of section 259 (1) sentence 1 for which both an inferred credit assessment pursuant to subsection (1) and a credit assessment reached using the Internal Assessment Approach pursuant to section 259 are available.

### **Section 257**

#### **Ratings-Based Method**

(1) The Ratings-Based Method shall be applied to IRBA securitisation positions for which a credit assessment from an ECAI nominated pursuant to section 235 or an inferred credit assessment pursuant to section 256 is available.

(2)<sup>1</sup> When applying the Ratings-Based Method, the IRBA securitisation risk weight for an IRBA securitisation position shall be determined in accordance with the credit quality step to which the specific credit assessment of the relevant credit assessment has been prudentially mapped and the category to which the IRBA securitisation position is to be assigned pursuant to subsection (3), namely according to Table 18 of Annex 1 for a long-term credit assessment or Table 19 of Annex 1 for a short-term credit assessment.<sup>2</sup> If the IRBA securitisation risk weight determined pursuant to sentence 1 is smaller than 1,250 per cent, it shall be multiplied by the supervisory scaling factor pursuant to section 86 (4).

(3)<sup>1</sup> Every IRBA securitisation position pursuant to subsection (1) which belongs

1. to a securitisation transaction whose securitised portfolio contains fewer than six effective CCR exposures pursuant to sentence 3 shall be assigned to the “non-granular” category,
2. to a securitisation transaction whose securitised portfolio contains at least six effective CCR exposures pursuant to sentence 3 and which forms part of the most senior securitisation tranche pursuant to subsection (4) shall be assigned to the “granular and most senior” category,

3. to a securitisation transaction whose securitised portfolio contains at least six effective CCR exposures pursuant to sentence 3 and which does not form part of the most senior securitisation tranche pursuant to subsection (4) shall be assigned to the “granular and not most senior” category.

<sup>2</sup>To determine the number of effective exposures in a securitised portfolio, all exposures contained in the securitised portfolio to persons or commercial partnerships of a group of connected clients within the meaning section 4 (8) are to be aggregated; if the securitised portfolio contains portions of securitisation tranches, this aggregation shall be carried out at the level of these portions of securitisation tranches without looking through the securitised portfolios of these securitisation tranches. <sup>3</sup>The institution can opt to determine the number N of effective CCR exposures of a securitised portfolio according to either Formula 10 or Formula 11 of Annex 2.

(4) The most senior securitisation tranche is a securitisation tranche whose holders are subordinated to no claims other than those from cash flows for market value hedging transactions of the securitised portfolio, fees and other similar payments.

### **Section 258**

#### Supervisory Formula Method

(1) <sup>1</sup>An institution may apply the Supervisory Formula Method to any IRBA securitisation position that is not an IRBA securitisation position for which, pursuant to section 257 (1), the Ratings-Based Method or, pursuant to section 259, the Internal Assessment Approach shall be used. <sup>2</sup>An institution that is deemed to be neither an originator nor a sponsor of an IRBA securitisation transaction may apply the Supervisory Formula Method only to an IRBA securitisation position for which BaFin has not objected to the use of the IRBA securitisation risk weight calculated according to the Supervisory Formula. <sup>3</sup>This is conditional on the institution having access to sufficiently up-to-date information on the composition of the securitised portfolio underlying the securitisation transaction.

(2) When using the Supervisory Formula Method, the IRBA securitisation risk weight is the greater of the following two risk weights:

1. a risk weight of 7 per cent;
2. the risk weight calculated according to Formula 13 in Annex 2.

(3) <sup>1</sup>If the ratio  $C_1$ , pursuant to section 257 (3) sentence 3 in conjunction with Formula 11 of Annex 2, of the assessment basis of the CCR exposure in the securitised portfolio with the

largest assessment basis to the sum of the assessment bases of all CCR exposures contained in the securitised portfolio does not exceed 3 per cent, then for determining the risk weight pursuant to subsection (2) number 2 in conjunction with Formula 13 of Annex 2,

1. the exposure-weighted LGD, ELGD, may, notwithstanding Formula 13 of Annex 2 sentence 5 number 6, be set equal to 50 per cent and
2. the number N of effective CCR exposures of the securitised portfolio may be determined, notwithstanding the calculation method for Formula 13 of Annex 2, according to Formula 11 or Formula 12 of Annex 2, at the institution's discretion.

<sup>2</sup>The reduced rate set forth in sentence 1 number 1 shall not apply to re-securitisations.

(4) If the securitised portfolio of the IRBA securitisation transaction to which the IRBA securitisation position to be recognised using the Supervisory Formula belongs predominantly comprises CCR exposures which, as CCR exposures of the institution, would be assigned to the IRBA exposure class Retail claims, the parameters  $h = 0$  and  $v = 0$  may be used in the equation to determine the risk weight pursuant to subsection (2) number 2 in conjunction with Formula 13 of Annex 2.

## Section 259

### Internal Assessment Approach

(1) <sup>1</sup>Where the conditions pursuant to subsections (2) to (5) are met, an institution shall apply a credit assessment determined using an internal process (Internal Assessment Approach) to an unrated IRBA securitisation position that is not an asset-backed money market paper and which relates to an ABCP programme if

1. this IRBA securitisation position falls within the scope of application of the Internal Assessment Approach determined by the institution pursuant to subsection (5) and
2. the credit assessment for the IRBA securitisation position derived using the Internal Assessment Approach, at the time of its inception or when it was initially included in this Internal Assessment Approach, was assigned to a credit quality step within this Internal Assessment Approach which is associated with a nominated ECAI's specific credit assessment which has been prudentially mapped to one of the credit quality steps 1 to 8 pursuant to section 257.

<sup>2</sup>The IRBA securitisation risk weight of an IRBA securitisation position pursuant to sentence 1 shall be calculated pursuant to section 257 using the credit assessment reached using the Internal Assessment Approach as a basis. <sup>3</sup>If the credit assessment calculated using the Internal Assessment Approach is worse than such an assessment pursuant to sentence 1

number 2, the risk-weighted IRBA exposure amount of the securitisation position may be calculated using the Supervisory Formula Method pursuant to section 258 if the relevant conditions are in place. <sup>4</sup>When calculating the amount pursuant to sentence 3, the KIRB capital requirement pursuant to Formula 13 in Annex 2 may be determined based on the data obtained using the Internal Assessment Approach.

(2) <sup>1</sup>An institution may apply an Internal Assessment Approach pursuant to subsection (1) only if

1. it has obtained approval from BaFin,
2. it complies with the minimum requirements for using the Internal Assessment Approach for IRBA securitisation positions pursuant to subsection (3) and
3. the Internal Assessment Approach for an IRBA securitisation position is applied to an ABCP programme for which the requirements for ABCP programmes suited for the Internal Assessment Approach pursuant to subsection (4) have been met.

<sup>2</sup>Approval pursuant to sentence 1 number 1 shall be granted by BaFin upon application for each Internal Assessment Approach for which a suitability examination has determined compliance with the minimum requirements for the use of Internal Assessment Approaches.

<sup>3</sup>Suitability examinations shall be ordered by BaFin on the basis of section 44 (1) sentence 2 of the Banking Act for each Internal Assessment Approach which the institution has submitted for a suitability examination. <sup>4</sup>BaFin may revoke the approval granted under sentence 1 number 1 if the Internal Assessment Approach no longer complies with the minimum requirements for the use of Internal Assessment Approach. <sup>5</sup>An institution using an Internal Assessment Approach to calculate the IRBA securitisation risk weight of IRBA securitisation positions may switch to one of the approaches pursuant to section 258 or section 260 only on material grounds and only with BaFin's consent. <sup>6</sup>The institution must request permission to the intended switch from BaFin, stating the reasons.

(3) An institution's Internal Assessment Approach is in compliance with the minimum requirements for the use of Internal Assessment Approaches if

1. the institution can demonstrate that its Internal Assessment Approach reflects the publicly available assessment methodology of one or more eligible ECAIs for securities backed by CCR exposures which are of the same type as the securitised CCR exposures; an assessment methodology that is disclosed only to the institution may also be regarded as publicly available if it is the assessment methodology used by that ECAI which has issued the relevant credit assessment for the money market paper of this ABCP programme, if this assessment permits a more robust internal assessment owing to the specific features of the ABCP programme, the securitised portfolio or the IRBA securitisation position, and provided BaFin has not objected to this approach;

2. quantitative elements, especially stress factors, which the institution uses to assign the IRBA securitisation position to a rating grade in the Internal Assessment Approach associated with a specific credit assessment are at least as conservative as the quantitative elements used by the ECAI in its assessment methodology, to one of the specific credit assessments of which the rating grade of the IRBA securitisation position determined using the Internal Assessment Approach is assigned;
3. in developing its Internal Assessment Approach, the institution takes into consideration the published ratings methodologies of eligible ECAIs that rate the commercial paper of the ABCP programme for rating shares in securitisation tranches used to securitise the same type of CCR exposures as those contained in the securitised portfolio of this IRBA securitisation transaction; the method of consideration and the reason for any non-consideration shall be documented and updated regularly;
4. the Internal Assessment Approach shall include rating grades which permit internal assessments to be unambiguously mapped to the credit assessments of those ECAIs whose ratings methodologies for assigning shares in securitisation tranches to specific credit assessments are relevant for the institution's Internal Assessment Approach; the procedure for assigning internal assessments to these credit assessments shall be documented;
5. the Internal Assessment Approach is a key element of the institution's risk management processes, including its lending policy, its management information systems and its internal capital allocation processes;
6. the Internal Assessment Approach and the subsequent internal assessments of IRBA securitisation positions are regularly reviewed by qualified internal or external bodies; the review and the result shall be documented; qualified internal bodies include the institution's internal audit or risk management functions if they, in terms of organisational structure and procedures, are independent of both the unit within the institution which is responsible for ABCP programme business as well as of those units within the institution which manage business with the sellers of the CCR exposures securitised by the securitisation transaction and with the obligors of the securitised CCR exposures; qualified external bodies include external auditors or ECAIs; internal and external bodies must have sufficient specialist knowledge to review Internal Assessment Approaches;
7. the institution compares the assumptions underlying its internal assessment of the IRBA securitisation position and the internal assessment itself with the credit performance of the securitised portfolio and the IRBA securitisation position in order to evaluate the robustness of its Internal Assessment Approach; if this comparison shows that the assumptions underlying the internal assessment or the internal assessments themselves routinely diverge from the tracked credit performance of the securitised portfolio or the IRBA securitisation position, the Internal Assessment Approach shall be corrected.

(4) The requirements for ABCP programmes deemed suitable for Internal Assessment Approaches shall be met for every ABCP programme if all of the following conditions are met.

1. An eligible credit assessment for securitisations pursuant to section 237 (2) is available for the commercial paper issued under the ABCP programme.
2. The ABCP programme contains credit and investment guidelines that obligate the ABCP programme administrator,
  - a) in deciding on the purchase of assets to be securitised, to consider the characteristics of the assets being purchased, the type and monetary value of the securitisation liquidity facilities and credit enhancements provided to the ABCP programme, the contractual assignment of loss risks from the assets being securitised and the legal and economic isolation of the assets to be securitised from the entity selling the assets, and
  - b) to perform a credit analysis of the asset seller's risk profile, including an analysis of past and expected future financial performance, current and expected future market position and competitiveness, current leverage, current and expected future cash flow and interest coverage, the existence and level of the external debt rating and the seller's underwriting standards, servicing capabilities and collection processes.
3. The ABCP programme has defined criteria for purchasing assets to be securitised which, in particular, exclude the purchase of assets that are significantly past due or defaulted, limit excess concentration to individual obligor or geographic area, and limit the residual maturity of the assets to be purchased.
4. The ABCP programme has policies and processes for the collection of purchased assets that take into account the operational capability and credit quality of the servicer and which mitigate seller/servicer risk for the collectibility of the purchased assets, especially through contractual clauses triggered by changes in the credit quality of the seller or servicer which would preclude the commingling of funds accruing to the ABCP programme with funds of the seller/servicer.
5. The servicer of the ABCP programme is obligated to take into account all risk factors when valuing the asset portfolio that is being considered for purchase, especially counterparty credit risk and dilution risk of the assets to be purchased.
6. If the credit enhancements to be provided by the seller of the assets to be purchased are sized based only on the counterparty credit risk of the assets in question, the servicer of the ABCP programme is obligated to establish a separate reserve for dilution risk if dilution risk is material for the particular exposure pool.

7. The servicer of the ABCP programme is required to review several years of historical information in order to size the required credit enhancements for the ABCP programme, including losses, delinquencies, dilutions and the turnover rate of the receivables to be securitised.

8. The ABCP programme incorporates structural features – for example, wind-down triggers – into the purchase of exposures in order to mitigate potential credit deterioration of the assets to be securitised.

(5) The scope of application of an Internal Assessment Approach to be determined by the institution is defined by the type of IRBA securitisation position which can be captured by this Internal Assessment Approach according to its risk features, especially the type of securitised CCR exposures underlying an IRBA securitisation position, the features of the IRBA securitisation position, IRBA securitisation transaction or ABCP programme or the range of available data.

### Section 260

IRBA securitisation risk weight calculated according to the fallback solution for qualified securitisation liquidity facilities

<sup>1</sup>For an unrated IRBA securitisation position

1. which is formed by the undrawn portion of a qualified securitisation liquidity facility,
2. for which there is no inferred credit assessment pursuant to section 256,
3. for which the IRBA securitisation risk weight pursuant to section 259 (1) is not applicable and
4. for which an institution may not use the Supervisory Formula Method pursuant to section 258,

an institution, subject to the consent of BaFin and upon prior application, may temporarily apply the highest of the CRSA risk weights to be applied to one of the CCR exposures contained in the securitised portfolio of this securitisation transaction as the IRBA securitisation risk weight. <sup>2</sup>Institutions making use of sentence 1 are required to designate, via a report to be submitted by the reporting date at the end of a calendar quarter, the IRBA securitisation positions for which they are applying the IRBA securitisation risk weight pursuant to sentence 1. <sup>3</sup>This report shall contain

1. the type of the respective IRBA securitisation position,
2. each of the attendant IRBA securitisation transactions,

3. the reason why the IRBA securitisation risk weight of the respective IRBA securitisation position cannot be set pursuant to sections 258 or 259,
4. the residual maturity of the respective IRBA securitisation position and
5. the point in time by which the institution intends to be able to calculate the IRBA securitisation risk weight for the respective IRBA securitisation position pursuant to sections 257, 258 or 259.

### **Section 261**

#### IRBA securitisation risk weight for partially protected IRBA securitisation positions

(1) The IRBA securitisation risk weight for the unprotected portion of a partially protected IRBA securitisation position shall be calculated according to the relevant method described in section 255 sentence 1 if the protection-buying institution's claim in respect of the unprotected partial exposure value pursuant to section 254 (5) sentence 2 is not contractually subordinated to its claim to the eligible unfunded credit protection or financial collateral, to be recognised at its volatility-adjusted value for financial collateral, assigned to the IRBA securitisation position.

(2) If the institution's claim in respect of the unprotected partial exposure value is subordinate to its claim to the credit protection mentioned in subsection (1), the IRBA securitisation risk weight for the unprotected portion of the partially protected IRBA securitisation position shall be determined as follows.

1. If, for the subordinated IRBA securitisation position which is formed by the institution's subordinated claim in respect of the unprotected partial exposure value, there is a relevant credit assessment pursuant to sections 235 to 237 or an inferred credit assessment pursuant to section 256, its IRBA securitisation risk weight shall be calculated according to the Ratings-Based Method pursuant to section 257.
2. If the subordinated IRBA securitisation position pursuant to number 1 is recognised by the institution using the Supervisory Formula Method, its IRBA securitisation risk weight shall be calculated pursuant to section 258 (2). The value of T according to Formula 13 of Annex 2 shall be defined as the difference between the protection ratio for financial collateral,  $e^*$ , and the protection ratio for unfunded credit protection, g; the protection ratio for financial collateral,  $e^*$ , is the ratio, expressed as a decimal figure, of the IRBA assessment basis, taking into account financial collateral pursuant to section 251 (2) for the IRBA securitisation position, to the product of the value according to Formula 13 in Annex 2 and the share of the IRBA securitisation position in the securitisation tranche; the protection ratio for unfunded

credit protection,  $g$ , is the ratio, expressed as a decimal figure, of the sum of the substituted assessment bases calculated for all unfunded credit protection assigned to the IRBA securitisation positions pursuant to section 254 (4) sentence 1 to the product of the value according to Formula 13 of Annex 2 sentence 5 number 1 letter (b) and the IRBA securitisation position's share in the securitisation tranche; the IRBA securitisation position's share in a securitisation tranche is the ratio of the IRBA assessment basis excluding financial collateral of the IRBA securitisation position to the IRBA assessment basis excluding financial collateral of the securitisation tranche according to Formula 13 of Annex 2 sentence 5 number 7, of which this IRBA securitisation position forms part.

(3) In all other cases than the ones mentioned in subsections (1) and (2), the IRBA securitisation risk weight for the unprotected portion of a partially protected IRBA securitisation position shall be 1,250 per cent.

## **Subdivision 2**

Special provisions for originators of IRBA securitisation transactions which include an investor's interest in securitisation transactions to be recognised by the originator

### **Section 262**

Calculating risk-weighted IRBA exposure amounts for investors' interests in securitisation transactions to be recognised by originators

<sup>1</sup>An institution that is deemed to be the originator of an IRBA securitisation transaction whose securitised portfolio includes revolving CCR exposures and which contains a creditworthiness-related early amortisation provision shall recognise a risk-weighted IRBA exposure amount for the IRBA securitisation position which, for this IRBA securitisation transaction, is formed by the investor's interest in securitisation transactions to be recognised by the originator. <sup>2</sup>For calculating the risk-weighted IRBA exposure amount, sections 245 to 248 shall apply subject to the following provisions.

1. In sections 245 to 248, in each case, the IRBA securitisation transaction shall replace the CRSA securitisation transaction, the IRBA securitisation position shall replace the CRSA securitisation position, the IRBA exposure value shall replace the CRSA exposure value, the average IRBA risk weight of the revolving securitised portfolio shall replace the average CRSA risk weight of the revolving securitised portfolio, and the IRBA assessment basis shall replace the CRSA assessment basis.

2. The IRBA assessment basis pursuant to section 248 sentence 1 shall be increased by the product of

- a) the distribution key pursuant to section 248 sentence 3 and
- b) the sum of IRBA exposure values for all off-balance-sheet CCR exposures belonging to the portfolio dedicated to this securitisation transaction pursuant to section 248 sentence 2 which are revolving CCR exposures.

### **Subdivision 3**

Upper limits for the method of calculating IRBA securitisation transactions

#### **Section 263**

Maximum risk-weighted IRBA exposure amount of an IRBA securitisation transaction

(1) <sup>1</sup>The total risk-weighted IRBA exposure amount to be applied by an institution to all IRBA securitisation positions belonging to the same IRBA securitisation transaction may, subject to sentence 3, be limited to the sum of the risk-weighted CRSA exposure amounts pursuant to section 24 sentences 2 and 3 of all CRSA positions pursuant to section 24 sentence 1 of the securitised portfolio and of the risk-weighted IRBA exposure amounts pursuant to section 72 sentences 2 and 3 and 12.5 times the expected loss amounts pursuant to section 104 of all IRBA positions of the securitised portfolio minus 12.5 times the deduction amount for IRBA securitisation positions pursuant to section 268, provided that the deduction amount pursuant to section 268 (2) relates to the IRBA securitisation positions belonging to this IRBA securitisation transaction. <sup>2</sup>A CRSA risk weight of 150 per cent must always be applied to CCR exposures contained in the securitised portfolio which, as CCR exposures of the institution, would have to be assigned to the CRSA exposure class Past due items pursuant to section 25 (16). <sup>3</sup>Section 264 applies to institutions that are deemed to be the originator of an IRBA securitisation transaction containing an IRBA securitisation position that is formed by the investor's interest in securitisation transactions to be recognised by the originator.

(2) Subsection (1) does not apply to IRBA securitisation transactions for which an institution is deemed to be the sponsor or investor and for which it does not meet the minimum requirements for IRBA use pursuant to sections 106 to 153 for determining risk-weighted IRBA exposure amounts and expected loss amounts for IRBA-compatible assets of the securitised portfolio.

### Section 264

Maximum risk-weighted IRBA exposure amount for originators of IRBA securitisation transactions which include an investor's interest in securitisation transactions to be recognised by the originator

(1) An institution that is deemed to be the originator of an IRBA securitisation transaction that includes an investor's interest in securitisation transactions to be recognised by the originator may limit the risk-weighted IRBA exposure amount determined for all the IRBA securitisation positions belonging to this IRBA securitisation transaction to the greater of the following two amounts:

1. the sum of the risk-weighted IRBA exposure amounts for those IRBA securitisation positions held by the originator in the securitisation transaction which are not an investor's interest in securitisation transactions to be recognised by the originator plus 12.5 times the deduction amount for IRBA securitisation positions pursuant to section 268 (1), provided that the deduction amount pursuant to section 268 (2) relates to the IRBA securitisation positions belonging to this IRBA securitisation transaction, or
2. the risk-weighted IRBA exposure amount for the investor's interest in securitisation transactions to be recognised by the originator which results from applying an IRBA conversion figure of 100 per cent.

(2) The net profits from capitalising future cash flows from the securitised portfolio, which pursuant to section 10 (3a) sentence 4 of the Banking Act are not part of the reserves pursuant to section 10 (2a) sentence 1 of the Banking Act, shall be excluded from the comparative calculation pursuant to subsection (1).

## Division 6

### Deduction amounts for securitisation positions

#### Section 265

##### Deduction amount for securitisation positions

<sup>1</sup>A securitisation position is regarded as having to be backed fully by own funds if a CRSA or IRBA risk weight of 1,250 per cent is applied to it. <sup>2</sup>The deduction amount for securitisation positions in the banking book for which an institution has chosen the deduction pursuant to section 10 (6a) number 3 of the Banking Act is the sum of the deduction amount for CRSA securitisation positions pursuant to section 267 and the deduction amount for IRBA securitisation positions pursuant to section 268 (1).

## Section 266

### Recognising securitisation positions by deducting from capital

(1) A CRSA securitisation position or an IRBA securitisation position to which a CRSA or IRBA securitisation risk weight of 1,250 per cent has been assigned may be disregarded when calculating the total capital charge for counterparty risks pursuant to section 8 and may instead be deducted when calculating the modified available capital pursuant to section 10 (1d) of the Banking Act.

(2) <sup>1</sup>An IRBA securitisation position recognised under the Supervisory Formula Method which is part of a securitisation tranche for which the value of L according to Formula 13 of Annex 2 is smaller than the value of KIRBR as defined in Formula 13 of Annex 2, and the value of the sum of L and T as defined in Formula 13 of Annex 2 is greater than the value of KIRBR, is either to be included in the calculation of the total capital charge for counterparty risk or to be split, pursuant to the procedure described in subsection (3), into a deductible securitisation sub-position and a securitisation sub-position to be recognised under the Supervisory Formula Method. <sup>2</sup>The deductible securitisation sub-position shall be excluded from the calculation of the total capital charge for counterparty risk and shall instead be treated as a deduction amount when calculating the modified available capital pursuant to section 10 (1d) of the Banking Act. <sup>3</sup>The securitisation sub-position to be recognised under the Supervisory Formula Method shall be factored into the calculation of the total capital charge for counterparty risk.

(3) The IRBA securitisation position shall be split pursuant to subsection (2) sentence 1 as follows.

1. The splittable share of the IRBA securitisation position in the splittable securitisation tranche shall be calculated. This is the ratio of the IRBA assessment basis pursuant to section 100 for the IRBA position pursuant to section 71 which is formed by this IRBA securitisation position and the IRBA assessment basis of the splittable securitisation tranche, which shall be calculated according to sentence 5 number 7 of Formula 13 of Annex 2.

2. The splittable securitisation tranche shall be split

a) into a deductible securitisation sub-tranche 1 with the value of L 1 as the value of L for the splittable securitisation tranche and the value of T 1 as the difference between the value of KIRBR and L, and

b) a securitisation sub-tranche 2 to be recognised using the Supervisory Formula Method with the value of L 2 taken to be the value of KIRB and the value of T 2 to be the difference between the value of T for the splittable securitisation tranche and the difference between the values of KIRBR and L.

3. For the deductible securitisation sub-position determined pursuant to subsection (2) sentence 1, the IRBA assessment basis for the IRBA position formed by this securitisation sub-position shall be based on the product of

- a) the share of the splittable IRBA securitisation position in the splittable securitisation tranche, calculated according to number 1, and
- b) the value of T 1 calculated according to number 2 letter (a), multiplied by the sum of the assessment bases of the CCR exposures contained in the securitised portfolio

in order to determine the IRBA exposure value pursuant to section 252 of the deductible securitisation sub-position when calculating the deduction amount for IRBA securitisation positions pursuant to section 268 (1).

4. The securitisation sub-position determined pursuant to subsection (2) sentence 1 that is to be recognised according to the Supervisory Formula Method shall be given the IRBA securitisation risk weight that results for this securitisation sub-position pursuant to section 258 if the value of L is taken to be the value of L 2 calculated according to number 2 letter (b) and the value of T is taken to be the value of T 2 calculated according to number 2 letter (b).

### **Section 267**

#### Deduction amount for CRSA securitisation positions

The deduction amount for CRSA securitisation positions is the sum of the CRSA exposure values of those CRSA securitisation positions which, pursuant to section 266 (1), are recognised as the deduction amount when calculating the modified available capital.

### **Section 268**

#### Deduction amount for IRBA securitisation positions

(1) The deduction amount for IRBA securitisation positions is the sum of the deduction amounts calculated according to subsection (2) for the IRBA securitisation positions and the deductible securitisation sub-positions which are deducted pursuant to section 266 (1) and (2) when calculating the modified available capital.

(2) The deduction amount for an IRBA securitisation position and a deductible securitisation sub-position is

- 1. either its IRBA exposure value or
- 2. the positive difference between its IRBA exposure value and

- a) either the value adjustments made by the institution for this IRBA securitisation position, provided that these value adjustments do not form part of the institution's liable capital pursuant to section 10 (2b) sentence 1 number 9 of the Banking Act,
- b) or, if the institution is deemed to be the originator of the IRBA securitisation transaction to which this IRBA securitisation position belongs, the value adjustments made by the institution for the CCR exposures contained in the portfolio securitised by this IRBA securitisation transaction, provided that these value adjustments do not form part of the institution's liable capital pursuant to section 10 (2b) sentence 1 number 9 of the Banking Act and have not been recognised pursuant to section 253 (4).

## Part 3

### Operational risk

#### Chapter 1

#### General provisions

##### Section 269

##### Approaches to determining the capital charge for operational risk

(1) <sup>1</sup>Operational risk means the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events. <sup>2</sup>This definition includes legal risk.

(2) <sup>1</sup>An institution may use a Basic Indicator Approach, a Standardised Approach or an Advanced Measurement Approach to calculate the capital charge for operational risk. <sup>2</sup>This shall apply *mutatis mutandis* to groups of institutions and financial holding groups, unless stated otherwise.

(3) <sup>1</sup>Financial service institutions which trade in financial instruments on their own account and investment firms may, notwithstanding the approaches listed under subsection (2), calculate the capital charge for operational risk using the methodology for calculating the fixed overheads-based capital requirement pursuant to section 10 (9) sentences 1 to 2 of the Banking Act if they

1. deal on their own account only for the purpose of fulfilling or executing a client order or for the purpose of gaining access to a clearing and settlement system or a recognised stock or futures exchange within the meaning of section 1 (3e) of the Banking Act, when acting on a commission basis or executing a client order, or
2. do not hold client money or securities, undertake only dealing on their own account, have no external customers and execute and settle their transactions under the responsibility of a central clearing institution pursuant to section 1 (31) of the Banking Act and are guaranteed by that central clearing institution.

<sup>2</sup>Section 10 (9) sentences 3 to 5 of the of the Banking Act applies *mutatis mutandis*.

(4) The chosen approach to calculating the capital charge for operational risk shall be adequate with regard to the scale and complexity of the business activities.

(5) <sup>1</sup>An institution which uses a Standardised Approach or an Advanced Measurement Approach to calculate the capital charge for operational risk may not revert to a simpler

approach except for demonstrated good cause and only with BaFin's permission. <sup>2</sup>Institutions shall apply to BaFin for permission for the intended reversion, stating the reasons.

## **Chapter 2**

### **Basic Indicator Approach**

#### **Section 270**

##### Calculating the capital charge

(1) The capital charge for operational risk is equal to 15 per cent of the average over three years of the relevant indicator.

(2) <sup>1</sup>The three-year average of the relevant indicator is calculated on the basis of the last three twelve-monthly observations at the end of the institution's financial year. <sup>2</sup>When audited figures are not available, business estimates by the institution may be used.

(3) <sup>1</sup>When calculating the three-year average of the relevant indicator, only positive annual figures shall be counted. <sup>2</sup>The three-year average of the relevant indicator is calculated as the sum of the annual positive figures divided by the number of positive annual figures.

#### **Section 271**

##### Definition of the relevant indicator

(1) The relevant indicator shall be calculated by institutions on the basis of the following items pursuant to the Bank Accounting Regulation (*Rechnungslegungsverordnung*), with income items being added and expense items being subtracted:

1. interest receivable and similar income,
2. interest payable and similar charges,
3. income from shares and other variable-yield securities,
4. commissions/fees receivable,
5. commissions/fees payable,
6. net profit or net loss on the trading portfolio and
7. other operating income (including leasing result).

(2) <sup>1</sup>Realised losses from the sale of non-trading book items must not reduce the relevant indicator. <sup>2</sup>The following items may be omitted when calculating the relevant indicator even if they are included in the items under subsection (1):

1. income from extraordinary or irregular items,
2. realised profits from the sale of non-trading book items, and
3. income derived from insurance.

<sup>2</sup>This shall be documented appropriately.

(3) When revaluation of trading book items is booked in the profit and loss statement, revaluation shall be included.

(4) <sup>1</sup>Expenditure on the outsourcing of services rendered by third parties may reduce the relevant indicator only if the expenditure is incurred from enterprises belonging to a group pursuant to section 10a of the Banking Act or from enterprises subject to equivalent supervision. <sup>2</sup>This shall also apply even if these are contained in the items pursuant to subsection (1).

(5) <sup>1</sup>Institutions which prepare their annual accounts using an accounting standard deviating from the Bank Accounting Regulation (Directive 86/635/EC) shall calculate the relevant indicator on the basis of data that best reflect the definition set out in subsection (1).

<sup>2</sup>Subsections (2) to (4) shall apply *mutatis mutandis*. <sup>3</sup>The same shall apply to calculation on a consolidated basis.

(5a) For groups of institutions and financial holding groups, the consolidation definition on which the calculation of the capital charge for operational risk is based may correspond to the accounting standard used and, to that extent, deviate from the consolidation definition pursuant to section 10a of the Banking Act if plausible evidence is given that this does not significantly reduce the relevant indicator.

(6) <sup>1</sup>Housing enterprises with saving facilities may include only the respective items in the saving facilities when calculating the relevant indicator. <sup>2</sup>The derivation of the income and expenses of the saving facilities from the accounting records shall be documented appropriately.

## Chapter 3

### Standardised Approach

#### Section 272

##### Use of the Standardised Approach

- (1) If an institution intends to use a Standardised Approach to calculate the capital charge for operational risk, it shall notify BaFin and the Deutsche Bundesbank in writing, stating the intended date of implementation.
- (2) <sup>1</sup>The notification shall contain a statement that the institution meets the qualifying criteria for the Standardised Approach pursuant to sections 275 and 276. <sup>2</sup>The institution shall have satisfied itself of this fact by means of an internal review, and it shall maintain the documentation pertaining to the internal assessment and its results.
- (3) BaFin may prohibit use of the Standardised Approach if an institution does not comply with the qualifying criteria.

#### Section 273

##### Calculating the capital charge

- (1) <sup>1</sup>In the Standardised Approach, an institution shall map its business activities and the relevant indicator to the eight regulatory business lines listed in subsection (4) pursuant to section 275. <sup>2</sup>Section 271 shall apply *mutatis mutandis* for calculating the relevant indicator. <sup>3</sup>The capital charge shall be calculated on the basis of the figures for the last three financial years. <sup>4</sup>When audited figures are not available, internal business estimates of these figures may be used.
- (2) The partial capital charge for a business line for a given year is obtained by weighting the indicator assigned to the respective business line with a certain percentage assigned to the business line (beta factor) pursuant to subsection (4).
- (3) <sup>1</sup>The capital charge for operational risk is the average of the sum of the partial capital charges of the individual business lines calculated for each of the last three financial years. <sup>2</sup>In each financial year, a negative partial capital charge in one business line resulting from a negative value for the indicator may be offset against positive partial capital charges in the other business lines. <sup>3</sup>Where the aggregate capital charge across all business lines within a given year is negative, then the input to the average for that year shall be zero.
- (4) The following beta factors shall be assigned to the regulatory business lines:

1. Corporate finance	18 per cent
2. Trading and sales	18 per cent
3. Payment and settlement	18 per cent
4. Agency services	15 per cent
5. Commercial banking	15 per cent
6. Retail banking	12 per cent
7. Asset management	12 per cent
8. Retail brokerage	12 per cent.

### **Section 274**

#### Use of an alternative indicator

(1) To calculate the partial capital charges in the regulatory business lines commercial banking and retail banking, an institution may use in the Standardised Approach an alternative indicator pursuant to subsection (2) instead of the relevant indicator within the meaning of section 273 (1) sentence 2, upon application to and subject to prior permission from BaFin, if

1. the institution is overwhelmingly active in retail and/or commercial banking,
2. these regulatory business lines account for at least 90 % of the relevant indicator,
3. a significant proportion of its retail and/or commercial banking activities comprise loans associated with a high PD, and
4. the alternative indicator provides an improved basis for assessing the operational risk.

(2) The alternative indicator is the total nominal amount of loans and advances pursuant to subsection (3) multiplied by the factor 0.035.

(3) <sup>1</sup>The nominal amount of loans and advances in retail and/or commercial banking shall consist of the total drawn amounts in the corresponding credit portfolios. <sup>2</sup>For the commercial banking business line, securities held in the banking book shall also be included.

### **Section 275**

#### Business line mapping

<sup>1</sup>An institution using the Standardised Approach shall develop specific policies and criteria

for mapping its business activities and the relevant indicator to the regulatory business lines specified in section 273 (4) and listed in Table 29 of Annex 1. <sup>2</sup>These policies and criteria shall be documented, regularly reviewed and adjusted as appropriate for new or changing business activities. <sup>3</sup>The policies and criteria shall meet the following requirements:

1. each business activity shall be clearly mapped to one regulatory business line,
2. ancillary activities which cannot be readily mapped to a regulatory business line shall be allocated to the regulatory business line they support. <sup>2</sup>If an ancillary activity supports several business activities which are mapped to different regulatory business lines, an objective criterion shall be used for mapping this activity,
3. business activities, including ancillary activities that support them, which cannot be mapped to a particular regulatory business line shall be mapped in full to a regulatory business line yielding the highest beta factor pursuant to section 273 (4),
4. institutions may use internal pricing methods to map the relevant indicator to the regulatory business lines if these methods can be objectively substantiated, and costs generated in one business line which are imputable to a different business line may be reallocated to that business line,
5. the criteria for mapping business activities to the regulatory business lines shall be consistent with the criteria used for credit and market risks,
6. notwithstanding the overall responsibility of the governing bodies, senior management, especially that which signs off on the institution's internal business lines, shall be responsible for the mapping policy for the business activities and the relevant indicator, and
7. the mapping process is subject to review by internal or external auditors.

## **Section 276**

### Qualitative standards

(1) <sup>1</sup>An institution which uses the Standardised Approach shall have an appropriate and documented system for identifying, assessing, monitoring, reporting on and controlling operational risk with clearly assigned responsibilities. <sup>2</sup>The institution shall track relevant data on operational risk, including material loss data. <sup>3</sup>This system shall be subject to regular internal or external audit.

(2) The output of the operational risk assessment system shall be an integral part of the process of monitoring, reporting and controlling the institution's operational risk profile.

(3) The operational risk assessment system shall be closely integrated into the institution's risk

management processes.

(4) <sup>1</sup>The institution shall have an appropriate reporting system that provides meaningful information about operational risk to relevant functions within the institution. <sup>2</sup>The institution shall determine decision-making competencies and channels so as to take appropriate action according to this information.

### **Section 277**

#### Combined use with the Basic Indicator Approach

(1) It shall not be possible to combine the Standardised Approach with the Basic Indicator Approach except in the cases specified under subsection (2).

(2) <sup>1</sup>In well reasoned exceptional circumstances BaFin may, upon application, approve partial use of the Standardised Approach along with the Basic Indicator Approach for a transitional period. <sup>2</sup>Approval for this transitional combined use shall be conditional upon a commitment by the institution concerned to use the Standardised Approach to determine the total capital charge for operational risk in the foreseeable future.

## **Chapter 4**

### Advanced Measurement Approaches

#### **Division 1**

#### General provisions

### **Section 278**

#### Definition of terms

(1) An institution may use an Advanced Measurement Approach to calculate the capital charge for operational risk only after obtaining approval from BaFin.

(2) <sup>1</sup>An Advanced Measurement Approach shall be deemed suitable only if the requirements of sections 279 to 292 are met. <sup>2</sup>Compliance with the approval requirements shall be evidenced and, prior to approval, will be reviewed in principle on the basis of an approval examination to be carried out by BaFin in conjunction with the Deutsche Bundesbank pursuant to section 44 (1) sentence 2 of the Banking Act and, subsequent to approval, in follow-up examinations. <sup>3</sup>Any material changes or extensions to the Advanced Measurement Approach require renewed approval pursuant to subsection (1). <sup>4</sup>Significant and insignificant changes do not require a renewed suitability examination but shall be notified to BaFin and

the Deutsche Bundesbank in writing; significant changes shall be coordinated with BaFin prior to the use of the amended Advanced Measurement Approach.

(3) If an Advanced Measurement Approach is used within a group of institutions or a financial holding group, the requirements pursuant to sections 279 to 292 may be met jointly by the institutions belonging to the group.

(4) If a group of institutions or a financial holding group would like to use a joint Advanced Measurement Approach to calculate the capital charge for operational risk for the group and the capital charges for operational risk for the institutions belonging to the group, the group's application for approval shall contain the following additional details:

1. a description of the procedure used to allocate parts of the capital charge for operational risk calculated for the group of institutions or the financial holding group to the various legal entities within that group, and
2. a description of whether and how diversification effects are taken into account in the risk measurement system.

(5) Partial use of an Advanced Measurement Approach in combination with the Basic Indicator Approach or the Standardised Approach is permitted after approval by BaFin pursuant to section 293.

## **Division 2**

### **Qualitative standards**

#### **Section 279**

##### **Risk management system and framework**

- (1) The institution shall have rolled out an integrated system to identify, measure, monitor, report on and control its operational risk.
- (2) The management body shall have implemented a framework which contains the principles for identifying, measuring, monitoring, reporting on and controlling operational risk and allocates the relevant responsibilities unambiguously.

#### **Section 280**

##### **Risk management function and resources**

- (1) <sup>1</sup>The institution shall have an independent central function for managing operational risk.  
<sup>2</sup>This function shall be responsible for developing strategies, policies and procedures to

identify, measure, monitor and report on operational risk and for developing procedures to control operational risk, including any necessary adjustments, and shall ensure that they are implemented and used. <sup>3</sup>Insofar as some of these tasks are performed by decentralised units, it shall be ensured that these units comply with the instructions of the central function.

(2) The institution shall have adequate resources in the central operational risk management function, in the major internal business lines and in internal audit to be able to use its Advanced Measurement Approach.

### **Section 281**

#### Integration of risk measurement system and reporting

(1) The operational risk measurement system shall be integrated into the institution's day-to-day risk management processes.

(2) <sup>1</sup>The institution shall have methods of allocating capital for operational risk to the major internal business lines and of creating incentives to improve the management of operational risk throughout the institution. <sup>2</sup>The operational risk measurement system shall support the allocation of economic capital to the internal business lines.

(3) <sup>1</sup>The institution shall have an appropriate reporting system via which the relevant functions within the institution are regularly informed about operational risk exposures and material operational loss events. <sup>2</sup>The institution shall define decision-making competencies and channels so as to be able to react adequately to this information.

### **Section 282**

#### Documentation of and compliance with the risk management system

(1) The operational risk management system shall be adequately documented.

(2) <sup>1</sup>The institution shall have routines in place for ensuring compliance with the documented operational risk management system. <sup>2</sup>These shall include policies for the treatment of non-compliance with internal rules.

### **Section 283**

#### Audit

(1) <sup>1</sup>The operational risk management processes and measurement systems shall be subject to regular reviews performed by internal or external auditors. <sup>2</sup>These audits shall include both the relevant activities of the internal business units and those of the independent operational

risk management function.

(2) Institutions shall ensure that data flows and processes associated with the operational risk measurement system are accessible to internal and external auditors without delay.

### **Division 3**

#### **Requirements for determining the capital charge for operational risk**

##### **Subdivision 1**

##### **Model framework**

##### **Section 284**

##### **Quality of the measurement system**

(1) <sup>1</sup>Advanced Measurement Approaches shall use internal loss data, external data, scenario analysis and factors reflecting the institution-specific business environment and internal control systems in calculating the capital charge for operational risk. <sup>2</sup>An institution shall combine these four elements appropriately in its Advanced Measurement Approach and document the fact. <sup>3</sup>In particular, it shall ensure that, in combining these elements, multiple counting of qualitative assessments or risk mitigation techniques is avoided.

(2) <sup>1</sup>The capital charge for operational risk calculated using an Advanced Measurement Approach shall include both expected and unexpected loss. <sup>2</sup>Insofar as the institution determines the expected loss appropriately and proves that it takes a portion of the expected loss adequately into account in its internal business practices, BaFin will authorise it to reduce the capital charge for operational risk by that portion of the expected loss.

(3) <sup>1</sup>The Advanced Measurement Approach shall capture the major drivers of operational risk affecting the shape of the tail of the loss estimates. <sup>2</sup>In particular, the capital charge for operational risk shall capture potentially severe tail loss events, achieving a soundness standard comparable to a 99.9 percentile confidence interval over a one-year holding period.

(4) The institution shall use appropriate techniques in developing a model for measuring its operational risk and in validating the model. The validation processes, techniques and outcomes shall be documented.

**Section 285**

## Correlations

<sup>1</sup>Individual risk estimates for different operational risk estimates may be added when calculating the capital charge for operational risk. <sup>2</sup>But if correlations between individual risk estimates are recognised when calculating the capital charge, the following requirements shall be met.

1. All correlation assumptions made when calculating the capital charge for operational risk shall be plausible and substantiated.
2. The systems for determining correlations shall be sound and take uncertainty into account.
3. The institution shall validate its correlation assumptions using quantitative and qualitative techniques and if necessary adjust them.

**Subdivision 2**

## Data

**Section 286**

## Internal loss data

(1) <sup>1</sup>When calculating the capital charge for operational risk, an institution shall use internal loss data based on a minimum historical observation period of five years. <sup>2</sup>When an institution first moves to an Advanced Measurement Approach, a three-year historical observation period for loss data is acceptable, starting when the Advanced Measurement Approach is used following approval to determine the capital charge for operational risk.

(2) The internal loss data shall be so comprehensive that they capture all material activities and operational risks across the institution. <sup>2</sup>The institution shall be able to justify that any excluded activities or exposures, both individually and in combination, would not have a material impact on the overall risk estimates.

(3) The institution shall define appropriate minimum thresholds for capturing losses in the loss data collection.

(4) The following minimum data shall be collected for each recorded loss event:

1. the loss amount, kind and size of recoveries and loss mitigation,
2. the business units in which the loss has occurred and which are affected by the loss event,
3. a description of the causes or drivers of the loss event, and

4. the date the loss event occurred and the date it was discovered.

(5) <sup>1</sup>The ongoing relevance of the loss data used shall be ensured by clear-cut internal rules and documented procedures. <sup>2</sup>All changes and adjustments to loss data shall be documented transparently. <sup>3</sup>The competencies for making such adjustments, in particular who is authorised to make them in which situations and to what extent, shall be laid down clearly.

### **Section 287**

#### Mapping internal loss data

(1) Institutions shall be able to map their internal loss data to the regulatory business lines pursuant to section 273 (4) and to the regulatory loss event types pursuant to subsection (3), and to provide the data thus classified to BaFin upon request. <sup>2</sup>Internal loss data which affect the entire institution may, due to exceptional circumstances, be allocated to the regulatory business line Corporate items defined in Annex 1 Table 29a. <sup>3</sup>The institution shall have in place documented and objective criteria for allocating loss data to the regulatory business lines and loss event types.

(2) The institution shall develop specific criteria for mapping the following loss data:

1. events in centralised functions
2. activities that span more than one business line, and
3. related events, including related events over time.

(3) The following loss event types, in accordance with the definitions in Table 30 of Annex 1, shall be used for mapping pursuant to subsection (1):

1. internal fraud,
2. external fraud,
3. employment practices and workplace safety,
4. clients, products and business practices,
5. damage to physical assets,
6. business disruptions and system failures, and
7. execution, delivery and process management.

**Section 288**

## Losses related to credit risk

<sup>1</sup>Operational risk losses that are related to credit risk shall be identified, recorded as operational risks in a loss database and separately labelled within that database. <sup>2</sup>Such losses shall not be used to calculate the capital charge for operational risk.

**Section 289**

## External data

(1) <sup>1</sup>Relevant external data shall be used when determining the capital charge for operational risk. <sup>2</sup>Data may only be used if they are not personal or, if they are personal, have been anonymised.

(2) <sup>1</sup>An institution shall have a systematic process for determining the situations in which external data are used and for establishing methodologies for incorporating these data into the measurement system. <sup>2</sup>The conditions and practices for using external data shall be documented, adjusted as required and subject to regular independent review.

**Subdivision 3**

## Scenario analyses, business environment and internal control system

**Section 290**

## Scenario analyses

<sup>1</sup>The institution shall use scenario analyses based on expert opinions and external data in order to evaluate its exposure to high-severity events when calculating the capital charge for operational risk. <sup>2</sup>The institution shall validate the results of these scenario analyses over time and adjust the latter in the light of actual loss experience so as to ensure their reasonableness.

**Section 291**

## Business environment and internal control system

<sup>1</sup>The operational risk measurement system shall capture the key factors of the business environment and the internal control system that affect the institution's operational risk profile. <sup>2</sup>The following requirements shall be met:

1. the chosen factors shall be meaningful risk drivers whose choice must be justified on the basis of experience and involving the expert judgement of the affected business areas,

2. the sensitivity of the risk estimates to changes in the factors and the relative weighting of these factors need to be well reasoned, in particular altered risks due to changes in the risk control system, in the complexity of activities or in the business volume must be taken into account,
3. over time, the choice and implementation of the internal control and business environment factors and their influence on the measurement system need to be validated and, if appropriate, reassessed by empirical means, especially through comparison with internal loss data and relevant external data, and
4. the choice and implementation of the internal control and business environment factors shall be documented and subject to independent review.

### **Subdivision 4**

#### **Risk transfer mechanisms**

### **Section 292**

#### **Insurance and other risk transfer mechanisms**

- (1) <sup>1</sup>Insurance and other risk transfer mechanisms may be recognised when determining the capital charge for operational risk. <sup>2</sup>The alleviation of the capital charge for operational risk resulting from recognition of risk transfer mechanisms shall not exceed 20 per cent of the capital charge before recognition of risk transfer mechanisms.
- (2) <sup>1</sup>Insurance may be recognised only if all of the following requirements have been met:
  1. the provider is authorised to provide insurance or reinsurance,
  2. the provider has an appropriate credit quality,
  3. the insurance policy has an initial term of at least one year,
  4. where a period of notice for cancellation is stipulated in the insurance contract, this shall be at least 90 days,
  5. the insurance policy has no exclusions or limitations triggered by supervisory actions,
  6. the insurance policy has no exclusions or limitations that preclude recovery of damages or expenses if the institution becomes insolvent,
  7. the insurance coverage is recognised in a manner that is transparent and consistent with the loss probability and severity used in the determination of the capital charge for operational risk,

8. the insurance is provided by a company that is not included in the capital consolidation, or else the insured risk was laid off, through re-insurance or other measures, to an independent third-party entity that meets the eligibility criteria for recognition of insurance, and
9. the framework for recognising insurance is well reasoned and documented.

<sup>2</sup>The requirement stipulated in sentence 1 number 6 shall not apply to events which occur after the initiation of insolvency or liquidation proceedings. <sup>3</sup>Insurance pursuant to sentence 1 shall not include any recovery of fines or other penalties which an institution shall pay as a result of action by the supervisory authorities.

(3) When recognising insurance, appropriate haircuts shall be made for insurance policies with a period of notice for cancellation or a residual term of less than one year and for uncertainty of payment and for mismatches in insurance policy coverages. If an insurance policy has a residual term of less than 90 days, it shall not be recognised for risk mitigation purposes.

(4) Other risk transfer mechanisms may be recognised if the institution can demonstrate that they achieve a noticeable and reliable mitigation of operational risk.

## **Division 4**

### **Partial use**

#### **Section 293**

##### **Combination with the Basic Indicator Approach or the Standardised Approach**

- (1) Upon application and subject to permission from BaFin, an institution may use an Advanced Measurement Approach for some of its organisational units and for the others either the Basic Indicator Approach or the Standardised Approach to calculate the capital charge for operational risk (partial use).
- (2) The organisational units whose capital charge for operational risk is calculated using the Basic Indicator Approach or the Standardised Approach shall be demarcated by the institution's internal organisational structure, the regulatory business lines or legal entities from the organisational units whose capital charge for operational risk capital is determined using an Advanced Measurement Approach.
- (3) Approval for partial use requires compliance with the following conditions:
  1. all operational risks of the institution are captured by the capital charge for operational risk calculated under partial use, and

2. the requirements for the Advanced Measurement Approach and Standardised Approach have been met for those organisational units whose capital charge for operational risk is determined using the respective approach.

(4) <sup>1</sup>The institution shall show in the application for approval that on the date of implementation it captures a significant part of its operational risk already by the Advanced Measurement Approach. <sup>2</sup>The application for approval shall also contain a timetable documenting that the institution will be using the Advanced Measurement Approach to calculate the capital charge for operational risk for the bulk of its business by five years at the latest after approval is granted. <sup>3</sup>An implementation plan for the ongoing rollout of the Advanced Measurement Approach after approval is granted shall be agreed with BaFin. <sup>4</sup>An immaterial part of the business may remain exempt from the rollout of an Advanced Measurement Approach. <sup>5</sup>A capital charge for operational risk for said immaterial part of its business activities shall be determined, in agreement with BaFin, either by an appropriate procedure within the framework of the Advanced Measurement Approach or using the Basic Indicator Approach or Standardised Approach.

(5) <sup>1</sup>In substantiated individual cases, BaFin may, upon application, exempt an institution from applying subsection (4). <sup>2</sup>The exemption may be revoked if there is a lasting change in the circumstances substantiating the exemption.

(6) <sup>1</sup>The institution shall be allowed to include new organisational units in the Advanced Measurement Approach subject to BaFin's permission. <sup>2</sup>Unforeseen changes to the degree of coverage, especially owing to mergers or hiving-off of business lines in which the Advanced Measurement Approach was already being used, shall be notified to Bafin, and a new timetable shall be submitted.

## Part 4

### Market risk positions

#### Chapter 1

#### Overall currency position

##### Section 294

##### Calculating and recognising the overall currency position

(1) <sup>1</sup>The overall currency position shall be calculated at the close of each business day separately for each currency (open individual currency positions) and for gold (open gold position) from the differences, converted to the reporting currency, between the long and short positions. <sup>2</sup>Long and short positions in gold shall be converted to the reporting currency at the rate quoted on the market which is deemed representative in terms of turnover volume. <sup>3</sup>Institutions shall document which markets they deem representative and state the principal reasons for their decision.

(2) <sup>1</sup>The open individual currency positions shall be aggregated separately to form total long and total short positions. <sup>2</sup>The higher of these two totals (overall net foreign exchange position) together with the open gold position constitutes the institution's overall currency position.

(3) If the overall currency position exceeds 2 per cent, or the higher of the two separately calculated sums of all long and short positions in all foreign currencies converted to the reporting currency exceeds 100 per cent, of the institution's own funds, an 8 per cent weight shall be applied to the overall currency position for calculating the capital charge.

(4) <sup>1</sup>When calculating the capital charge for the overall currency position, the institution may choose, on a consistent and permanent basis, to exclude opposite positions of equal amounts after conversion to the reporting currency (matched currency position) in verifiably closely correlated currencies when calculating the open individual currency positions pursuant to subsection (1) and instead add 50 per cent of the amount of the matched currency position to the overall net foreign exchange position pursuant to subsection (2). <sup>2</sup>An 8 per cent weight shall be applied to the overall currency position for calculating the capital charge.

<sup>3</sup>Subsection (3) does not apply. <sup>4</sup>When the institution exercises the option for the first time, it

shall submit the conducted statistical analysis to BaFin and the Deutsche Bundesbank. <sup>5</sup>BaFin may prohibit the exercise of the option if the analysis pursuant to sentence 4 was not carried out appropriately. <sup>6</sup>This shall be considered especially likely if the parameters set out in subsection (5) have not been observed.

(5) Foreign currencies may be deemed to be verifiably closely correlated if – calculated on the basis of daily exchange rate data for the preceding three or five years – the likelihood that any loss occurring on matched individual currency positions in such currencies over the following ten working days will not exceed 4 per cent of the value of the matched currency position is at least 99 per cent, when an observation period of three years is used, or at least 95 per cent, when an observation period of five years is used.

(6) <sup>1</sup>When calculating long and short positions pursuant to section 295 (1) and (2), exposures in the form of CIUs within the meaning of section 25 (12) shall be recognised proportionately in accordance with their actual currency breakdown. <sup>2</sup>The institution may employ third parties to calculate the currency breakdown of the CIU provided that the correctness of the calculation and its reporting to the institution are appropriately ensured. <sup>3</sup>If the institution does not calculate the currency breakdown of the CIU itself, an external auditor shall confirm the correctness of the calculation pursuant to sentence 2 no later than three months after the end of the CIU's financial year. <sup>4</sup>If the institution is not aware of the actual currency breakdown of the CIU, it shall be assumed that it has invested in foreign currencies up to the maximum extent allowed in the sales prospectus or equivalent document. <sup>5</sup>If leveraging is allowed in the case of CIU exposures which are trading book risk positions, when proceeding pursuant to sentence 4 the CIU exposure shall be increased by the maximum permissible leverage allowed in the sales prospectus or equivalent document. <sup>6</sup>The assumed foreign currency position calculated in accordance with sentences 4 and 5 shall be treated as a separate currency, analogously to the recognition of gold, when calculating the overall currency position. <sup>7</sup>If the direction of the CIU's investment is known, the currency position of the relevant CIU may, notwithstanding sentence 6, be added in accordance with its direction pursuant to subsection (2) to the sum of the long open individual currency positions or to the sum of the short open individual currency positions. <sup>8</sup>Such positions shall not be netted prior to calculation. <sup>9</sup>If an institution uses an internal risk measurement model within the meaning of section 313 (1) sentence 1 which has been recognised as suitable and whose scope of application at least covers foreign currency risks, CIU exposures shall be recognised in a way that reflects their actual currency breakdown pursuant to sections 313 to 318. <sup>10</sup>Sentences 2 and 3 apply *mutatis mutandis*. <sup>11</sup>If the institution is not aware of the actual currency breakdown of the CIU in which it is invested through its CIU exposure, the foreign currency risk exposures incurred from the CIU exposure shall be carved out from the institution's internal risk measurement model and shall be recognised pursuant to sentences 4 to 8 when calculating the capital charge for the overall currency position.

**Section 295**

## Long and short positions

(1) <sup>1</sup>Long positions comprise

1. asset items shown on the assets side of the balance sheet including accrued income, even if it has not yet been allocated to the relevant balance sheet items and the asset items are not included in the long positions under numbers 4 or 5,
2. rights to the payment of principal amounts under financial swaps, delivery and payment rights arising under spot contracts and other derivatives excluding option rights pursuant to numbers 4 and 5 where these rights are not included in the long position under number 1,
3. contingent claims under sale and repurchase agreements to the return of items included in the long position under number 1,
4. delivery or payment rights of the institution, arising when exercising its own option rights or when third parties exercise option rights, under foreign exchange or gold options pursuant to the rules stated in section 308,
5. own option rights not included in number 4,
6. irrevocable guarantees and similar instruments that are certain to be called, if this increases the long positions under numbers 1 to 5.

<sup>2</sup>The institution may choose, on a consistent and permanent basis, to allocate expected income other than accrued income to the long positions if such income has verifiably been hedged by one or more of the short positions pursuant to subsection (2) sentence 1 numbers 1 to 5.

(2) <sup>1</sup>Short positions comprise

1. debt items shown on the liabilities side of the balance sheet including accrued charges, even if these have not yet been allocated to the relevant balance sheet items,
2. obligations to pay principal amounts under financial swaps, delivery and payment obligations arising under spot contracts and other derivatives excluding option rights pursuant to numbers 4 and 5 where these obligations are not included in the short position under number 1,
3. contingent liabilities under sale and repurchase agreements to return items included in the long position under number 1,
4. delivery or payment obligations on the institution, arising from the exercise of its own option rights or when third parties exercise option rights, under foreign exchange or gold options pursuant to the rules stated in section 308,

5. third-party option rights not included in number 4,
6. irrevocable guarantees and similar instruments that are certain to be called, if this increases the short positions under numbers 1 to 5.

<sup>2</sup>The institution may choose, on a consistent and permanent basis, to allocate expected expenses other than accrued expenses to the short positions if such expenses have verifiably been hedged by one or more of the long positions pursuant to subsection (1) sentence 1 numbers 1 to 5.

(3) <sup>1</sup>Long and short positions pursuant to subsections (1) and (2) numbers 1, 3 and 6 shall be included at their book values, long and short positions pursuant to subsections (1) and (2) number 5 at their market values and the other long and short positions at their nominal values.

<sup>2</sup>The institution may choose, on a consistent and permanent basis, to include delivery and payment obligations arising from forward foreign exchange and forward gold transactions to be included in the long and short positions pursuant to subsections (1) and (2) number 2 at their present values. <sup>3</sup>Individual value adjustments made to long positions shall be deducted from these items irrespective of how they are shown on the balance sheet.

(4) The institution may choose, on a consistent and permanent basis, to treat long or short positions denominated in units of account whose exchange rate is computed from the exchange rates of other currencies as a foreign currency or to break them down into the component currencies used to calculate their exchange rate.

(5) <sup>1</sup>A simplified procedure may be applied to calculate the accrued interest amount of long and short positions. <sup>2</sup>According to this procedure, an institution may use the amount from the most recent interest accrual calculation. <sup>3</sup>This amount shall be extrapolated using linear extrapolation based on the regular calculation period for the interest accrual calculation that is chosen by the institution. <sup>4</sup>If an institution wishes to adopt the procedure pursuant to sentence 1, it must notify BaFin and the Deutsche Bundesbank when it applies it for the first time.

## Chapter 2

### Commodities position

#### Section 296

##### Calculating and recognising the commodities position

(1) <sup>1</sup>The commodities position shall be calculated at the close of each business day, separately for each commodity, from the differences between the long and short positions based on the spot market prices of the commodities and converted to the reporting currency (open

individual commodity positions). <sup>2</sup>The capital charge shall be calculated in accordance with subsection (5) or section 297.

(2) <sup>1</sup>When calculating the commodities position, an institution, upon request, may choose, on a consistent and permanent basis and subject to BaFin's permission, to disregard stocks of commodities and their hedges that constitute matched positions for the entire duration of the transaction as a result of outright agreements to accept or deliver the commodity in question at the time of performance. <sup>2</sup>Permission shall be deemed to have been given if the institution applies for the positions informally and BaFin does not object within three months of the application being received. <sup>3</sup>The application must describe the type of business and commodity. <sup>4</sup>The application shall be submitted to BaFin at the end of each year for the following year and can be made via the regional audit associations. <sup>5</sup>If an institution intends

1. to extend the size of the matched commodities position that it communicated in its last regular application by 20 per cent or more and thereby exceed the average business volume of the previous year by 1 per cent or
2. to conclude a covering transaction only after a month has elapsed

it shall make an appropriate application to BaFin promptly.

(3) Long positions comprise

1. stocks of commodities to be shown on the assets side of the balance sheet,
2. delivery rights under spot transactions and derivatives excluding option rights pursuant to number 3,
3. delivery rights of the institution arising from the exercise of its own option rights or when third parties exercise option rights, pursuant to the rules stated in section 308,
4. contingent rights under sale and repurchase agreements to the return of items included in the long position under number 1,

(4) Short positions comprise

1. delivery obligations under spot transactions and derivatives excluding option rights pursuant to number 2,
2. delivery obligations of the institution arising from the exercise of its own option rights or when third parties exercise option rights, pursuant to the rules stated in section 308,
3. contingent liabilities under sale and repurchase agreements to return long position items pursuant to subsection (3) number 1.

(5) <sup>1</sup>To calculate the capital charge, the open individual commodity positions shall be aggregated, irrespective of whether they are long or short positions, and assigned a 15 per cent weight. <sup>2</sup>The amounts for the long and short positions shall be aggregated, irrespective of whether they are positive or negative, and 3 per cent of this sum shall be added to the sum calculated pursuant to sentence 1.

### **Section 297**

#### **Maturity ladder approach**

(1) The institution may choose, on a permanent basis, to calculate the capital charge for the commodities position from the partial capital charges for the open individual commodity positions using a risk measurement ladder with different maturity bands, using a separate ladder for each commodity, for the seven consecutive weighting categories (maturity bands) shown in Table 20 of Annex 1.

(2) <sup>1</sup> To calculate the partial capital charges for the open individual commodity positions, the long and short positions shall be allocated to the maturity bands of the risk measurement ladder in accordance with their maturity, and opposite positions of equal amount in each maturity band (matched maturity band positions) and the remaining differences between the long and short positions (unmatched maturity band positions) shall be calculated. <sup>2</sup>The matched maturity band positions shall be assigned a 3 per cent weight and shall be aggregated to yield the partial capital charge. <sup>3</sup>Notwithstanding sentence 2, the weight for matched maturity band positions in the same commodity is 0 per cent if the underlying transactions mature on the same date or mature within ten days of each other and are traded on markets which have daily delivery dates.

(3) <sup>1</sup>The unmatched position in each maturity band, beginning with the first maturity band listed in Table 20 of Annex 1 pursuant to subsection (1), shall be aggregated with the unmatched position of the next maturity band, and the matched and unmatched positions deriving from this aggregation shall be calculated and allocated to the next maturity band. <sup>2</sup>Each unmatched maturity band position included in the aggregation shall be assigned a 0.6 per cent weight in each maturity band and be added to the partial capital charge pursuant to subsection (2) sentence 2. <sup>3</sup>The matched weighted band positions deriving from the aggregation shall be assigned a 3 per cent weight and added to the partial capital charge pursuant to subsection (2) sentence 2. <sup>4</sup>The remaining unmatched maturity band position shall be assigned a 15 per cent weight and be added to the partial capital charge pursuant to subsection (2) sentence 2.

## Chapter 3

### Trading book risk positions

#### Section 298

##### Trading book risk positions

(1) Trading book risk positions are net positions deriving from

1. interest rate-related financial instruments pursuant to section 1a (3) of the Banking Act (net interest positions) and
2. equity price-related financial instruments pursuant to section 1a (3) of the Banking Act (net equity positions).

(2) <sup>1</sup>When calculating the net positions within the meaning of subsection (1), the institution shall recognise its underwriting commitments to accept debt or equity instruments on the basis of the time, expressed in working days, that has elapsed since the date of assuming the initial binding underwriting commitment at the weights listed in Table 21 of Annex 1, unless the securities are assigned to the institution's portfolio. <sup>2</sup>Commitments made by third parties to underwrite the institution's debt or equity instruments shall be deducted from the positions.

(3) Securities transferred as part of sale and repurchase agreements or lent as part of securities lending agreements which are included in the net positions pursuant to subsection (1) shall be assigned to the transferor or lender.

#### Section 299

##### Net positions

(1) <sup>1</sup>Net positions are the differences arising from

1. holdings of identical securities, delivery rights and delivery obligations arising from spot transactions and derivatives relating to the same underlying securities or which contractually relate to the same securities, and
2. closely matched opposite derivatives to the extent that they are included in the net interest position and belong to the same category of instruments as forward securities transactions, interest rate futures, forward rate agreements, swaps or forward foreign exchange transactions.

<sup>2</sup>Index-linked transactions and trading book receivables shall be treated as securities.

(2) <sup>1</sup>When calculating the net positions, derivatives shall be split into components in accordance with their interest rate effect on the basis of the associated cash flows and shall be recognised at their relevant amounts. <sup>2</sup>The components of derivatives pursuant to subsection (1) sentence 1 number 1 which are not related to securities (financing components) shall be included in the calculation of the net position following the split in accordance with subsection (1) sentence 1 number 2. <sup>3</sup>In the case of a net positions pursuant to subsection (1) sentence 1 number 1, the relevant amounts is the current market price of the security, and in the case of a net position according to subsection (1) sentence 1 number 2 the present value, converted to the reporting currency in each case. <sup>4</sup>Options trades shall be included pursuant to the rules stated in section 308.

(3) Securities shall be deemed to be identical if

1. they were issued by the same issuer,
2. they are denominated in the same currency and traded in the same national market,
3. in the event that they are included in the net interest position, they have the same repayment profile,
4. in the event that they are included in the net equity position, they give the holder the same status in terms of voting rights, and
5. in the event of the issuer's insolvency, they have the same rank.

(4) Positions arising from derivatives shall be deemed to be closely matched if

1. they have the same notional value and are denominated in the same currency,
2. in the event that they are included in the net interest position, their nominal interest rate in terms of their coupon or the same floating reference rate does not differ by more than 0.15 percentage point and
3. the residual maturity or next interest fixing date are within the time limits set out in Table 22 of Annex 1.

(5) <sup>1</sup>Unless otherwise specified, the notional value of the credit derivative contract shall be used in the case of credit derivatives. <sup>2</sup>If a credit derivative is exclusively based on a reference obligation, the positions for the party assuming the credit risk (the protection seller) shall be calculated as follows when calculating the partial capital charges for general and specific risk.

1. A total return swap shall be decomposed into a long position of the reference obligation, for which general and specific risk shall be calculated, and a short position in the form of a financing component with the corresponding fixed or floating interest rate, for which general risk shall be calculated.

2. A credit default swap creates a synthetic long position in a reference obligation for which specific risk shall be calculated; if future premium or interest payments are due, these cash flows shall be represented as long positions in the form of financing components with the corresponding fixed or floating interest rate for general risk.

3. A credit linked note shall be decomposed into a long position in a debt security of the issuer of the credit linked note, for which general and specific risk shall be calculated, and a synthetic long position in a reference obligation, for which specific risk shall be calculated.

(6) <sup>1</sup>If a credit derivative provides proportional protection to a basket of reference obligations, synthetic long positions in each individual reference obligation shall be proportionately recognised for the specific risks associated with the reference obligations. <sup>2</sup>These proportions are derived from the ratio of the reference obligations contained in the basket to the notional value of the total basket. <sup>3</sup>If more than one reference obligation can be selected, the obligation with the highest risk weight determines the specific risk. <sup>4</sup>The other positions to be included pursuant to subsection (5) remain unaffected.

(7) <sup>1</sup>For an nth-to-default credit derivative pursuant to section 168, the institution, as the protection provider, must recognise one long position in the notional amount in an obligation to each reference obligor belonging to the basket, minus the n-1 obligations to those reference obligors with the lowest partial capital charge, for which specific risk shall be calculated. <sup>2</sup>If the resulting partial capital charge for specific risk is higher than the maximum agreed credit event payment, this agreed maximum credit event payment may be taken as the partial capital charge for specific risk. <sup>3</sup>The other positions to be included pursuant to subsection (5) sentence 2 remain unaffected.

(8) A credit derivative pursuant to subsection (5) sentence 2, number 2 or 3 and subsections (6) or (7) that has an external credit assessment and which fulfils the conditions for qualifying items pursuant to section 303 (3) sentence 2 may record a single long position reflecting the credit derivative's external credit assessment for the purpose of calculating the partial capital charge for specific risk rather than the synthetic long position in the obligations of the respective reference entities.

(9) <sup>1</sup>For the party that transfers the credit risk (the protection buyer) positions are determined as the mirror image of those of the protection seller, with the exception of a credit linked note, whose short position in the issuer of the credit linked note entails no specific risk. <sup>2</sup>If at any given moment there is a call option in connection with a cost step-up clause, this moment will be treated as the maturity of the protection. <sup>3</sup>Where an institution obtains credit protection for a number of reference entities underlying a credit derivative under the terms that the first default among the assets shall trigger payment and that this credit event shall terminate the contract (first-to-default credit derivative) the institution, notwithstanding sentence 1, may opt not to recognise that net interest position which, pursuant to section 303 (2) to (4), is included in the calculation of the partial capital charge for specific risk of the net interest position at the

lowest weight. <sup>4</sup>For net positions which, pursuant to section 303 (2) numbers 1 to 3, are not to be recognised pursuant to section 303 (1), a weight of 0 shall be applied for the purposes of the calculation pursuant to sentence 3. <sup>5</sup>Where the nth default among the risk positions triggers payment under the credit protection, the protection buyer may opt not to recognise a net interest position only if protection has also been obtained for defaults 1 to n-1 or when n-1 defaults have already occurred. <sup>6</sup>In such cases, the methodology set out in sentence 3 for first-to-default credit derivatives shall be followed appropriately modified for nth-to-default credit derivatives.

(10) <sup>1</sup>Subsection (3) applies *mutatis mutandis* to opposite positions in credit derivatives.

<sup>2</sup>Positions protected by a total return swap may be offset against the opposite positions within the meaning of subsection (1) sentence 1 number 1 arising from the total return swap.

(11) The relevant maturity for a synthetic long position pursuant to subsection (5) sentence 2 numbers 2 and 3 and subsections (6) and (7), in each case other than for total return swaps regulated therein, is that of the credit derivative which gives rise to this position.

### **Section 300**

#### General risk of the net interest position

(1) In order to calculate the partial capital charge for general risk, net interest positions shall be assigned in accordance with the maturity-based method with their relevant amounts to appropriate maturity bands and weights, based on their residual maturity or period until the next interest fixing date, separately for each currency and for long or short positions and differentiated according to their coupon.

(2) An institution may choose, on a consistent and permanent basis for particular clearly defined sub-segments, to use the duration method instead of the maturity-based method.

### **Section 301**

#### Maturity-based method

(1) <sup>1</sup>Where the maturity-based method is applied, the maturity bands for net positions with a coupon of less than 3 per cent (coupon category A) comprise the periods listed in column A of Table 23 in Annex 1. <sup>2</sup>For a coupon of 3 per cent or more (coupon category B) the maturity bands comprise the periods listed in column B of Table 23 in Annex 1. <sup>3</sup>The maturity bands, which are measured from the respective calculation date, are assigned the weights listed in column C of Table 23 in Annex 1. <sup>4</sup>The maturity bands are grouped into the following zones:

1. the first four maturity bands to form the short-term maturity zone,

2. the following three maturity bands to form the medium-term maturity zone,
3. the other maturity bands to form the long-term maturity zone.

(2) After the net interest positions have been assigned to the appropriate maturity bands and weights in accordance with section 300 (1), the weighted net interest positions of the two coupon categories shall be aggregated for each maturity band separately for long and short positions.

(3) For each maturity band the matching amounts of the weighted long and short net positions (matched weighted band positions) and the remaining differences (unmatched weighted band positions) shall be calculated.

(4) <sup>1</sup>The matched weighted band positions shall be aggregated to yield the sum of the matched weighted band positions. <sup>2</sup>For each maturity zone the unmatched weighted band positions in that zone shall be aggregated separately for long and short positions.

(5) <sup>1</sup>For each maturity zone the matching amounts of the unmatched long and short weighted band positions, aggregated according to subsection (4) sentence 2 (matched weighted zone positions) and the remaining differences (unmatched weighted zone positions) shall be calculated. <sup>2</sup>The unmatched long/short weighted zone positions of all maturity zones shall be netted with one another individually in order to calculate the net matched weighted zone positions and the net unmatched weighted zone positions, and the remaining net unmatched weighted zone position shall be calculated. <sup>3</sup>This shall be done by, firstly, netting the unmatched weighted zone position of the short-term zone with the unmatched weighted zone position of the medium-term zone, and then netting the remaining unmatched weighted zone position of the medium-term zone with the unmatched weighted zone position of the long-term zone and the remaining unmatched weighted zone position of the long-term zone with the remaining unmatched weighted zone position of the short-term zone.

(6) The partial capital charge for general risk shall be calculated as the sum of

1. 10 per cent of the sum of the matched weighted band positions,
2. 40 per cent of the matched weighted zone position of the short-term zone,
3. 30 per cent of the matched weighted zone position of the medium-term zone,
4. 30 per cent of the matched weighted zone position of the long-term zone,
5. 40 per cent of the matched net weighted zone position between the short-term and medium-term zones,

6. 40 per cent of the matched net weighted zone position between the remaining unmatched weighted zone position of the medium-term zone and the unmatched weighted zone position of the long-term zone,
7. 150 per cent of the matched net weighted zone position between the remaining unmatched weighted zone positions of the short-term and long-term zones,
8. the remaining unmatched net weighted zone position.

### **Section 302**

#### Duration-based method

- (1) <sup>1</sup>Where the duration-based method is applied, the net interest positions shall be allocated to the maturity bands shown in Table 24 of Annex 1, which are measured from the respective calculation date, in accordance with their duration. <sup>2</sup>Section 301 (1) sentence 4 applies *mutatis mutandis*.
- (2) In order to calculate the weights, the assumed yield changes listed in Table 24 of Annex 1 shall be multiplied by the modified duration, a mathematical ratio to be calculated for each net position.
- (3) <sup>1</sup>Section 301 (2) to (5) and (6) numbers 2 to 8 applies *mutatis mutandis*. <sup>2</sup>The sum of the matched weighted band positions shall be assigned a 5 per cent weight.

### **Section 303**

#### Specific risk of the net interest position

- (1) In order to calculate the partial capital charge for specific risk, the relevant amounts of the net interest positions shall be aggregated and assigned an 8 per cent weight subject to subsections (2) to (5).
- (2) The following positions shall be disregarded for the purposes of subsection (1):
  1. securities-based net positions pursuant to section 299 (1) sentence 1 number 1 which constitute claims on or which are expressly guaranteed by central governments, international organisations, multilateral development banks, other public-sector entities if they are operated by the Federal Republic of Germany and for the settlement of whose payment obligations the Federal Republic of Germany has assumed liability equivalent to an explicit guarantee or which is a legally independent promotional institution in the legal form of a Federal agency, or by regional governments or local authorities in an EEA country if, for these securities, a credit assessment from an eligible ECAI is available which has been assigned credit quality

step 1 or if these securities would be assigned a CRSA risk weight of 0 per cent as CRSA exposures,

2. net positions arising from components pursuant to section 299 (2) sentences 1 and 2, where the underlying instrument involves no issuer-related risk, and
3. short interest rate positions of time deposits and own debt securities.

(3) <sup>1</sup>In the aggregation pursuant to subsection (1), the relevant amount for a net interest position in qualifying items which is not a securitisation position shall be weighted according to the residual maturity of the qualifying item. <sup>2</sup>Qualifying items comprise the following:

1. securities for which a credit assessment from an eligible ECAI is available which has been assigned credit quality step 1, 2 or 3, where these securities underlying the net positions are not recognisable pursuant to subsection (2) number 1,
2. securities which are assigned a forecast PD calculated pursuant to the provisions of sections 55 to 153 that is no higher than the forecast PD of the securities listed under number 1,
3. securities for which no credit assessment from an eligible ECAI is available and which meet the following conditions:
  - a) they are traded on at least one regulated market within the meaning of Article 4 (14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Directives 85/611/EEC and 93/6/EEC of the Council and Directive 2000/12/EC of the European Parliament and of the Council and repealing Directive 93/22/EEC of the Council (OJ L 145 of 30 April 2004, page 1; L 45 of 16 February 2005, page 18), as amended, in an EEA country or on a stock exchange or futures exchange of a non-EEA country, and
  - b) they are considered to be sufficiently liquid by the institution according to its own general criteria designed for permanent application, which on request shall be disclosed to BaFin, and are assigned a CCR that is comparable to or lower than that of the securities specified under number 1; the institution shall inform BaFin and the Bundesbank of its first-time use of its own criteria,
4. securities issued by institutions subject to the capital adequacy requirements set out in Article 75 of Directive 2006/48/EC that are considered to be sufficiently liquid by the institution according to its own general criteria designed for permanent application, which on request shall be disclosed to BaFin, and are assigned a CCR that is comparable to or lower than that of the securities specified under number 1; the institution shall inform BaFin and the Bundesbank of the institution's first-time use of its own criteria, and

5. securities issued by institutions subject to a prudential regime which is substantively equivalent to that provided for by the Banking Act and which the institution has assigned a CCR equivalent to credit quality step 1 or 2.

<sup>3</sup>The relevant weights for qualifying items depend on the residual maturity as indicated below:

- |                                    |                  |
|------------------------------------|------------------|
| 1. up to six months                | 3.125 per cent,  |
| 2. over six months up to two years | 12.500 per cent, |
| 3. more than two years             | 20.000 per cent. |

<sup>4</sup>Securities listed under numbers 1 to 5 which would meet the conditions for assignment to the CRSA exposure class Covered bonds issued by credit institutions and which as CRSA positions would be given a risk weight of 10 per cent shall be weighted at the lower of 10 per cent or the weight pursuant to sentence 3.

(4) For a net interest position, the relevant amount shall be allocated a 12 per cent weight if the underlying security

1. constitutes a claim on, or is explicitly guaranteed by, a central government, international organisation, multilateral development bank or regional government or local authority in an EEA country or institutions or public-sector entity treated as an institution and a credit assessment from an eligible ECAI is available for this security which has been assigned credit quality step 6;
2. constitutes a claim on, or is explicitly guaranteed by, an enterprise and a credit assessment from an eligible ECAI is available for this security which has been assigned credit quality step 5 or 6;
3. constitutes a claim on, or is explicitly guaranteed by, a counterparty specified in number 1 and no credit assessment from an eligible ECAI is available for this security but it has been allocated a forecast PD calculated pursuant to the provisions of sections 55 to 153 corresponding to credit quality step 6;
4. constitutes a claim on, or is explicitly guaranteed by, an enterprise and no credit assessment from an eligible ECAI is available for this security but it has been allocated a forecast PD calculated pursuant to the provisions of sections 55 to 153 corresponding to credit quality step 5 or 6.

(5) <sup>1</sup>If a net interest position is based on securities which pursuant to sections 225 to 268 are deducted from the liable capital or are allocated a risk weight of 1,250 per cent, the net interest position in the aggregation pursuant to subsection (1) shall likewise be weighted at 1,250 per cent. <sup>2</sup>If a net interest position is based on unrated liquidity facilities, the

recognition provisions set out in sections 225 to 268 shall apply *mutatis mutandis*.

(6) If net interest positions are protected by a credit derivative, the following points apply.

1. An 80 per cent offset of the partial capital charge for specific risk shall be applied to the position with the higher partial capital charge, provided

- a) the requirements for an effective risk transfer are met,
- b) there is an exact match between the reference obligation and the position that is protected,
- c) the credit derivative and the position that is protected are denominated in the same currency,
- d) the credit derivative and the position that is protected have the same maturity date and
- e) the key features of the credit derivative contract do not cause the price movement of the credit derivative to materially deviate from the price movements of the position that is protected;

the partial capital charge for specific risk of the opposite position is zero.

2. Only the position with the higher partial capital charge for specific risk shall be recognised if

- a) the position is protected by a total return swap where the reference obligation and the underlying exposure are not an exact match but the reference obligation ranks *pari passu* with or is junior to the underlying exposure and the underlying exposure and the reference obligation share the same obligor and have legally enforceable cross-default or cross-acceleration clauses,
- b) the positions fall under number 1 or constitute opposite positions in credit derivatives pursuant to section 299 (10) sentence 1, except that there is a currency or maturity mismatch between the credit derivative and the underlying exposure; currency risks which are the result of a currency mismatch between the credit derivative and the underlying exposure shall be included when calculating the overall currency position;
- c) the conditions specified in number 1 are met, except that there is not an exact match between the reference obligation and the underlying exposure, but the underlying exposure is included in the deliverable obligations listed in the credit derivative documentation;

3. in all other cases both the net interest positions and the credit derivative shall be included when calculating the partial capital charges for specific risk.

**Section 304**

## General risk of the net equity position

<sup>1</sup>The difference between the aggregated relevant amounts of the net long and short equity positions shall be included, with an 8 per cent weight, separately for each national equity market, as the partial capital charge for general risk. <sup>2</sup>The institution's own equities which it holds in its portfolio shall not be included.

**Section 305**

## Specific risk of the net equity position

(1) <sup>1</sup>In order to calculate the partial capital charge for specific risk, the relevant amounts of the net equity positions shall be aggregated, regardless of whether they are long or short, and assigned a 4 per cent weight. <sup>2</sup>The following shall not be included:

1. net positions arising from exchange-traded forward contracts on a recognised stock index and
2. equities pursuant to section 304 sentence 2.

(2) <sup>1</sup>Net positions pursuant to section 299 (1) sentence 1 number 1 in highly liquid qualifying equities shall be included in the aggregation pursuant to subsection (1) with 50 per cent of their relevant amount provided that they do not account for more than 5 per cent of the value of the total net positions. <sup>2</sup>The limit referred to in sentence 1 clause 2 shall be 10 per cent if the total value of these net positions is 50 per cent or less of the value of the total net positions. <sup>3</sup>Equities are considered to be highly liquid if they are verifiably included in a recognised stock index. <sup>4</sup>Equities are considered to be qualifying equities if they are verifiably admitted for trading on a stock or futures exchange in a country with a liquid equities market and if the issuer is not the obligor of securities included in the net interest position that are not qualifying items pursuant to section 303 (3) sentence 2.

**Section 306**

## Stock index positions

<sup>1</sup>In calculating net equity positions, the institution may choose, on a consistent and permanent basis, to completely decompose its net positions deriving from stock index transactions into net positions in the individual equities underlying the stock index in accordance with the current index breakdown. <sup>2</sup>The option pursuant to sentence 1 may be exercised separately for each stock index.

**Section 307**

## Exposures in the form of CIUs

(1) <sup>1</sup>The sum of the partial capital charges for general and specific risk associated with CIU exposures within the meaning of section 25 (12) is 32 per cent of the exposure's relevant amount pursuant to section 299 (2) sentence 3. <sup>2</sup>If the institution applies the procedure pursuant to section 294 (6) sentence 6, the capital charge for general and specific position risk plus foreign exchange risk shall total no more than 40 per cent of the relevant amount for the position. <sup>3</sup>Provided the conditions for use described below in subsection (3) are met, the partial capital charges for general and specific risk for CIU exposures within the meaning of section 25 (12) may be calculated in accordance with the procedures set out in subsections (4) to (6), whereby the sum of the partial capital charges thus calculated shall be capped at the amount specified in sentence 1.

(2) Unless expressly noted otherwise, netting is not permitted between the underlying investments of a CIU and other positions held by the institution.

(3) <sup>1</sup>The general eligibility criteria for using the methods specified in subsections (4) to (6) are as follows.

1. The CIU exposures are issued by an enterprise supervised in an EEA country,
2. the CIU's sales prospectus or equivalent document includes
  - a) all categories of assets in which the CIU is authorised to invest,
  - b) if investment limits apply for certain categories of assets, the relative limits and the methodologies to calculate them,
  - c) if leverage is allowed, the maximum leverage,
  - d) if investment is allowed in financial derivatives not subject to daily remargining and not constituting claims on or carrying the guarantee of a stock or futures exchange or in repurchase transactions, a description of the policy to limit counterparty risk arising from these transactions,
3. a report shall be prepared at least on a half-yearly and annual basis on the CIU in which the position constitutes a share detailing the assets and liabilities, net income and business operations over the reporting period,
4. the CIU exposures are redeemable in cash, out of the undertaking's assets, on a daily basis at the request of the unit holder,
5. investments in the CIU shall be segregated from the assets of the CIU manager and

6. there shall be adequate risk assessment of the CIU by the investing institution.

<sup>2</sup>Subsection (1) may be applied to exposures in the form of CIUs within the meaning of section 25 (12) issued by an enterprise that is not included under sentence 1 number 1 provided the requirements pursuant to sentence 1 numbers 2 to 6 are met and BaFin has given its permission.

(4) <sup>1</sup>Where the institution is aware of the underlying investments of the CIU in which it has a share via the CIU exposure on a daily basis, it may look through to those underlying investments in order to calculate the partial capital charges for general and specific risk for these positions in accordance with sections 298 to 306 and sections 308 to 312 or, provided BaFin has granted its permission pursuant to section 313 (1) sentence 1, in accordance with sections 313 to 318. <sup>2</sup>Under this approach positions in CIUs shall be treated as positions in the underlying investments of the CIU. <sup>3</sup>Netting is permitted between positions in the underlying investments of the CIU and other positions held by the institution, as long as the institution holds a sufficient quantity of units to allow for redemption in exchange for the underlying investments.

(5) Provided that

1. the purpose of the CIU's mandate as described in its sales prospectus or equivalent document is to replicate the composition and performance of an externally generated index or fixed basket of equities or debt securities, and
2. a minimum correlation of 0.9 between daily price movements of the CIU and the index or basket of equities or debt securities it tracks can be clearly established over a minimum period of six months,

the partial capital charges for general and specific risk for CIU exposures may be calculated in accordance with sections 298 to 306 and sections 308 to 312 or, provided BaFin has granted its permission pursuant to section 313 (1) sentence 1, in accordance with sections 313 to 318 on the basis of the composition of the externally generated index or of fixed basket of equities or debt securities whose composition and performance the CIU exposure is intended to track.

(6) Where the institution is not aware of the underlying investments of the CIU in which it has a share via the CIU exposure on a daily basis, it may calculate the capital charges for this CIU exposure in accordance with sections 298 to 306 and sections 308 to 312 subject to the following conditions:

1. it will be assumed that, in an initial step, the CIU first invests to the maximum extent laid down in the sales prospectus or equivalent document in the asset classes attracting the highest sum of the partial capital charge for general risk and the partial capital charge for specific risk; this step is then repeated in descending order of the sum of the partial capital charges

until the maximum total investment limit of the CIU is reached; the positions in the CIU will be treated as a direct holding in the assumed assets;

2. if leveraging is allowed, the procedure under number 1 shall be modified by raising the positions assumed to be held using the maximum permissible leverage laid down in the sales prospectus or equivalent document.

(7) <sup>1</sup>Institutions may rely on a third party to calculate the partial capital charges pursuant to subsections (4) to (6), provided that the correctness of the calculation and the report to the institution is adequately ensured. <sup>2</sup>An external auditor must confirm the correctness of the calculation pursuant to sentence 1 no later than three months after the end of the CIU's business year.

## Chapter 4

### Options position

#### Section 308

##### Recognition of options

(1) With regard to the overall currency position, the commodities position, the trading book risk positions and other market risk positions, the institution's delivery or payment rights or delivery or payment obligations arising from options shall be included in the amount of their delta equivalent on the assumption that the underlying instrument is actually delivered or received.

(2) In addition to the capital charges for the overall currency position, the commodities position, the partial capital charges for general risk arising from the trading book risk positions and the capital charge for other market risk positions, a trading book institution is also required to add further capital charges for gamma factor risk and vega factor risk pursuant to sections 309 and 310 (delta-plus method).

(3) <sup>1</sup>A trading book institution may choose, on a consistent and permanent basis upon request and with the prior permission of BaFin, to calculate the capital charge for its options trades pursuant to the provisions set out in section 311 (scenario matrix analysis). <sup>2</sup>In cases where sentence 1 applies, options shall not be included when calculating the capital charges for the overall currency position, the commodities position and other market risk positions as well as the partial capital charges for general risk arising from trading book risk positions. <sup>3</sup>The institution may, when calculating the capital charges for its options, additionally include those other asset or liability items or net positions verifiably hedged by the options that have to be included in the overall currency position, the commodities position, the other market risk

positions or the trading book risk positions. <sup>4</sup>In cases where sentence 3 applies, these can be disregarded when calculating the capital charges for the overall currency position, the commodities position, other market risk positions as well as the partial capital charges for general risk arising from trading book risk positions. <sup>5</sup>This discretionary choice may be applied to certain defined segments. <sup>6</sup>BaFin may request an institution which uses the delta-plus method to switch to scenario matrix analysis for some or all types of options trades within a reasonable transitional period if this seems appropriate in view of the nature, scale or structure of such options trades for the adequate recording and capital backing of the risks associated with these transactions.

(4) <sup>1</sup>The delta equivalent of a claim or obligation or an asset or liability component shall be calculated by multiplying the relevant notional amount by the delta factor established for the option. <sup>2</sup>The delta factor of an option measures the change in the option price in terms of the change in the price of the underlying which is assumed to be very small. <sup>3</sup>An option's gamma factor measures the change in the delta factor in terms of the change in the price of the underlying which is assumed to be very small; a negative gamma factor denotes the gamma factor of a third-party option right. <sup>4</sup>An option's vega factor measures the change in the option price in terms of the change in volatility which is assumed to be very small; a negative vega factor denotes the vega factor of a third-party option right. <sup>5</sup>The volatility measures the variation in the price of the underlying.

(5) <sup>1</sup>When calculating the sensitivity factors and volatility referred to in subsection (4) sentences 2 to 4 and when using scenario matrix analysis, the institution shall use consistently for options trades of the same type, paying due regard to market practices, scientifically sound computer-aided option pricing models. <sup>2</sup>Section 317 (3) sentences 1 and 2 shall apply *mutatis mutandis*. <sup>3</sup>The procedures and option pricing models referred to in sentence 1 shall be submitted to BaFin. <sup>4</sup>BaFin may prohibit an institution from using an unsuitable option pricing model and require it to use a suitable option pricing model if this seems appropriate in view of the nature, scale or structure of the institution's options business for the adequate recording and capital backing of the risks involved in these transactions.

### Section 309

#### Capital charge for gamma factor risk

(1) If the options trade involves the delivery or receipt of shares, other equities, stock indices, foreign currency or gold, the gamma factor risk for a unit of the underlying shall be calculated by multiplying one-half of the gamma factor of the options trade by the square of the market value of a unit of the underlying weighted with 8 per cent, expressed in the accounting currency.

(2) If the options trade involves the delivery or receipt of commodities or refers to other

market risk positions, the gamma factor risk of a unit of the underlying shall be calculated by multiplying one-half of the gamma factor of the options trade by the square of the market value of a unit of the underlying weighted with 15 per cent, expressed in the accounting currency.

(3) <sup>1</sup>If the options trade involves the delivery or receipt of a debt instrument, the gamma factor risk shall be calculated by multiplying one-half of the gamma factor of the options trade by the square of the market value of the debt instrument weighted with the relevant weight factor specified in section 301 (1) sentence 3 in conjunction with Table 23 of Annex 1, expressed in the accounting currency. <sup>2</sup>If the duration-based method pursuant to section 300 (2) is applied, the weight calculated in accordance with section 302 (2) shall be used.

(4) <sup>1</sup>If the options trade involves the delivery or receipt of an interest-rate-related financial instrument other than those referred to in subsection (3), the gamma factor risk shall be calculated by multiplying one-half of the gamma factor of the options trade by the square of the weighted market value of the underlying, expressed in the accounting currency. <sup>2</sup>The calculation of the weight to be used in sentence 1 shall be based on the yield changes specified in section 302 (2) in conjunction with Table 24 of Annex 1.

(5) <sup>1</sup>Gamma factor risks of options trades involving the delivery or receipt of shares, other equities or stock indices shall be aggregated to the extent that the shares, other equities or stock indices are traded on the same national market. <sup>2</sup>Gamma factor risks of options which involve the delivery or receipt of foreign currency or gold shall be aggregated for all options involving the same currency pairs or the same currency/gold pairs. <sup>3</sup>Gamma factor risks of options trades which involve the delivery or receipt of commodities or trades in other market risk positions shall be aggregated for all options trades involving the same commodities or trades in other market risk positions. <sup>4</sup>If an institution applies the maturity-based method, gamma factor risks of options trades which involve debt instruments or other interest-rate-related instruments shall be aggregated separately for all maturity bands specified in section 301 (1) in conjunction with Table 23 of Annex 1. <sup>5</sup>If an institution applies the duration-based method, the gamma factor risks pursuant to sentence 3 shall be aggregated separately for all maturity bands calculated pursuant to section 302 (1) in conjunction with Table 24 of Annex 1.

(6) The capital charge for gamma factor risk is the absolute value of the sum of all gamma factor risks calculated in accordance with subsections (1) to (4) and aggregated in accordance with subsection (5) which have a negative sign.

**Section 310**

## Capital charge for vega factor risk

<sup>1</sup>The vega factor risk shall be calculated for each options trade using the vega factor of the options trade for a relative change in the current volatility of 25 per cent, expressed in the accounting currency. <sup>2</sup>The vega factor risks shall be aggregated in accordance with the provisions of section 309 (5) for options trades involving the same underlying. <sup>3</sup>The capital charge for vega factor risk shall be calculated as the absolute amount of the vega factor risks aggregated in accordance with sentence 2.

**Section 311**

## Scenario matrix analysis

(1) <sup>1</sup>If scenario matrix analysis is used, options trades involving the same underlying shall be aggregated to form options trade classes pursuant to section 309 (5). <sup>2</sup>The institution may choose, on a consistent and permanent basis, to itself calculate the options trade classes for the aggregation of debt instruments and other interest-rate-related instruments based on the maturity bands described in section 301 (1) in conjunction with Table 23 of Annex 1 and calculated pursuant to section 302 (1) in conjunction with Table 24 of Annex 1; the options trades shall be divided into at least six options trade classes, and not more than three of the maturity bands calculated in section 301 (1) in conjunction with Table 23 of Annex 1 and in section 302 (1) in conjunction with Table 24 of Annex 1 may be combined into one options trade class.

(2) <sup>1</sup>The capital charge for an options trade class shall be calculated by revaluing all options trades included in the aggregation and their additionally included collateral pursuant to section 308 (3) sentence 3 for various combinations of simultaneous changes in the price of the underlying and its volatility and by calculating the difference compared with the price of the option if the price of the underlying and its volatility remains unchanged. <sup>2</sup>In this case

1. a relative increase and a relative decrease in volatility of 25 per cent of the current level of volatility and
2. a relative increase and a relative decrease in the price of the underlying for
  - a) underlyings involving foreign currency, gold, equities, stock indices and similar underlyings of 8 per cent,
  - b) underlyings involving commodities and other market risks of 15 per cent,

c) underlyings involving interest-rate-related financial instruments amounting to the highest assumed change in yield according to Table 24 of Annex 1 for the maturity band to which the respective class shall be assigned,

shall be assumed.<sup>3</sup> At least six equally spaced intervals shall be used for the change in the price of the underlying pursuant to sentence 2 number 2. <sup>4</sup>The capital charge for the options trade class shall be calculated as the absolute amount of the largest loss resulting from the calculation pursuant to sentence 2 for all combinations. <sup>5</sup>In order to calculate the capital charge for all options trades, the capital charges for the individual options trade classes shall be aggregated.

## Chapter 5

### Other market risk positions

#### Section 312

##### Calculation and recognition of other market risk positions

(1) <sup>1</sup>When calculating the capital charges for other market risk positions, all contracts relating to similar underlyings that are included in the institution's portfolio at the close of business on the current trading day shall be aggregated in each case to form a single market risk portfolio (current market risk portfolio). <sup>2</sup>An institution may choose, on a consistent and permanent basis and with prior permission from BaFin, to transfer individual contracts from one market risk portfolio to another market risk portfolio if there is a verifiable hedging relationship between the contracts contained in this market risk portfolio and the market risks relating to this market risk portfolio. <sup>3</sup>Approval shall be deemed to have been given if the institution applies for such reassignment informally and BaFin does not object within three months of the application being received. <sup>4</sup>Any such application shall specify the type and scale of the business in the relevant market risk positions and shall also provide evidence of the hedging relationship. <sup>5</sup>Applications shall be submitted to BaFin annually by the reporting date of 31 December for the following year and in the event of planned or actual deviations.

(2) <sup>1</sup>When calculating the market value of the current market risk portfolio, the underlyings of all contracts in a current market risk portfolio, for options the delta equivalent, shall be disaggregated in such a way that none of the resulting underlyings forms a concrete part of one of the other resulting underlyings. <sup>2</sup>For each individual underlying, the difference, with a positive or negative sign, between the rights and obligations shall be calculated (net position). <sup>3</sup>For each trading day during the observation period specific to the underlying, the average market price for one unit of the individual underlying calculated for this day shall be multiplied by the absolute amount of the net position for this individual underlying (daily

market value of the net position). <sup>4</sup>The market value of the current market risk portfolio on a given trading day shall be the sum of the absolute amounts of the market values of the net positions. <sup>5</sup>The change in the market value of the current market risk portfolio for a given trading day shall be the difference between the market values of this market risk portfolio on this and the preceding trading day. <sup>6</sup>The cumulative change in market value for a given trading day shall be the absolute amount of the sum of the changes in market value for this and the preceding nine trading days, providing each of these trading days falls in the observation period, otherwise it is zero. <sup>7</sup>For contracts denominated in foreign currency section 5 shall apply *mutatis mutandis*.

(3) <sup>1</sup>BaFin shall regularly announce the applicable observation periods specific to the underlying. <sup>2</sup>If a position lacks an adequate price history, the instrument's theoretical prices shall be calculated.

(4) <sup>1</sup>The capital charge for each current market risk portfolio shall be calculated as the sum of the standard deviation, multiplied by a factor of 7.5, of changes in market value of this market risk portfolio across all trading days in the observation period specific to the underlying, including the current trading day, and the largest cumulative change in market value for a trading day during the observation period. <sup>2</sup>The method of moments shall be used to estimate the standard deviation. <sup>3</sup>The total capital charge for other market risk positions shall be the sum of the capital charges for the current market risk portfolios.

(5) <sup>1</sup>The suitability of calculating the theoretical market values of positions pursuant to subsection (3) sentence 2 shall be monitored verifiably through daily back-testing the estimated changes in value versus the actual changes. <sup>2</sup>For those contracts contained in the institution's portfolio at the close of business on the previous trading day, the market value of each market risk portfolio shall be calculated on the basis of the market prices calculated at the close of business on the current trading day for a unit of the respective underlying in accordance with the procedure pursuant to subsection (2), and the difference between this figure and the market value of this market risk portfolio calculated one day previously (change in value) shall be ascertained. <sup>3</sup>In the event that this change in value is negative and if the absolute amount of this change in value exceeds the capital charge of the previous day divided by the square root of ten, BaFin and the Deutsche Bundesbank shall be notified promptly of this exception, its size and the reason for its occurrence.

(6) <sup>1</sup>Crisis scenarios appropriate to the portfolio shall be conducted regularly, and at least once a month. <sup>2</sup>The institution shall verifiably and appropriately incorporate the results of the crisis scenarios into its system of risk-mitigating limits.

## Chapter 6

### Internal risk measurement models

#### Section 313

##### Use of risk measurement models

(1) <sup>1</sup>Subject to BaFin's permission, an institution may use suitable internal risk measurement models to calculate the capital charges or partial capital charges for market risk positions pursuant to section 2 (3). <sup>2</sup>The institution may restrict the use of suitable risk measurement models, subject to BaFin's permission, to the calculation of individual or various capital charges or partial capital charges. <sup>3</sup>In individual cases BaFin may restrict the use of internal risk measurement models pursuant to sentence 1 by time, locality or according to other criteria.

(2) <sup>1</sup>Risk measurement models are time-based stochastic representations of the changes in market rates, prices or interest rates and their effects on the market value of individual financial instruments or groups of financial instruments based on the sensitivity of these financial instruments or groups of financial instruments to changes in the factors determining their risk. <sup>2</sup>Risk measurement models contain mathematical-statistical structures and distributions for the calculation of risk-capturing ratios, notably the degree and correlation of fluctuations in market rates, prices and interest rates (volatility and correlation) and the sensitivity of financial instruments and groups of financial instruments, which are calculated by means of suitable computer-aided methods, in particular time series analyses.

(3) <sup>1</sup>Risk measurement models shall be deemed to be suitable only if their method of calculating risk-capturing ratios is based on the quantitative variables pursuant to section 315, they capture at least the risk factors defined in section 316, meet the qualitative standards set out in section 317 and demonstrate sufficient accuracy. <sup>2</sup>Compliance with the suitability requirements set out in sentence 1 shall be recognised by BaFin on the basis of an audit performed by it in collaboration with the Deutsche Bundesbank pursuant to section 44 (1) sentence 2 of the Banking Act. <sup>3</sup>These audits may continue, after the model's suitability has been recognised, in the form of follow-up examinations. <sup>4</sup>Any material changes and extensions pertaining to the risk measurement model require renewed permission pursuant to subsection (1). <sup>5</sup>Significant and insignificant changes do not require a renewed suitability examination but are to be notified in writing to BaFin and the Bundesbank; significant changes shall be coordinated with BaFin prior to use of the amended risk measurement model.

(4) <sup>1</sup>An institution which uses internal risk measurement models after having obtained BaFin's permission may revert to calculating the capital charges or partial capital charges for market risk positions in accordance with the provisions of sections 294 to 312 only if there are material grounds for doing so and only with BaFin's permission. <sup>2</sup>The institution shall apply to BaFin for such permission, stating the reasons.

### **Section 314**

#### Calculating the capital charges

(1) <sup>1</sup>The relevant capital charge or partial capital charge shall be the higher of the following amounts:

1. the value-at-risk measure for the financial instruments or groups of financial instruments in the institution's portfolio at the close of business on the previous day,
2. the average of the daily value-at-risk measures for the financial instruments or groups of financial instruments in the institution's portfolio at the close of business on each of the preceding 60 business days, weighted with a factor to be set by BaFin.

<sup>2</sup>When calculating the amount pursuant to sentence 1, section 2 (3), sentences 5 and 6 shall be taken into account.

(2) <sup>1</sup>If an institution uses a risk measurement model to calculate partial capital charges for specific risk, the relevant capital charge or partial capital charge pursuant to subsection (1) shall be increased above the amount resulting from the quantitative variables set out in section 315 to the extent that, based on these quantitative standards, the risk measurement model does not adequately capture default risk compared with the resulting capital charges for credit risk.

<sup>2</sup>When calculating this shortfall, due account shall be taken of the risk that, in the event that these trading book positions are sold or hedged at short notice, the value received will be lower than their most recently observed market price or estimated value.

(3) <sup>1</sup>The weighting factor to be applied pursuant to subsection (1) sentence 1 number 2 shall be at least 3. <sup>2</sup>BaFin may set a higher factor in individual cases. <sup>3</sup>BaFin shall set the factor to be used in the light of the qualitative standards pursuant to section 316 (1), sections 317 and 318 (2) and the risk measurement model's accuracy pursuant to section 318 (1).

### **Section 315**

#### Quantitative standards

In calculating the value-at-risk measures,

1. it shall be assumed that the financial instruments or groups of financial instruments held in the portfolio at the close of business will be held for another ten business days (holding period),
2. a 99th percentile, one-tailed confidence interval and
3. an effective historical observation period of at least one year shall be applied.

### **Section 316**

#### **Risk factors to be captured by the model**

- (1) In measuring the value at risk, the model shall capture all material market risk factors commensurate with the scale and structure of the institution's business.
- (2) The model shall adequately capture the risks inherent in options trades which are not linearly correlated with the volatility of market rates, prices or interest rates.
- (3) <sup>1</sup>Yield curve risks arise from the asymmetric movement of short and long-term interest rates. <sup>2</sup>In calculating yield curve risk, the yield curve shall be divided into a number and distribution of interest rate risk maturity segments appropriate to the scale and structure of the institution's business. <sup>3</sup>In mature markets the model shall differentiate between at least six interest rate risk maturity segments. <sup>4</sup>The model shall also adequately capture spread risk, ie asymmetric interest rate movements of different classes of interest rate-related financial instruments denominated in the same currency, irrespective of whether the positions have been assigned to general or specific risk.
- (4) In calculating equity price risks and commodity price risks, the model shall adequately capture differences in the price movements of product groups or products and differences in the movements of spot and forward prices.
- (5) <sup>1</sup>Risk measurement models used for calculating partial capital charges for specific risk shall be capable of statistically explaining the historical price variation in the portfolio. <sup>2</sup>They shall adequately capture risk concentrations, name-related basis risks and event risks.

### **Section 317**

#### **Qualitative standards**

- (1) <sup>1</sup>The institution shall have operational and organisational procedures in place which ensure adequate and timely quantitative and qualitative risk management and control. <sup>2</sup>This shall be properly documented.
- (2) <sup>1</sup>The task of designing, maintaining and further developing the risk measurement models,

of daily calculating, analysing and commenting on the value-at-risk measures and complying with the requirements pursuant to subsections (3) to (5) and section 318 (1) shall be entrusted to an entity within the institution which is organisationally independent of the trading unit.

<sup>2</sup>This organisational entity shall likewise be responsible for the initial and ongoing validation process. <sup>3</sup>The entity's independence shall be ensured right up to the institution's senior management level.

(3) <sup>1</sup>The mathematical-statistical methods for calculating the value-at-risk measures shall be adequately documented. <sup>2</sup>These methods shall be consistent with the procedures used for actual risk management. <sup>3</sup>Only deviations from the quantitative requirements set out in section 315 are permissible.

(4) <sup>1</sup>The institution shall have suitable processes in place for validating the risk measurement model. <sup>2</sup>Persons who are directly involved in the risk measurement model's development process shall not have a major role in the validation process. <sup>3</sup>The risk measurement model's suitability shall be validated and evaluated when is initially developed, on a periodic basis and when any significant changes are made which might lead to the model no longer being adequate. <sup>4</sup>Validation and evaluation of the model's suitability shall be appropriately documented and the model adjusted as and when necessary.

(5) <sup>1</sup>Potential exceptionally large losses in the value of the individual financial instruments or groups of financial instruments included in the model's calculation, which may arise as a result of unusually large or small changes in the market parameters that determine their value and their correlations (crisis scenario), shall be calculated at regular intervals commensurate with the scale and structure of the institution's business, and at least monthly. <sup>2</sup>The crisis scenarios shall adequately reflect the specific features of the groups of financial instruments included in the model's calculation and shall also reflect the length of time that is required for hedging and managing risks. <sup>3</sup>The losses in value pursuant to sentence 1 shall be calculated for all financial instruments as well as for the classes of individual financial instruments and groups of financial instruments appropriately defined by the institution. <sup>4</sup>The results of the crisis scenarios shall be used as the basis for assessing the adequacy of the limits pursuant to subsection (6).

(6) The quantitative ceilings (limits) to be set by the institution shall depend verifiably and appropriately on the value-at-risk measures calculated by the model.

(7) In order to evaluate its risk-bearing capacity, an institution which uses risk measurement models to calculate the partial capital charges for specific risk must also take due account of event risks that are excluded from the calculation of the value-at-risk measures pursuant to section 315.

(8) The empirical data on the movement of prices, market rates and interest rates and their correlations used for time series analyses shall be updated at regular intervals, at least every

three months and if necessary promptly.

(9) Compliance with the requirements specified in subsections (1) to (8) and section 318 (1) shall be reviewed by the internal audit unit at regular intervals, and at least once a year.

(10) <sup>1</sup>Senior management shall ensure that it is directly and verifiably informed by the entity referred to in subsection (2) of the results of the adequacy review of the risk measurement model variables and procedures pursuant to subsection (4), the results of the crisis scenarios pursuant to subsection (5) and the internal audit results pursuant to subsection (9). <sup>2</sup>It shall take due account of this information when formulating the institution's business policy.

### **Section 318**

#### Accuracy of the model

(1) <sup>1</sup>A risk measurement model's accuracy shall be reviewed by daily back-testing the value-at-risk measure calculated by the model, based on a holding period of one business day, against the actual change in value of the individual financial instruments or groups of financial instruments included in the model's calculation. <sup>2</sup>The financial instruments or groups of financial instruments included in the institution's portfolio at the close of business on the previous day shall be revalued using current market prices at the close of business. <sup>3</sup>If the amount is lower than the previous day's valuation result and if the difference exceeds the value-at-risk measure calculated by the model, BaFin and the Deutsche Bundesbank shall be notified promptly of this overshooting, its scale and its cause.

(2) <sup>1</sup>BaFin will set the factor pursuant to section 314 (3) sentence 2 based on the number of overshootings during the most recent 250 business days in accordance with Table 25 of Annex 1. <sup>2</sup>When determining this factor, BaFin may disregard individual overshootings if the institution can demonstrate that the overshooting was not due to the risk measurement model's inadequate accuracy.

## Part 5

### Disclosure

#### Chapter 1

### General provisions regarding the scope of application, disclosure medium and disclosure frequency

#### Section 319

##### Scope of application of disclosure

(1) The disclosure requirements set out in this part apply to institutions within the scope of application of section 1, groups of institutions within the meaning of section 10a (1) sentence 1 and (2) sentence 1 of the Banking Act and financial holding groups within the meaning of section 10a (3) sentences 1 and 2 of the Banking Act.

(2) <sup>1</sup>In the case of a group of institutions or financial holding group, the disclosure requirements apply only to the group's superordinated company. <sup>2</sup>The information it gives shall relate to the group.

(3) Institutions within the meaning of section 53 of the Banking Act and subsidiaries of an institution or financial holding company domiciled in another EEA country as well as within the meaning of section 53d of the Banking Act need not apply the disclosure requirements set out in this part if information equivalent to the disclosure requirements set out in this part is disclosed in the course of the group's consolidated reporting.

(4) The disclosure requirements set out in this part do not apply to housing enterprises with savings facilities.

#### Section 320

##### Disclosure medium

(1) <sup>1</sup>Institutions subject to disclosure requirements shall publish, on their own website or in another suitable medium, the information to be disclosed pursuant to this part in compliance with the principle of materiality, protection and confidentiality described in section 26a of the Banking Act. <sup>2</sup>If such information has already been disclosed on a mandatory or voluntary basis under other legal publishing requirements, it need not be published in the media named in sentence 1 as long as reference is made to those other disclosure media. <sup>3</sup>The disclosure medium shall be used consistently.

(2) <sup>1</sup>The fact of disclosure shall be announced in the electronic edition of the Federal Gazette together with a reference to the disclosure medium. <sup>2</sup>BaFin and the Deutsche Bundesbank shall be notified of this announcement. <sup>3</sup>The information to be disclosed shall be transmitted only at BaFin's written request.

### **Section 321**

#### Disclosure frequency

(1) <sup>1</sup>The disclosure pursuant to this part shall be published annually. <sup>2</sup>In individual cases, BaFin may request more frequent disclosure, in particular where this is appropriate given the scope of application and structure of the institution's business and market activity.

(2) Disclosures shall be made as soon as practicable in the light of the availability of data and external accounts.

## **Chapter 2**

### **General requirements regarding the information to be disclosed**

### **Section 322**

#### Description of risk management in relation to individual risks

Institutions shall describe the following details of risk management objectives and principles for each separate category of risk, including counterparty credit risk, market risk, operational risk and interest rate risk in the banking book:

1. strategies and processes;
2. structure and organisation of risk management;
3. scope and nature of risk reporting and/or the management information system;
4. policies for hedging or mitigating risks and the strategies and processes for monitoring the continuing effectiveness of hedges and mitigants.

### **Section 323**

#### Information regarding the scope of application of this Regulation

(1) The following qualitative information shall be disclosed:

1. the name of the undertaking at the top of the group hierarchy to which the requirements of this Regulation apply;
2. an outline of the fundamental differences in the basis of consolidation under commercial law and consolidation pursuant to section 10a of the Banking Act, with a brief description of the group entities that are
  - a) fully consolidated,
  - b) proportionally consolidated,
  - c) deducted from own funds, and
  - d) neither consolidated nor deducted;
3. all restrictions or other significant impediments to the transfer of funds or liable capital within the group,
4. where use is made of the exemptions for group institutions specified in section 2a of the Banking Act, an explanation of the extent to which the criteria specified in section 2a of the Banking Act are met.

(2) The following quantitative information shall be disclosed: the aggregate amount by which the actual own funds are less than the required minimum in all subsidiaries that are not included in the consolidation pursuant to section 10a of the Banking Act but whose equity share was deducted from liable capital; the subsidiaries shall be named.

### **Section 324**

#### **Own funds structure**

(1) <sup>1</sup>The following qualitative information shall be disclosed: summary information on the terms and conditions of the main features of all own funds items and components. <sup>2</sup>Other capital pursuant to section 10 (4) of the Banking Act, particularly capital for which an incentive to redeem has been agreed, shall be reported separately.

(2) The following quantitative information shall be disclosed separately:

1. the total amount of tier 1 capital pursuant to section 10 (2a) of the Banking Act and its composition, broken down by individual capital components and deductions; this also includes other capital pursuant to section 10 (4) of the Banking Act, particularly capital for which an incentive to redeem has been agreed,

2. the sum of tier 2 capital pursuant to section 10 (2b) of the Banking Act and tier 3 capital pursuant to section 10 (2c) of the Banking Act,
3. the sum of capital deductions pursuant to section 10 (6) and (6a) of the Banking Act, with separate disclosure of deductions pursuant to section 10 (6a) numbers 1 and 2 of the Banking Act, and
4. the total amount of modified available capital pursuant to section 10 (1d) of the Banking Act and eligible tier 3 capital pursuant to section 10 (2c) of the Banking Act.

### **Section 325**

#### Adequacy of own funds

(1) The following qualitative information shall be disclosed: a summary of the institution's approach to assessing the adequacy of its internal capital to support current and future activities.

(2) The following quantitative information shall be disclosed:

1. under the CRSA, the capital requirements resulting from CCR in the banking book, broken down by CRSA exposure class;
2. under the IRBA, the capital requirements resulting from CCR in the banking book, broken down by IRBA exposure class; the capital requirements resulting from the IRBA exposure class Equity claims, broken down by weighting method and, under the simple risk-weighting approach, further broken down by exchange-traded equity exposures, private equity exposures in sufficiently diversified portfolios and other exposures, as well as the separate disclosure of the capital requirement for exposures which are temporarily or permanently exempted from IRBA use;
3. for the trading book, the total capital requirement for market risk exposures using the Standardised Approach or the model-based approach;
4. the capital requirement for operational risk using the Basic Indicator Approach, the Standardised Approach or the Advanced Measurement Approach;
5. the total capital requirement as well as its ratio to tier 1 capital as the tier 1 capital ratio and the total capital ratio pursuant to section 2 (6) sentence 2; also, the tier 1 capital ratio and the total capital ratio pursuant to section 2 (6) sentence 2 of significant subsidiaries of the institution at single-entity or sub-consolidated level.

**Section 326**

## Disclosure requirements for derivative CCR exposures and netting positions

(1) The following qualitative information shall be disclosed:

1. a description of the methodology used to assign the internal capital and credit limits for counterparty credit exposures;
2. a description of policies for securing collateral and establishing credit reserves;
3. a description of policies with respect to the treatment of correlations between market and counterparty risks (wrong-way risk exposures);
4. a description of the impact of the amount of collateral the credit institution would have to provide given a downgrade in its credit rating.

(2) The following quantitative information shall be disclosed:

1. gross positive fair values of contracts before netting and before collateral arrangements, a breakdown of these amounts into interest rate contracts, foreign exchange contracts, equity contracts, credit derivative contracts, commodity contracts and other contracts, as well as available netting arrangements, eligible collateral, positive fair values after netting and collateral arrangements;
2. the amount of recognisable counterparty credit risk in contracts according to the method applied;
3. the notional value of credit derivative hedges;
4. the notional value of credit derivatives transactions, segregated between use for the institution's own credit portfolio as well as in its intermediation activities, broken down further by credit derivative product and by its own bought or sold protection positions;
5. the factor pursuant to section 223 (6) if the credit institution has received authorisation from the competent authorities to estimate this factor.

**Section 327**

## Counterparty credit risk: general disclosure obligations for all institutions

(1) <sup>1</sup>The following qualitative information shall be disclosed over and above the general disclosure obligation:

1. the definition of "past due" and "impaired" used for accounting purposes and

2. a description of the approaches and methods adopted for determining value adjustments and provisions.

<sup>2</sup>Disclosure of additional information pursuant to sentence 1 may be waived if it is published under other statutory disclosure obligations.

(2) The following quantitative information shall be disclosed:

1. the total amount of exposures without taking into account the effects of credit risk mitigation, broken down by different types of exposure classes; where the amounts differ materially from the average amounts on the reference date for disclosure, the average amounts shall also be disclosed;
2. the distribution of the exposures over significant geographical areas, broken down by material exposure classes;
3. the distribution of the exposures by industry or counterparty type, broken down by exposure classes;
4. a breakdown of the various exposure classes by the contractual residual maturity;
5. a breakdown of impaired and past-due exposures by significant industry or counterparty type and broken down separately by significant geographical areas with their
  - a) assignable amounts of individual and general value adjustments and provisions and
  - b) for the breakdown by significant industry or counterparty type, also the assignable charges for individual and general value adjustments, for provisions and for direct write-downs or write-offs as well as the assignable revenues on written-off exposures during the reporting period;
6. separate disclosure of the changes in the individual value adjustments, general value adjustments and provisions in lending business, stating the opening balance, adjustments in the reporting period, liquidations, consumption, exchange rate-related and other changes as well as the closing balance at the end of the reporting period.

### **Section 328**

#### Counterparty credit risk: disclosure for CRSA exposure classes

(1) The following qualitative information shall be disclosed:

1. the names of the nominated ECAIs and, where appropriate, export credit agencies (ECAs) as well as the reasons for any changes to the group of nominated ECAIs or ECAs;

2. the CRSA exposure classes for which the individual ECAIs are nominated;
3. a description of the process used to transfer issue credit assessments onto exposures.

(2) The following quantitative information shall be disclosed: the respective sum of the exposure values before and after the application of credit risk mitigation techniques that are assigned to specific credit quality steps pursuant to sections 26 to 40 and according to the prudential mapping of credit assessments to credit quality steps or are deducted from own funds.

### **Section 329**

#### Counterparty credit risk: additional disclosure requirements

(1) Institutions calculating their risk-weighted exposure amounts for IRBA exposures for which the simple risk weight for specialised lending exposures has to be used shall disclose the exposure amounts that are assigned to the risk weight categories determined pursuant to section 97 (1).

(2) Institutions using the simple IRBA risk weight for equity exposures to calculate risk-weighted exposure amounts for IRBA equity claims shall disclose the exposure amounts assigned to the simple IRBA risk-weight categories pursuant to section 98.

### **Section 330**

#### Disclosure requirements for market risk

(1) Institutions using the standard method to calculate their own funds requirements for market risk in the trading book and for foreign exchange and commodity exposure risks in all business lines shall disclose the separate own funds requirement for interest rate risk, equity risk, foreign exchange risk, commodity risk and other risk.

(2) Institutions which apply internal risk measurement models shall disclose the following qualitative information:

1. for each portfolio recorded separately for supervisory purposes, the characteristics of the model used, the scope of acceptance by the competent authority, as well as a description of the stress tests and the processes used to validate the model;
2. a description of the extent of and methodologies for compliance with the requirements pursuant to section 1a (8) of the Banking Act.

(3) Institutions which apply internal risk measurement models shall disclose the following quantitative information:

1. the highest, the lowest and the mean of the daily value-at-risk measures over the reporting period and the value-at-risk measure as at the end of the period;
2. a comparison of the daily end-of-day value-at-risk measures to the one-day changes of the portfolio's value by the end of the subsequent business day calculated pursuant to section 318 (1) sentence 2 including an analysis of any important overshootings of such a value-at-risk measure during the reporting period caused by such a change of the portfolio's value during the reporting period.

### **Section 331**

#### Disclosure requirements for operational risk

- (1) The methodology used to determine the supervisory capital charge for operational risk shall be disclosed.
- (2) <sup>1</sup>Institutions that apply the Advanced Measurement Approach shall describe this methodology and the internal and external factors considered. <sup>2</sup>In the case of partial use, the scope of application and coverage of each of the different methodologies shall be disclosed.

### **Section 332**

#### Disclosure requirements for equities in the banking book

The following shall be disclosed regarding exposures in equities in the banking book:

1. in qualitative terms, a differentiation between exposures based on their objectives, including exposures where the intention is to achieve capital gains and those entered for strategic reasons, and an overview of the valuation and accounting principles used. These include the assumptions and practices on which the valuation is based and any significant changes in these practices;
2. in quantitative terms,
  - a) the balance sheet value and fair value of an equity exposure; for exchange-traded securities, a comparison to the listed market price where it is materially different from the fair value;
  - b) the types, nature and amounts of equity exposures, broken down by exchange-traded exposures, private equity exposures in sufficiently diversified portfolios from a supervisory perspective, and other exposures;
  - c) the cumulative realised gains or losses arising from sales and liquidations in the reporting period;

d) the total unrealised revaluation gains or losses, the latent revaluation gains or losses and any of these amounts included in the tier 1 and tier 2 capital.

### **Section 333**

#### Disclosure of interest rate risk in the banking book

(1) The following qualitative information shall be disclosed: the nature of the interest rate risk in the banking book and the associated key assumptions, including assumptions regarding loan prepayments and the behaviour of non-maturity deposits, and the frequency of measurement of the interest rate risk in the banking book.

(2) The following quantitative information shall be disclosed: the increase or decrease in earnings or economic value or other relevant measure in the event of an interest rate shock according to management's method for measuring the interest rate risk in the banking book, where appropriate broken down by currency.

### **Section 334**

#### Disclosure requirements for securitisations

(1) Institutions shall disclose the following qualitative information in connection with securitisation transactions for which they calculate risk-weighted securitisation position amounts pursuant to sections 225 to 268:

1. a description of the institution's objectives in relation to securitisation activity;
2. the roles played by the institution in the securitisation process;
3. an indication of the extent of the institution's involvement in each of them;
4. a description of the institution's approaches to calculating the risk-weighted exposure amounts for the securitisation transactions to be included;
5. a summary of the institution's accounting and valuation policies for securitisations, including in particular whether the transactions are treated as sales or refinancings, the recognition of gains on sales, the key assumptions for valuing retained interests, the treatment of synthetic securitisation transactions if this is not covered by other accounting and valuation policies;
6. the names of the ECAs used for securitisations and the types of securitised position for which each agency was used.

(2) Institutions shall disclose the following quantitative information in connection with

securitisation transactions for which they calculate risk-weighted securitisation position amounts pursuant to sections 225 to 268:

1. the total outstanding amount of positions securitised by the institution, broken down into true-sale and synthetic securitisation transactions and by securitised position type;
2. details of impaired and past-due parts of the securitised position amounts pursuant to number 1 and the associated losses incurred in the reporting period, broken down by type of securitised position;
3. the aggregate amount of securitisation positions retained or purchased by the institution in its role as originator, sponsor or investor, broken down by the type of the respective underlying exposure;
4. for the aggregate amount of the securitisation positions pursuant to number 3, a breakdown into a meaningful number of securitisation risk weight bands; securitisation positions that have been risk-weighted at 1,250 per cent or treated as deductible securitisation positions pursuant to section 266 shall be disclosed;
5. for securitisation positions in connection with revolving CCR exposures for which the institution is the originator and which include an investor's interest in securitisation transactions to be recognised by the originator, the CCR exposures arising from amounts drawn under the limit, segregated by originator's interest and investor's interest, as well as the CRSA or IRBA capital requirement for the amount of the limit, segregated by the originator's interest and the investor's interest;
6. a summary of the securitisation activity in the reporting period, including the amount of effectively securitised exposures, and the gains or losses realised from the sale of the securitised positions, broken down in each case by type of securitisation activity and type of securitised position.

## **Chapter 3**

### **Qualifying requirements for the use of particular instruments or methodologies**

#### **Section 335**

Counterparty credit risk: disclosure for exposure classes for which the IRBA is used

(1) Institutions calculating risk-weighted exposure amounts in accordance with the IRBA shall disclose the following qualitative information:

1. the IRBA methodologies or approved transition accepted by BaFin;
2. a description and explanation of
  - a) the structure of the internal rating system and relation between the internal assignment of exposures or obligors to rating classes or risk pools and external credit assessments,
  - b) the use of internal estimates other than for calculating IRBA risk-weighted exposure amounts,
  - c) the process for managing and recognising credit risk mitigation techniques and
  - d) the control mechanisms for the rating system, including a description of independence, accountability and the rating system's review;
3. a description of the internal process for assigning exposures or obligors to rating classes or risk pools, provided separately for the following exposure classes:
  - a) central governments,
  - b) institutions,
  - c) corporates, small and medium-sized enterprises, specialised lending and purchased corporate receivables,
  - d) retail claims, in each case for IRBA retail claims secured by real estate, qualifying revolving IRBA retail claims and other IRBA retail claims and
  - e) equity claims.

(2) Institutions calculating risk-weighted exposure amounts in accordance with the IRBA shall disclose the following quantitative information:

1. the sum of the exposure amounts for each of the IRBA exposure classes specified in subsection (1) number 3. Exposures assigned to the exposure classes pursuant to subsection (1) number 3 letters (a), (b) and (c), and for which the institution uses own estimates of LGD or of the IRBA conversion factors for calculating risk-weighted IRBA exposure amounts shall be disclosed separately from the exposures for which the institutions do not apply such estimates;
2. for each of the exposure classes pursuant to subsection (1) number 3 letters (a), (b), (c) and (e), across a sufficient number of obligor rating grades (including “default”) to allow a meaningful differentiation of credit risk, in each case:
  - a) the total exposure amount: for the exposure classes pursuant to subsection (1) number 3 letters (a), (b) and (c) the sum of the outstanding loans and exposure values for undrawn

- commitments, for the exposure class pursuant to subsection (1) number 3 letter (e) the outstanding amounts,
- b) for institutions using their own LGD estimates for the calculation of risk-weighted IRBA exposure amounts, the exposure-weighted average LGD in per cent,
  - c) (c) the exposure-weighted average risk weight and
  - d) (d) for institutions that use their own estimates of IRBA conversion factors to calculate risk-weighted IRBA exposure amounts, the total amount of undrawn commitments and the average exposure value for each exposure class;
3. for each of the retail sub-portfolios specified in subsection (1) number 3 letter (d), either the disclosure requirements pursuant to number 2 or an analysis of exposures against a sufficient number of EL grades to allow a meaningful differentiation of credit risk;
  4. actual losses in the form of direct write-downs and value adjustments in the preceding reporting period for each exposure class (for retail claims, for each sub-portfolio specified in subsection (1) number 3 letter (d)) and how they differ from past experience;
  5. a description of the factors that impacted on the loss experience in the reporting period (for example, has the institution experienced higher-than-average default rates or higher-than-average LGDs);
  6. the institution's estimates against actual outcomes over a longer period. At a minimum, this shall include information on estimates of losses against actual losses in each exposure class. The period under consideration should be sufficient to allow for a meaningful assessment of the performance of the process for assigning exposures or obligors to rating classes or risk pools for each exposure class. Where appropriate, the institutions shall further decompose this and provide an analysis of the realised default rates and, for institutions using own estimates of LGDs, realised LGDs and/or a comparison of the outcomes with the respective estimates to be disclosed pursuant to number 2.

### **Section 336**

#### Credit risk mitigation techniques: disclosures for CRSA and IRBA exposures

(1) Institutions that apply credit risk mitigation techniques for the calculation of the total capital charge for credit risk shall disclose the following qualitative information:

1. the policies and processes for, and an indication of the extent to which an institution makes use of, on- and off-balance sheet netting;
2. the policies and processes for valuing and managing the eligible collateral used;

3. a description of the main types of collateral taken by the institution;
4. the main types of guarantor and credit derivative counterparty and their creditworthiness;
5. information about (market or credit) risk concentrations incurred within the eligible credit mitigation taken:

(2) Institutions that apply credit risk mitigation techniques for the calculation of the total capital charge for credit risk shall disclose the following quantitative information, where applicable, following the use of on- and off-balance sheet netting agreements:

1. in the case of institutions that apply the CRSA, or IRBA institutions that do not use their own estimates of LGD or of the IRBA conversion factor separately for each CRSA- or IRBA exposure classes, the total exposure value that is covered by

- a) eligible financial collateral pursuant to section 154 (1) sentence 1 number 1 after application of market value volatility adjustments,
- b) unfunded credit protection pursuant to section 154 (1) sentence 1 number 2 and life insurance policies pursuant to section 170,
- c) other eligible IRBA collateral pursuant to section 154 (1) sentence 1 number 3,

2. in the case of IRBA institutions that use their own estimates of LGD or of the IRBA conversion factor, the total exposure value that is covered, especially those covered by guarantees or credit derivatives, separately for each IRBA exposure class.

For IRBA equity claims this shall be disclosed separately for all three of the approaches listed in section 78 (2).

### **Section 337**

#### Instruments for transferring operational risks

Institutions using Advanced Measurement Approaches for calculating the capital charge for operational risk shall disclose a description of the use of insurance and other risk transfer mechanisms for the purpose of mitigating operational risk.

## Part 6

### Transitional and final provisions

#### Section 338

##### Transitional provisions for estimating parameters

(1) If an application to use IRBA is submitted before 1 January 2010, the period for gathering experience with rating systems pursuant to section 63 (1) number 1 is reduced to one year until 31 December 2009 and the period for gathering experience with own estimates of LGD and IRBA conversion factors outside of retail business pursuant to section 63 (1) number 2 is reduced to two years until 31 December 2008.

(2) Until 31 December 2012, the average own estimate of LGD, weighted with the respective IRBA exposure value, for all IRBA exposures within the exposure class Retail claims secured by residential real estate and not benefiting from guarantees from central governments shall not be lower than 10 per cent.

(3) Until 31 December 2012, the following supervisory LGD may be used:

1. for the sub-assessment basis fully secured by real estate collateral, provided the claims or contingent claims associated with the IRBA exposure are not subordinate, notwithstanding section 94 (3) sentence 1 number 3 letter (b): a value of 30 per cent,
2. for senior IRBA exposures in the form of commercial real estate leasing: a value of 30 per cent,
3. for senior IRBA exposures in the form of equipment leasing: a value of 35 per cent.

(4) <sup>1</sup>Until 31 December 2017, an IRBA institution may exempt from IRBA treatment equity exposures that were held prior to 1 January 2008 in addition to equity exposures pursuant to section 70 sentence 1 numbers 8 and 9. <sup>2</sup>The position exempted pursuant to sentence 1 shall be measured as the number of shares already held prior to 1 January 2008 and any additional share arising directly as a result of owning those holdings, as long as they do not increase the proportional share of ownership pursuant to section 102 (2) in this company. <sup>3</sup>Sentence 1 does not apply to

1. the exceeding part of the holding if an acquisition increases the proportional share of ownership in a specific company,
2. holdings that were held on 31 December 2007 but were subsequently sold and then repurchased.

<sup>4</sup>Equity exposures exempted from IRBA treatment pursuant to sentence 1 shall be subject to the capital requirements calculated pursuant to sections 24 to 54.

(5) Own estimates of LGD and IRBA conversion factors for IRBA exposures in the IRBA exposure classes Central governments, Institutions and Corporates as well as Advanced Measurement Approaches for calculating the capital charge for operational risk may not be used until 1 January 2008.

(6) <sup>1</sup>Until 31 December 2011 an institution, when assigning CRSA exposures, which were originally assigned to the CRSA exposure classes Corporates, Other public-sector entities or Retail business to obligors situated in another country that exercises the discretion pursuant to Article 154 (1) of Directive 2006/48/EC, to the CRSA exposure class Past due items, may apply the deadline set by the competent authorities instead of the deadline of 90 calendar days mentioned in section 25 (16) sentence 1. <sup>2</sup>Until 31 December 2011, an institution, when defining default, may apply the deadline set by the competent authorities instead of the deadline of 90 calendar days mentioned in section 125 (1) sentence 1 number 2 to IRBA exposures assigned to the IRBA exposure class Corporates to obligors situated in a country that exercises the discretion pursuant to section 154 (7) of Directive 2006/48/EC.

### Section 339

#### Transitional provisions for the adequacy and calculation of own funds

(1) An institution that has calculated the total capital charge for credit risk fully or partially according to the IRBA, shall, during the first, second, third, fourth and fifth twelve-month periods after 31 December 2006, provide own funds which are at all times more than or equal to the amounts indicated in subsections (3) to (5b).

(2) An institution that has used Advanced Measurement Approaches for calculating the capital charge for operational risk shall, during the second, third, fourth and fifth twelve-month periods after 31 December 2006, provide own funds which are at all times more than or equal to the amounts indicated in subsections (4) and (5b).

(3) For the first twelve-month period pursuant to subsection (1), the minimum amount of own funds shall be 95 per cent of the total minimum amount of own funds that would be required to be held during that period by the institution pursuant to section 2 of Principle I concerning the own funds of credit institutions (*Grundsatz I*) in the version announced on 29 October 1997 (Federal Gazette page 13,555), last amended by the announcement of 20 July 2000 (Federal Gazette page 17,077) (Principle I).

(4) For the second twelve-month period pursuant to subsections (1) and (2), the minimum amount of own funds shall be 90 per cent of the total minimum amount of own funds that would be required to be held by the institution during that period pursuant to section 2 of

## Principle I.

(5) For the third twelve-month period pursuant to subsections (1) and (2), the minimum amount of own funds shall be 80 per cent of the total minimum amount of own funds that would be required to be held by the institution during that period pursuant to section 2 of Principle I.

(5a) For the fourth and fifth twelve-month period pursuant to subsections (1) and (2), the minimum amount of own funds for the relevant twelve-month period for an institution which was granted IRBA approval pursuant to section 58 (1) or approval to use an Advanced Measurement Approach pursuant to section 278 (1) by 31 December 2009 shall be 80 per cent of the total minimum amount of own funds that would be required to be held by the institution during the relevant twelve-month period pursuant to section 2 of Principle I.

(5b) For the fourth and fifth twelve-month period pursuant to subsections (1) and (2), the minimum amount of own funds for the relevant twelve-month period for an institution which was granted IRBA approval pursuant to section 58 (1) or approval to use an Advanced Measurement Approach pursuant to section 278 (1) for the first time after 31 December 2009 and which previously did not have approval to use either the IRBA or an Advanced Measurement Approach shall be

1. 80 per cent of the total minimum amount of own funds that would be required to be held by the institution during the relevant twelve-month period pursuant to section 2 of Principle I, or
2. subject to prior permission from BaFin, 80 per cent of the sum of the total minimum amounts of own funds that would be required to be held by the institution pursuant to the wording of this Regulation valid prior to 1 January 2011, during the relevant twelve-month period for
  - a) credit risk exposures according to the CRSA and the settlement risk exposures pursuant to sections 15 and 16,
  - b) operational risk calculated using the Basic Indicator Approach or the Standardised Approach, and
  - c) market risk positions pursuant to sections 294 to 318.

(6) When carrying out the calculations pursuant to subsections (3) to (5b), the modified available capital shall be recognised excluding the amounts to be included according to section 10 (2b) sentence 1 number 9 and section 10 (6a) numbers 1 and 2 of the Banking Act.

(7) <sup>1</sup>Until 31 December 2011, financial services institutions and investment firms that do not fall under the scope of section 269 (3) may, subject to BaFin's permission, calculate their

capital charge for operational risk differently from the approaches listed in section 269 (2) if their daily trading book position at no time exceeds EUR 50 million and their average number of employees carrying out business activities related to proprietary trading does not exceed 100 during the financial year. <sup>2</sup>In this case, the capital requirement for operational risk shall be at least the lower of

1. the capital charge for operational risk pursuant to section 269 (2) and
2. 12/88 of the higher of
  - a) the total capital requirements pursuant to section 2 (1) sentence 1 excluding the capital charge for operational risk and
  - b) the fixed overheads-based own funds requirements pursuant to section 10 (9) sentences 1 and 2 of the Banking Act; section 10 (9) sentences 3 to 5 of the Banking Act shall apply *mutatis mutandis*.

<sup>3</sup>If sentence 2 number 2 applies, the value calculated shall be adjusted to the capital charge pursuant to section 269 (2) to section 293 in appropriate increments on at least an annual basis. <sup>4</sup>Applying sentences 1 to 3 shall not result in a reduction in the overall level of capital requirements for the institution in question in comparison to the requirements as at 31 December 2006, unless such a reduction is justified by a reduction in the size of the institution's business.

(8) Financial services institutions and investment firms that calculate the capital charge for operational risk using the Standardised Approach may use a beta factor of 15 per cent until 31 December 2012 for the regulatory business line Trading and sales if at least 50 per cent of the relevant indicator determined pursuant to section 273 (1) can be assigned to the business line Trading and sales.

(9) (Repealed)

(10) (Repealed)

(11) Until 31 December 2012, an institution may, when calculating risk-weighted CRSA exposure amounts for property leasing transactions concerning offices or other commercial premises situated within Germany, assign a 50 per cent risk weight if the criteria set out in section 35 (2) sentence 1 numbers 1 and 2 as well as in section 35 (3) sentence 1 number 2 are met.

(12) Until 31 December 2010, BaFin, when defining the secured portion of a past due loan pursuant to sections 24 to 54, may recognise collateral other than eligible collateral as set out in sections 154 to 224.

(13) Until 31 December 2015, an institution may assign a CRSA risk weight of 0 per cent within the meaning of section 26 number 2 letter (b) if the exposure is to a central government or central bank of another EEA country and is denominated and funded in the currency of an EEA country.

(14) <sup>1</sup>Until 30 December 2011, an institution may use an internal risk measurement model to calculate the partial capital charge for specific risk, even if it does not measure event risk, if BaFin gave permission for its use prior to 1 January 2007. <sup>2</sup>In this case, when calculating the relevant capital charge or partial capital charge, the subtotal calculated for specific risk shall be added to the total pursuant to section 314 (1) sentence 1 number 1. <sup>3</sup>The average value-at-risk measures attributable to specific risk for the financial instruments or groups of financial instruments held by the institution at the close of business on each of the preceding 60 business days shall be added to the total pursuant to section 314 (1) sentence 1 number 2. <sup>4</sup>Section 314 (2) does not apply in this case.

(15) (Repealed)

(16) For CIU exposures pursuant to section 294 (6) sentences 1 to 8, an institution may disregard the requirement of proportional recognition in accordance with the actual currency breakdown until 31 December 2011 if the share of the CIU components invested in foreign currency or gold accounts for no more than 10 per cent of the CIU's total value.

(17) The requirement set out in section 164 (1) number 1 does not apply to a guarantee issued in the form of unfunded credit protection or a counter-guarantee up to 31 December 2006 by a company whose unsecured payment obligations would, as a CRSA exposure, be assignable to the CRSA exposure class Institutions. <sup>2</sup>Notwithstanding sentence 1, the deadline is extended to 31 December 2007 for institutions applying the provision pursuant to subsection (9).

(18) <sup>1</sup>The criterion set out in section 35 (2) sentence 1 number 2 pursuant to section 20a (6) of the Banking Act does not apply to a CRSA exposure incurred up to 31 December 2006, provided it is fully secured by residential real estate. <sup>2</sup>Notwithstanding sentence 1, the deadline is extended to 31 December 2007 for institutions applying the provision pursuant to subsection (9).

(19) <sup>1</sup>Until 31 December 2011, an institution, notwithstanding section 49 (2) sentence 1 number 1 letter (d), may choose, on a consistent basis for all such CRSA exposures, to calculate the CRSA assessment basis for a CRSA exposure assigned to the CRSA exposure class Other items, incurred as a result of a lease contract and constituting the residual value of a leased asset to be recognised pursuant to section 25 (15) number 6, as the book value of the residual value of a leased asset divided by the nearest number of whole years of the lease remaining, at least 1. <sup>2</sup>Until 31 December 2011, an IRBA institution, notwithstanding section

100 (9) number 1, may choose, on a consistent basis for all such IRBA exposures, to calculate the assessment basis for an IRBA exposure assigned to the exposure class Other non credit-obligation assets, incurred as a result of a lease contract and constituting the residual value of a leased asset to be recognised pursuant to section 82 number 2, as the book value of the residual value of a leased asset divided by the nearest number of whole years of the lease remaining, at least 1.

(20) The disclosure requirements set out in sections 319 to 337 shall first apply as soon as the institution calculates at least one risk-weighted exposure amount using the Credit Risk Standardised Approach or the Internal Ratings-Based Approach.

(21) Section 271 (1) number 6 of the Act Modernising Accounting Law (Bilanzrechtsmodernisierungsgesetz) as amended on 25 May 2009 (Federal Law Gazette I, page 1102) shall apply for the first time to annual financial statements for financial years starting after 31 December 2009.

(22) The requirement pursuant to section 237 (2) sentence 1 number 3 that there be an assessment by an ECAI which can be accessed from a publicly available forum, such as how development of the value of CCR exposures of the securitised portfolio affects the credit assessment,

1. is applicable only to securitisation transactions conducted for the first time from 31 December 2010 and

2. shall also be applied, from 1 January 2015, to securitisation transactions begun prior to 31 December 2010 in which underlying assets have been added or replaced after 31 December 2014.

(23) Until 31 December 2015, an institution may continue to determine IRBA compatibility pursuant to section 226 (4) sentence 2 in the wording of this Regulation valid prior to 31 December 2010 for all of the securitisation positions established prior to 31 December 2010.

### **Section 340**

#### Entry into force

This Regulation shall enter into force on 1 January 2007.

Berlin, 14 December 2006

Federal Minister of Finance

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