

CHAPTER VII
DEFINITIONS AND GENERAL PROVISIONS

67. Definitions

In these Regulations, "the Act" means the Banks Act, 1990 (Act No. 94 of 1990), and any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned thereto and, unless the context otherwise indicates-

“actual distribution” in relation to a bank’s exposure to counterparty credit risk means the distribution of market values or exposures in respect of a future time period, which distribution is calculated based on historic or realised values such as calculated volatilities based on past price or rate changes;

“asset class” in relation to-

- (a) the standardised approach for the measurement of a bank's exposure to credit risk includes-
- (i) any corporate exposure, that is, any exposure to a corporate entity or institution, including any relevant exposure to an SME of which the aggregate annual turnover amount exceeds a specified amount;
 - (ii) any corporate SME exposure, that is, any exposure to a corporate entity or institution of which the aggregate annual turnover amount is less than a specified amount, which exposure shall be deemed to constitute a corporate SME exposure and as such shall be reported separately;
 - (iii) any exposure to a public sector entity;
 - (iv) any exposure to local government or a municipality;
 - (v) any exposure to a sovereign, including central government or a central bank;
 - (vi) any exposure to a bank;
 - (vii) any exposure to a regulated securities firm, which securities firm is subject to supervisory and regulatory arrangements comparable to banks in the Republic, including, in particular, risk-based capital requirements and regulation and supervision on a consolidated basis, provided that when the said exposure to a securities firm does not comply with the aforementioned requirements the said exposure shall be deemed to constitute a corporate exposure;
 - (viii) any retail exposure, which retail exposure adheres to specified requirements;
 - (ix) any relevant retail SME exposure, that is, any retail exposure that complies with specified requirements, which retail SME exposure shall separately be reported from retail exposure not constituting retail SME exposure;
 - (x) any securitisation exposure;

- (b) the IRB approach for the measurement of a bank's exposure to credit risk includes-
- (i) any corporate exposure, that is, any exposure to a corporate entity or institution, including-
 - (A) any specialised lending exposure relating to high volatility commercial real estate;
 - (B) any specialised lending exposure relating to income producing real estate;
 - (C) any specialised lending exposure relating to object finance;
 - (D) any specialised lending exposure relating to commodity finance;
 - (E) any specialised lending exposure relating to project finance;
 - (F) any purchased corporate receivable;

which specialised lending exposures and purchased corporate receivables shall separately be reported;
 - (ii) any corporate SME exposure, that is, any exposure to a corporate entity or institution of which the aggregate annual turnover amount is less than a specified amount, which exposure shall be deemed to constitute a corporate SME exposure and as such shall be reported separately;
 - (iii) any exposure to a public sector entity;
 - (iv) any exposure to local government or a municipality;
 - (v) any exposure to a sovereign, including central government or a central bank;
 - (vi) any exposure to a bank;
 - (vii) any exposure to a regulated securities firm, which securities firm is subject to supervisory and regulatory arrangements comparable to banks in the Republic, including, in particular, risk-based capital requirements and regulation and supervision on a consolidated basis, provided that when the said exposure to a securities firm does not comply with the aforementioned requirements the said exposure shall be deemed to constitute a corporate exposure;
 - (viii) any retail exposure, which retail exposure adheres to specified requirements, including-
 - (A) any retail mortgage exposure;
 - (B) any retail revolving credit exposure;
 - (C) any purchased retail receivable;

- (ix) any relevant retail SME exposure, that is, any retail exposure that complies with specified requirements, which retail SME exposure shall separately be reported from retail exposure not constituting retail SME exposure;
- (x) any securitisation exposure;

“**associate**” in relation to a bank’s trading activities means an associate as defined in section 37(7) of the Act;

"Basel II" means the framework issued by the Basel Committee on Banking Supervision that essentially consists of the comprehensive version of the International Convergence of Capital Measurement and Capital Standards: A Revised Framework,¹ issued on 30 June 2006, which is a compilation of the following documents issued by the Basel Committee on Banking Supervision:

- (a) the June 2004 Basel II Framework;²
- (b) the elements of the 1988 Accord that were not revised during the Basel II process;³
- (c) the 1996 Amendment to the Capital Accord to Incorporate Market Risks;⁴ and
- (d) the 2005 paper on the Application of Basel II to Trading Activities and the Treatment of Double Default Effects;⁵

"Basel 2.5" means the framework issued by the Basel Committee on Banking Supervision that essentially includes the following documents issued by the Basel Committee on Banking Supervision:

- (a) the enhancements to the Basel II framework,⁶ issued on 13 July 2009;
- (b) the revisions to the Basel II market risk framework,⁷ issued on 13 July 2009; and
- (c) the guidelines for computing capital for incremental risk in the trading book,⁸ issued on 13 July 2009;

¹ Available at: <https://www.bis.org/publ/bcbs128.htm>

² Available at: <https://www.bis.org/publ/bcbs107.htm>

³ Available at: <https://www.bis.org/publ/bcbsc111.htm>

⁴ Available at: <https://www.bis.org/publ/bcbs119.htm>

⁵ Available at: <https://www.bis.org/publ/bcbs116.htm>

⁶ Available at: <https://www.bis.org/publ/bcbs157.htm>

⁷ Available at: <https://www.bis.org/publ/bcbs158.htm>

⁸ Available at: <https://www.bis.org/publ/bcbs159.htm>

"Basel III" means the framework issued by the Basel Committee on Banking Supervision that essentially consists of the following two documents issued by the Basel Committee on Banking Supervision:

- (a) a revised version of Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems,⁹ issued on 1 June 2011; and
- (b) a revised version of Basel III: International Framework for Liquidity Risk Management, Standards and Monitoring, which is a compilation of-
 - (i) Basel III: the Liquidity Coverage Ratio and liquidity risk monitoring tools,¹⁰ issued on 7 January 2013; and
 - (ii) Basel III: the Net Stable Funding Ratio,¹¹ issued on 31 October 2014;

"business day" for the purposes of these Regulations, unless otherwise stated or directed by the Registrar, means each day of the week except Saturday, Sunday or a public holiday;

"cash-management scheme" means an agreement between a bank and such of its clients as are members of the same group of companies in respect of which group annual financial statements are required to be completed in terms of the provisions of section 288(1) of the Companies Act, which agreement provides for transfers of balances between such clients' accounts kept in the accounting records of the bank, and which transfers are made in order to minimise the interest expense or to maximise the interest income of such clients;

"central counterparty" in relation to a bank's exposure to counterparty credit risk means an entity or a person that acts as an intermediary between counterparties to contracts traded in one or more financial markets, which entity or person or intermediary-

- (a) becomes the legal counterparty to a particular contract in such a manner that it becomes the buyer to every seller and the seller to every buyer, thereby ensuring the future performance of all relevant open contracts;
- (b) may become a counterparty to trades with relevant market participants through novation, an open offer system, or any other relevant legally binding arrangement;
- (c) is sometimes being referred to as a clearing house; and
- (d) shall for purposes of these Regulations be regarded as a financial institution;

"central government" means all relevant-

- (a) central government departments;
- (b) major extra-budgetary institutions or entities falling under the central government, as contemplated in the Institutional Sector Classification Guide;
- (c) universities, universities of technology and technikons, as contemplated in the

⁹ Available at: <https://www.bis.org/publ/bcbs189.htm>

¹⁰ Available at: <https://www.bis.org/publ/bcbs238.htm>

¹¹ Available at: <https://www.bis.org/bcbs/publ/d295.htm>

Institutional Sector Classification Guide; and

- (d) social security funds, as contemplated in the Institutional Sector Classification Guide;

“clearing member” in relation to counterparty credit risk means a member of, or a direct participant in, a central counterparty that is entitled to enter into a transaction with the relevant central counterparty, irrespective whether or not the relevant transactions with the central counterparty are for the member’s own hedging, investment or speculative purposes, or whether it also enters into trades as a financial intermediary between the relevant central counterparty and other market participants, provided that-

- (a) for purposes of these Regulations, when a central counterparty has a link to a second central counterparty, the said second central counterparty shall be treated as a clearing member of the first-mentioned central counterparty;
- (b) for purposes of these Regulations, the legal arrangement between the relevant central counterparties shall determine whether the said second central counterparty’s collateral contribution to the first-mentioned central counterparty is regarded as initial margin or a default fund contribution;
- (c) the Registrar may from time to time issue a directive in writing regarding the appropriate treatment of any relevant initial margin and/or default fund contributions;

“client” in relation to counterparty credit risk includes a party to a transaction with a central counterparty, either through a clearing member acting as a financial intermediary or a clearing member guaranteeing the performance of the client to the central counterparty;

“commercial paper” means-

- (a) a short-term secured or unsecured promissory note with a fixed or floating maturity;
- (b) call bonds; and
- (c) any other secured or unsecured written acknowledgement of debt;

issued to acquire working capital; and

- (d) debentures or any interest-bearing written acknowledgement of debt issued for a fixed term in accordance with the provisions of the Companies Act, 1973, or the Companies Act, 2008, as amended,

but does not include bankers' acceptances;

“committed undrawn facility or loan commitment” in relation to a bank’s off-balance sheet exposure includes any irrevocable undrawn commitment or facility;

“commodity” in relation to a bank’s exposure to market risk means a physical product that is or may be traded in a secondary market, such as agricultural products, minerals that may include oil, and precious metals;

“connected persons” in relation to a bank’s trading activities means two or more persons-

- (a) that are predominantly engaged in financial activities;
- (b) one or more of which is a bank;
- (c) each of which is an associate of any one of the others; and

which persons-

- (i) owing to the fact that one of them directly or indirectly owns or exercises control over the other or others, constitutes a single financial entity; or
- (ii) are so interconnected that should one of them experience financial difficulties, another one or all of them would be likely to be adversely affected,

irrespective whether or not any of the said persons are domiciled in the same country as the other or others;

“corporate exposure” in relation to the IRB approach includes a debt obligation of a corporation, partnership or proprietorship;

“Corporation for Public Deposits” in relation to the institutional and maturity breakdown of liabilities and assets means the subsidiary of the Reserve Bank, which subsidiary is a public-sector financial institution authorised in terms of the Corporation for Public Deposits Act, 1984 (Act No 46 of 1984) to accept call deposits from public-sector institutions and to invest such funds in short-term money-market instruments and in Treasury bills;

“correlation trading portfolio” in relation to the measurement of a bank’s exposure to market risk-

- (a) includes-
 - (i) any securitisation exposure or n-th-to-default credit derivative instrument that complies with the conditions specified below:
 - (A) The position is neither a resecuritisation position or exposure, nor a derivative of a securitisation exposure that do not provide a pro-rata share in the proceeds of a securitisation tranche, and as such excludes any option on a securitisation tranche or a synthetically leveraged super-senior tranche;
 - (B) All reference entities shall be single-name products, including a single-name credit derivative instrument, in respect of which a liquid two-way market exists, that is, independent bona fide offers to buy and sell exist so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at such price within a relatively short time conforming to trade custom, and as such includes commonly traded indices based on the aforesaid reference entities;

(b) shall exclude-

- (i) any position that references an underlying asset or instrument that constitutes a retail exposure, a residential mortgage exposure or a commercial mortgage exposure in terms of the standardised approach for the measurement of a bank's exposure to credit risk, as envisaged in regulation 23 of these Regulations;
- (ii) any position that references a claim on a special purpose entity or vehicle,

Provided that a bank may also include in its correlation trading portfolio any position that hedges a position described hereinbefore, and which is neither a securitization exposure nor n-th-to-default credit derivative instrument, and in respect of which a liquid two-way market exists, as described hereinbefore, for the instrument or its underlying;

“counterparty credit risk” includes any exposure to credit risk arising from a bilateral contract, transaction or agreement-

- (a) which credit risk relates to the risk that the counterparty to the contract, transaction or agreement may default before the final settlement of the underlying cash flows arising from the said contract, transaction or agreement;
- (b) the amount of which credit exposure-
 - (i) often relates to the positive economic value at the time of default or the cost of replacing the contract, transaction or agreement when the counterparty to the transaction defaults, assuming no recovery of value;
 - (ii) is uncertain and may vary over time due to movements in underlying market factors, that is, the market value of the contract, transaction or agreement-
 - (A) has an associated random future value based on market variables;
 - (B) for either counterparty to the bilateral contract, transaction or agreement, may be positive or negative during the remaining period to the maturity of the said contract, transaction or agreement;
 - (iii) may arise from an exchange of payment or an exchange of a financial instrument or commodity against payment;
 - (iv) exists for both parties to the contract, transaction or agreement during the remaining term of the said contract, transaction or agreement;
- (c) which contract, transaction or agreement-
 - (i) may relate to an OTC derivative instrument, a securities financing transaction or a long settlement trade transaction;
 - (ii) creates a current exposure or market value;
 - (iii) may be frequently valued based on market variables;

- (d) in respect of which counterparty to the said contract, transaction or agreement a unique probability of default may be determined, that is, any contract, transaction or agreement in respect of which the probability of default is calculated on a pooled basis is excluded from this definition of counterparty credit risk,

irrespective whether or not the reporting bank entered into the contract, transaction or agreement in order to obtain short-term financing, obtained collateral to mitigate its exposure to credit risk or entered into any netting, re-margining or set-off contract;

“CPSS-IOSCO Principles for Financial Market Infrastructures” means the Principles for Financial Market Infrastructures issued from time to time by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO);

“credit-default swap” means a bilateral agreement between a protection buyer and a protection seller in terms of which agreement the protection buyer agrees to pay the protection seller an agreed premium or fee. The protection seller agrees to pay the protection buyer a credit-default amount only if a predefined credit event occurs;

“credit-derivative instrument” means any contract in terms of which the credit risk associated with a financial asset is isolated from the other risks associated with that financial asset and which credit risk is transferred, either explicitly or implicitly, from one person or counterparty, which can be referred to as the protection buyer or credit-risk seller, to another person or counterparty, which can be referred to as the protection seller or buyer of credit risk;

“credit-enhancing interest-only strip” means an asset that-

- (a) represents a valuation of cash flows related to future margin income;
- (b) is subordinated;

“credit event” means any contingent event relating to a reference asset, reference entity or underlying asset agreed between the counterparties to a credit-derivative instrument, upon the occurrence of which event the protection buyer becomes entitled to payment;

“credit-linked note” means a bilateral agreement between a protection buyer and a protection seller in terms of which agreement the protection seller invests in a note issued by the protection buyer, which note is referenced to a particular credit exposure. The protection seller assumes the credit risk of the referenced exposure or underlying exposure. The protection buyer pays the protection seller agreed interest on the note issued and redeems the note at par value on the maturity date if a predefined credit event did not occur;

“credit valuation adjustment” in relation to a bank’s exposure to counterparty credit risk means an adjustment to the mid-market valuation of a portfolio of trades with a particular counterparty, which adjustment-

- (a) reflects the market value of the credit risk due to any failure to perform in accordance with the relevant contractual agreements with the said counterparty;
- (b) may reflect the market value of the credit risk of the relevant counterparty or the market value of the credit risk of both the bank and the said counterparty;

“cross-product netting” in relation to a bank’s exposure to counterparty credit risk means the inclusion of transactions of different product categories within the same netting set in accordance with the relevant requirements relating to cross-product netting specified in these Regulations;

“current exposure” in relation to a bank’s exposure to counterparty credit risk means the higher amount of-

- (a) zero; or
- (b) the market value of a transaction or portfolio of transactions within a netting set with a particular counterparty, which amount will be lost upon the default of the said counterparty, assuming that in the case of default or bankruptcy no recovery value exists in respect of the said transactions.

The terms current exposure and replacement cost are often used interchangeably by market participants;

“current market value” in relation to a bank’s exposure to counterparty credit risk means the net market value of a portfolio of transactions within a netting set with a particular counterparty, which net market value may include positive and negative market values relating to individual transactions included in the said netting set or portfolio of transactions;

“default” in relation to the IRB approach for the measurement of a bank’s exposure to credit risk shall in the case of-

- (a) exposures other than retail exposures, be deemed to have occurred when the bank is of the opinion that an obligor is unlikely to pay his/her/its credit obligations in full without any recourse by the said bank to actions such as the realisation of security, which opinion of the bank, as a minimum, shall be based on the matters specified below.
 - (i) The bank has assigned non-accrued status to the relevant credit obligation;
 - (ii) The bank has written off a portion or raised a specific provision in respect of the relevant credit exposure due to a significant perceived decline in the credit quality of the obligor since the bank incurred the said exposure;

- (iii) The bank is about to sell the credit obligation at a material credit-related economic loss;
 - (iv) The bank has consented to a distressed restructuring of the credit obligation, which restructuring is likely to result in a reduced financial obligation caused by, for example, the postponement of principal, interest or fees;
 - (v) The bank has applied for the obligor's bankruptcy or a similar order in respect of the obligor's credit obligation;
 - (vi) The obligor has applied for or has been placed in bankruptcy or similar protection and the said event is likely to avoid or delay repayment of the credit obligation to the banking group.
- (b) exposures other than retail exposures be deemed to have occurred when a material obligation of an obligor is overdue for more than 90 days;
 - (c) retail exposures be deemed to have occurred when the criteria specified in paragraph (a) or (b) above are present at a facility level instead of an obligor level;
 - (d) an overdraft facility be deemed to have occurred when-
 - (i) an obligor exceeded an advised limit for more than 90 days, that is, the relevant obligor failed to reduce the outstanding amount within the said period of time to an amount that is within the authorised limit; or
 - (ii) an obligor is advised of a limit smaller than the obligor's existing outstanding amount and the relevant obligor failed to reduce the outstanding amount within a period of 90 days to an amount that is within the newly advised limit;
 - (iii) the reporting bank extends credit to a person with no authorised limit, which credit is not repaid within 90 days;

“default fund” in relation to counterparty credit risk includes all clearing members' funded or unfunded contributions towards or underwriting of a central counterparty's mutualised loss-sharing arrangements-

- (a) which classification shall be based on the substance of the said arrangements; and
- (b) which classification shall be determined irrespective of the description given thereto by the relevant central counterparty, and

which contributions are sometimes being referred to as clearing deposits or guaranty fund contributions;

"demand deposit" means any amount repayable on demand, and includes -

- (a) all balances due on current account, without deduction of debits in transit or addition of credits in transit;
- (b) call monies, or monies withdrawable with a notice period of less than or equal to 24 hours; and
- (c) any other amounts due that are immediately withdrawable;

"distribution of exposures" in relation to a bank's exposure to counterparty credit risk means the process of forecasting the probability distribution of market values of transactions, during which process of forecasting instances of negative net market values are set equal to zero in order to recognise that when the reporting bank owes money to a particular counterparty, the bank does not have an exposure to the said counterparty;

"distribution of market values" in relation to a bank's exposure to counterparty credit risk means the process of forecasting the probability distribution of the net market values of transactions within a netting set for a particular forecasting horizon, which process of forecasting is based on the realised market value of the said transactions up to the time of forecasting;

"doubtful category" in relation to the standardised approach for the measurement of a bank's exposure to credit risk means on or off-balance sheet items that exhibit all the weaknesses inherent in on-balance sheet or off-balance sheet items classified as substandard, with the added characteristic that the on-balance sheet or off-balance sheet items are not adequately secured;

"EAD amount" in relation to the IRB approach for on-balance sheet and off-balance sheet credit exposure means the expected aggregate gross exposure of a facility upon the default of an obligor, as may be specified in these Regulations;

"economic loss" in relation to the IRB approach includes all material discounts and material direct and indirect costs associated with the collection of an exposure in default;

"effective expected exposure" at a specific date and in relation to a bank's exposure to counterparty credit risk means-

- (a) the maximum expected exposure that occurs at that date or any earlier date; or
- (b) the higher of the expected exposure at that date and the effective exposure at the previous date,

that is, effective expected exposure means the expected exposure constrained to be non-decreasing over time;

"effective expected positive exposure" in relation to a bank's exposure to counterparty credit risk means the weighted average over time of effective expected exposure over the first year or over the time period of the contract with the longest maturity included in the relevant netting set, in respect of which the relevant weights shall be based on the proportion that an individual expected exposure amount represents of the entire time interval;

“effective maturity” in relation to the internal model method for the measurement of a bank’s exposure to counterparty credit risk and relating to a netting set with a maturity of more than one year means the ratio of the sum of expected exposure over the life of the transactions included in the netting set and discounted at the risk-free rate of return, **divided by** the sum of expected exposure over one year in a netting set discounted at the risk-free rate provided that the effective maturity may be adjusted to reflect rollover risk by replacing the expected exposure amount with the effective expected exposure amount in respect of a forecasting horizon of less than one year;

“eligible institution” means an external credit assessment institution or an export credit agency that meets the prescribed minimum requirements specified in these Regulations and which institution/agency is recognised as an eligible institution for purposes of determining the required capital and reserve funds of a bank;

“eligible provisions” in relation to a bank that adopted the IRB approach for the measurement of the bank’s exposure to credit risk means the sum of all credit impairments, allowances or reserves for impairment, including-

- (a) specific credit impairment;
- (b) portfolio-specific credit impairment;
- (c) general allowance or reserve for credit impairment; and
- (d) any discounts on defaulted assets,

which impairment, allowance, reserve or discount relates to exposures calculated in terms of the IRB approach, but do not include any specific impairments relating to equity exposures or securitisation exposures;

“exemption notice relating to securitisation schemes” means Government Notice No. 2, published in *Government Gazette* No. 30628, dated 1 January 2008, as amended from time to time;

“expected exposure” in relation to a bank’s exposure to counterparty credit risk means the mean or average of the distribution of exposures at any particular future date before the transaction with the longest maturity in the particular netting set matures, which expected exposure amount is typically generated in respect of many future dates up until the longest maturity date of transactions included in the relevant netting set;

“expected positive exposure” in relation to a bank’s exposure to counterparty credit risk means the weighted average over time of expected exposure and in respect of which the relevant weights are based on the proportion that an individual expected exposure amount represents of the entire time interval, which average shall for purposes of calculating a bank’s minimum required capital and reserve funds be calculated over the first year or over the time period of the contract with the longest maturity included in the particular netting set;

"financial asset" in relation to a bank's trading activities means-

- (a) cash;
- (b) a contractual right-
 - (i) to receive cash or another financial asset from another person;
 - (ii) to exchange financial instruments with another person under conditions that are potentially favourable; or
- (c) an equity instrument;

"financial corporate sector" in relation to the institutional and maturity breakdown of liabilities and assets includes public and private sector companies, including an insurer, a pension fund, a medical scheme, a financial intermediary such as a unit trust, a micro lenders, the Development Bank of Southern Africa, the Industrial Development Corporation and any broker;

"financial instrument" in relation to a bank's trading book, portfolio or activities means any instrument or contract that gives rise to-

- (a) a financial asset of one person; and
- (b) a financial liability of or equity instrument issued by another person,

which instruments or contracts include primary instruments or cash instruments, and derivative instruments, including-

- (i) any transferable security such as an equity instrument or debt security;
- (ii) units in collective investment undertakings, that is, an open-ended collective investment marketed solely with the objective of investing in transferable securities, such as a unit trust;
- (iii) any money market instrument such as treasury bills, certificates of deposit or commercial paper;
- (iv) any financial futures contract, including equivalent cash settled instruments;
- (v) any forward interest-rate agreement;
- (vi) any interest-rate, currency or equity swap contract;
- (vii) a credit-derivative instrument;
- (viii) any option to acquire or dispose of any of the aforesaid instruments or contracts, including equivalent cash-settled instruments,

but not any other deposit or loan;

"financial liability" in relation to a bank's trading activities means an obligation-

- (a) to deliver cash or another financial asset to another person; or
- (b) to exchange financial instruments with another person under conditions that are potentially unfavourable;

"Financial Reporting Standards" means such reporting standards as may be issued from time to time by the Financial Reporting Standards Council in terms of the relevant provisions of section 440 of the Companies Act, 1973, or section 29 read with section 203 of the Companies Act, 2008;

"foreign asset" means any asset (excluding a claim) situated outside the Republic, and any asset consisting of a claim on a non-resident by the reporting bank;

"foreign currency" means a currency other than the reporting currency of a bank, branch or controlling company;

"foreign sector" in relation to the institutional and maturity breakdown of liabilities and assets means any natural or juristic person who is not a permanent resident of the Republic of South Africa;

"fund manager" in relation to the institutional and maturity breakdown of liabilities and assets means an institution approved under the Financial Advisory and Intermediary Services Act, Act no. 37 of 2002, as amended, to carry on the business of managing funds on behalf of others, which institution may be referred to as a fund manager, portfolio manager or asset manager;

"funded credit-derivative instrument" means a credit-derivative contract in terms of which a protection seller provides collateral to a protection buyer for the settlement of the protection seller's potential future obligations;

"general allowance or reserve" in relation to doubtful debts means any provision or reserve created to absorb future losses on debts that may prove to be wholly or partly irrecoverable and which losses have not been separately identified, but which losses can reasonably be expected to exist or develop;

"general risk" in relation to a bank's trading activities means the risk of an adverse price change in the underlying instrument owing to-

- (a) in the case of a traded loan-stock instrument or loan-stock derivative, a change in the level of interest rates; or
- (b) in the case of a security or security derivative, a broad market price movement unrelated to any specific attributes of the individual securities;

"general wrong-way risk" in relation to a bank's exposure to counterparty credit risk means the probability of default of a particular counterparty is positively correlated with general market risk factors;

“hedge” means a position in a financial instrument that materially or entirely offsets the component risk elements of another position or portfolio;

“hedging set” in relation to the standardised method for the measurement of a bank’s exposure to counterparty credit risk means a group of risk positions arising from transactions within a single netting set in respect of which only the balance is relevant in order to determine the exposure amount or EAD;

"holding of a financial instrument" in relation to a bank’s trading activities means the holding of a financial instrument by a bank-

- (a) on behalf of a buyer or seller;
- (b) for purposes of the management and control of such financial instrument;
- (c) within the limited or unlimited discretion of the bank; and
- (d) for any length of time;

“household” in relation to the institutional and maturity breakdown of liabilities and assets means an individual or small group of individuals sharing the same living accommodation, pooling some or all of their income and wealth and collectively consuming goods and services;

“household sector” in relation to the institutional and maturity breakdown of liabilities and assets includes households, unincorporated business enterprises of households, non-profit institutions serving households, private trusts and friendly societies;

“initial margin” in relation to counterparty credit risk means a clearing member’s or client’s funded collateral posted or provided to the relevant central counterparty to mitigate the potential future exposure of the central counterparty to the clearing member arising from the possible future change in the value of their relevant transactions, provided that, for purposes of these Regulations, initial margin shall exclude any contribution to a central counterparty in terms of a mutualised loss-sharing arrangement, that is, when a central counterparty uses initial margin to mutualise losses among the relevant clearing members, it shall for purposes of these Regulations be treated as a default fund exposure and not as initial margin;

"instalment sale transaction" means a transaction in terms of which-

- (a) movable goods are sold by the seller to the purchaser against payment, by the purchaser to the seller, of a stated or determinable sum of money at a stated or determinable future date or, in whole or in part, in instalments over a period in the future; and
- (b) the purchaser does not become the owner of those goods merely by virtue of the delivery to, or the use, possession or enjoyment by, the purchaser thereof; or
- (c) the seller is entitled to the return of those goods if the purchaser fails to comply with any term of that transaction;

"Institutional Sector Classification Guide" means the Institutional Sector Classification Guide for South Africa, issued from time to time by the Economic Research and Statistics Department of the Reserve Bank;

"insurer" in relation to the institutional and maturity breakdown of liabilities and assets means any privately or publicly incorporated mutual or other entity established in terms of the Long-term Insurance Act, 1998 (Act No 52 of 1998) or the Short-term Insurance Act, 1998 (Act No 53 of 1998), the principal function of which is to provide life, accident, fire or other forms of insurance to individual institutional units or groups of units;

"investor's interest" in relation to the calculation of a bank or other relevant institution's risk exposure relating to revolving assets in terms of the IRB approach means the investors' drawn balances related to the securitisation exposures **plus** the EAD amounts associated with the investors' undrawn facilities, which EAD amounts shall in respect of the undrawn balances of the securitised exposures be calculated by allocating the undrawn facilities between the seller's and investors' interests on a pro rata basis, that is, based on the proportions of the seller's and investors' shares of the securitised drawn balances;

"IRB approach" means the internal ratings-based approach in terms of which a bank may calculate its exposure to credit risk;

"irrevocable undrawn commitment or facility" in relation to a bank's off-balance sheet exposure includes any commitment or facility in respect of which the bank is legally committed to honour any drawdown or obligation arising from the said commitment or facility, and the said obligation of the bank in respect of the said commitment or facility may not be cancelled or amended by the bank-

- (a) without the prior written agreement of all relevant parties or counterparties;
- (b) until the client of the bank defaults in terms of the conditions of the contract; or
- (c) without the bank incurring a cost or penalty;

"ISO code" in relation to selected locational statistics means the relevant country codes issued from time to time by the International Organization for Standardisation;

"leasing transaction" means a transaction in terms of which a lessor leases movable goods to a lessee against payment, by the lessee to the lessor, of a stated or determinable sum of money at a stated or determinable future date or in whole or in part in instalments over a period in the future, but does not include a transaction by which it is agreed at the time of the conclusion thereof that the debtor or any person on behalf of the debtor shall at any stage during or after the expiry of the lease or after the termination of that transaction become the owner of those goods or after such expiry or termination retain possession or use or enjoyment of those goods;

"lending related guarantee" in relation to a bank's off-balance sheet exposure includes any undertaking issued by a bank on behalf of a person in respect of which undertaking the said bank will be liable for a specific financial obligation of the person in respect of which the undertaking was issued in the event that the said person does not fulfill that person's specified financial obligation at the due date;

“LGD ratio” in relation to the IRB approach means the loss suffered by a bank following the default of a particular obligor, expressed as a percentage of the relevant obligation;

"liability to non-resident" means any claim of a non-resident on a South African bank;

"liabilities to the public" means all liabilities of a reporting bank, whether domestic or foreign, arising from the operations of the reporting bank in connection with its banking business in the Republic, as set out in more detail in the forms BA 100 and BA 900;

"long position" in relation to a bank's trading activities means the position when a person has bought a financial instrument in order to establish a market position and such market position has not yet been closed out by means of an offsetting sale;

“long settlement trade transaction” includes any transaction in respect of which a counterparty undertakes to deliver a security, commodity, or foreign exchange amount against cash, other financial instruments, or commodities, or *vice versa*, at a settlement or delivery date that is contractually specified as more than the lower of the market standard for the particular instrument and five business days after the date on which the reporting bank entered into the transaction, which transaction, for purposes of these Regulations, shall be treated as a forward contract up to the settlement date;

"long-term liability", in relation to any date, means a liability (including a loan from or a deposit by another bank) that is payable after the expiration of more than six calendar months as from that date or that on that date is subject to notice that makes it payable after the expiration of more than six calendar months as from that date;

“loss” in relation to the LGD ratio of any asset class specified in the IRB approach means economic loss, which loss amount/ratio shall include material discounts and material direct and indirect costs associated with the collection of amounts due;

"loss category" in relation to the standardised approach for the measurement of a bank's exposure to credit risk means on-balance sheet or off-balance sheet items that are considered uncollectible and of such little value that the said items should no longer be included in the net assets of the bank or branch;

“margin agreement” in relation to counterparty credit risk means any contractual agreement or provision to a contractual agreement in terms of which agreement or provision one counterparty has to provide collateral to the second counterparty when an exposure of the said second counterparty to the said first counterparty exceeds a specified amount;

“margin lending transaction” includes any transaction in terms of which a bank extends credit in connection with the purchase, sale, carrying or trading of securities, which credit amount is collateralised by securities, the value of which collateral exceeds the amount of the loan, but does not include any other loan granted by the bank in the ordinary course of business and in respect of which loan the bank obtained collateral as security for the repayment of the loan;

“margin period of risk” in relation to counterparty credit risk means the time period commencing on the date on which collateral in respect of a netting set of transactions with a defaulting counterparty was last exchanged until the date on which the said counterparty is closed out and the resulting market risk re-hedged;

“margin threshold” in relation to counterparty credit risk means the largest amount of an exposure that remains outstanding before one party to the bilateral agreement has the right to call for collateral;

“market risk” means the risk of loss in on-balance sheet and off-balance sheet positions arising from movements in market prices;

"market value" in relation to a bank's trading activities means the amount obtainable from the sale, or payable on acquisition, of a financial instrument in the market;

"medium-term liability", in relation to any date, unless specifically otherwise stated, means a liability (including a loan from or a deposit by another bank) that is payable on or after the thirty-second day as from that date but not later than the day on which a period of six calendar months as from that date expires, or that on that date is subject to notice that makes it payable on or after the thirty-second day as from that date but not later than the day on which a period of six calendar months as from that date expires;

“mortgage loan or advance” in relation to the institutional and maturity breakdown of liabilities and assets means any loan or advance granted by the reporting bank to a person, which loan or advance is repaid by the obligor in whole or in part in instalments during a specified period in the future and in terms of which loan or advance a mortgage bond in respect of a specified property is registered in favour of the reporting bank, which mortgage bond serves as collateral in respect of the loan or advance to be repaid by the obligor during the said specified period in the future;

"mutual bank" means a juristic person that is registered as a mutual bank in terms of the Mutual Banks Act, 1993, (Act No. 124 of 1993);

“negotiable certificate of deposit” means any fixed-deposit receipt issued by the reporting bank, which certificate of deposit is transferable and negotiable as a financial asset in the secondary market, and in terms of which certificate of deposit the issuer bank undertakes to pay to the holder of the certificate, on the maturity date of the said instrument, the amount of the said deposit plus any interest amount due in respect of the deposit;

"net market value" in relation to a bank's trading activities means the aggregated market value of all relevant long and short positions in a particular category of financial instruments;

“net position” in relation to a relevant specified instrument held in a bank's trading book or banking book, unless expressly stated otherwise, means the excess amount of a bank's long/short positions over the bank's short/long positions in respect of the said specific instrument;

"netting" in relation to a bank's trading activities means the process whereby-

- (a) a person's long position in a particular financial instrument is off-set against that person's short positions in that same financial instrument; and
- (b) that person's short position in a particular financial instrument is off-set against that person's long position in that same financial instrument,

in order to ascertain the net position of the person in question;

“netting set” in relation to a bank’s exposure to counterparty credit risk means a group of transactions concluded with a single counterparty and which group of transactions is subject to a legally enforceable bilateral netting agreement that complies with the relevant requirements specified in these Regulations provided that each transaction that exposes the bank to counterparty credit risk but which transaction is not subject to a legally enforceable bilateral netting agreement as envisaged hereinbefore shall for purposes of these Regulations be deemed to represent a netting set on its own;

"non-earning asset" includes an investment in shares in respect of which no dividends have been received during the twelve-month period preceding the date of a return that is to be submitted in accordance with these Regulations;

“non-financial instrument” in relation to a bank’s trading activities means an instrument that does not constitute a financial instrument, such as a loan, deposit or mortgage advance;

"non-performing debt" means discounts, loans or advances in respect of which it is no longer prudent to credit interest receivable to the income statement;

“non-profit institution serving households” in relation to the institutional and maturity breakdown of liabilities and assets means any legal or social entity providing goods and services to households free of charge or at economically insignificant prices, which institutions are neither controlled nor primarily financed by government, including any welfare organisation, any aid society, any club, any non-profit hospital or school, any church, any trade union, any stokvel, any political party or company registered in terms of section 21 of the Companies Act;

"non-resident" means a person who is not a resident;

“offsetting transaction” in relation to counterparty credit risk means the transaction leg between a clearing member and a central counterparty when the clearing member acts on behalf of a client, such as, for example, when a clearing member clears or novates a client’s trade;

“one-sided credit valuation adjustment” in relation to a bank’s exposure to counterparty credit risk means a credit valuation adjustment that-

- (a) reflects the market value of the credit risk of a particular counterparty to the reporting bank; and
- (b) does not reflect the market value of the credit risk of the reporting bank to the said counterparty;

"operational risk" means the risk of loss resulting from inadequate or failed internal processes, people or systems or from external events, including legal risk such as exposure to fines, penalties, or punitive damages resulting from supervisory actions and private settlements, but does not include strategic or reputational risk;

“other capital market transaction” in relation to a bank’s exposure to counterparty credit risk includes-

- (a) any margined OTC derivative contract;
- (b) any securities margin lending contract;

"other public-sector bodies" include-

- (a) the nine provincial governments;
- (b) non-financial public enterprises, as contemplated in the Institutional Sector Classification Guide;
- (c) the monetary authority of South Africa, Postbank, the Land Bank, the Public Investment Commissioners, public-sector insurers and pension funds and miscellaneous other financial institutions in the South African public sector, as contemplated in the Institutional Sector Classification Guide,

but do not include any local government, municipality, local government unit or local government enterprise;

"overdue amount" in relation to-

- (a) an overdraft facility includes an amount due by a person who has exceeded an advised limit or has been advised of a limit smaller than the current outstanding amount;
- (b) an amount payable in instalments or in relation to bills issued in a series, includes the full amount not yet written off, outstanding under the transaction concerned, including, in the case of an amount payable in instalments, such instalments not yet due and penal interest, if any, incurred in respect of overdue amounts, but excluding, in the case of an amount payable in instalments or of bills issued in a series, interest not yet due, if-
 - (i) the relevant account has vested in the hands of a third party for collection; or
 - (ii) the debtor has become subject to an administration order, has surrendered his estate, has entered into a compromise with his creditors, has been put under judicial management, is wound up or sequestered or has been declared insolvent; or
 - (iii) the reporting institution considers recovery of the debt for any reason doubtful or has identified the debt as a non-performing debt;
- (c) an amount not payable in instalments, including an overdraft facility, includes-
 - (i) any amount the recovery of which the reporting institution for any reason considers doubtful;
 - (ii) any amount in respect of which the reporting institution has identified the debt concerned as a non-performing debt; or

- (iii) the full amount, not yet written off, outstanding under the transaction concerned if any of the circumstances contemplated in subparagraph (i) or (ii) of paragraph (b) become applicable;

"particular instrument" in relation to a bank's trading activities means an interest-rate future, forward rate agreement or forward commitment to buy or sell loan stock;

"past due amount" shall bear the same meaning as an overdue amount, which terms are often used interchangeably by market participants;

"peak exposure" in relation to a bank's exposure to counterparty credit risk means a high percentile, such as 95 percent or 99 percent, of the distribution of exposures at any particular future date before the maturity date of the transaction with the longest maturity included in the particular netting set, which peak exposure amount is typically generated for many future dates up until the longest maturity date of transactions included in the relevant netting set;

"pension or provident fund" in relation to the institutional and maturity breakdown of liabilities and assets includes any autonomous private or public entity that provides retirement benefits;

"performance related guarantee" in relation to a bank's off-balance-sheet exposure includes-

- (a) any undertaking given by a bank on behalf of one person to another person in respect of which the potential obligation of the bank as to the value or time of performance cannot be determined at the time of issue of the guarantee but only in the event and at the time of default by the first-named person; or
- (b) any undertaking issued by a bank on behalf of a person in respect of which undertaking the said bank will be financially liable to a third person in the event that the relevant person in respect of which the undertaking was issued fails to perform in accordance with a non-financial obligation made to the said third person;

"person" includes -

- (a) two or more persons, whether natural or juristic, that, unless proved to the contrary, constitute a single risk due to the fact that one of them has direct or indirect control over the other or others; or
- (b) two or more persons, whether natural or juristic, between whom there is no relationship or control as referred to in (a) above, but that are to be regarded as constituting a single risk, due to the fact that they are so interconnected that should one of them experience financial difficulties, the other or all of them would be likely to encounter repayment difficulties;

"potential future exposure" in relation to a bank's exposure to counterparty credit risk means the maximum exposure amount estimated to occur on a future date, which exposure amount is estimated at a high level of statistical confidence;

“private non-financial corporate sector” in relation to the institutional and maturity breakdown of liabilities and assets includes any company primarily engaged in the production of market goods and non-financial services at economically significant prices with the intent to generate profit or financial gain for its shareholders, including any nominee company, any non-profit institution serving the non-financial corporate sector, co-operatives, close corporations and any other private sector company registered in terms of the Companies Act;

"private-sector non-bank person" means a person, as hereinbefore in this regulation defined, but excludes-

- (a) the central government and other public-sector bodies;
- (b) a bank;
- (c) a mutual bank;
- (d) a branch of a bank;
- (e) a branch;
- (f) a foreign institution, as defined in the Regulations relating to the Conditions for the Conducting of the Business of a Bank by a Foreign Institution by means of a Branch in the Republic;
- (g) a controlling company; and
- (h) any other person designated by the Registrar;

“private trusts” in relation to the institutional and maturity breakdown of liabilities and assets means assets of individuals or estates, administered by, among others, banks, trust companies or attorneys on behalf of the said individuals or estates;

“promissory note” means any unconditional order issued in writing by one person to another, in terms of which note the issuer undertakes to pay on demand or at a fixed or determinable future date a specified amount of money to a specified person or the order of a specified person, or to the bearer of the said promissory note;

“protection buyer” means a counterparty that transfers the credit risk associated with a reference asset, reference entity or underlying asset to a protection seller, irrespective of whether or not the protection buyer owns the reference asset or underlying asset;

“protection seller” means a counterparty that assumes credit risk associated with a reference asset, reference entity or underlying asset;

“public financial corporate sector” in relation to the institutional and maturity breakdown of liabilities and assets includes all institutional units owned or controlled by institutional units in the general government sector;

“Public Investment Corporation” in relation to the institutional and maturity breakdown of liabilities and assets means the corporation conducting business in terms of the Financial

Advisory and Intermediary Services Act, 2002 (Act No 37 of 2002) and the Public Finance Management Act, which corporation invests funds on behalf of public sector entities such as the Government Employees Pension Fund;

“public non-financial corporate sector” in relation to the institutional and maturity breakdown of liabilities and assets includes institutional units owned or controlled by units in the general government sector, such as ESKOM, Telkom, Transnet and the SABC, the principal activity of which units or corporations is the production of market goods or the provision of non-financial services;

"public sector", unless specifically otherwise stated, means the central government and other public-sector bodies, as hereinbefore in this regulation defined;

“qualifying central counterparty” means an entity or a person-

- (a) that is licensed to conduct business as a central counterparty, which license may include a license granted by way of a specific exemption;
- (b) that is permitted by the relevant regulator or supervisor to conduct business with or in respect of specified products and/or counterparties;
- (c) that is based in a jurisdiction in which it is prudentially supervised by a regulator or an authority that publicly confirms that all relevant central counterparties conducting business in that jurisdiction are continuously subject to rules and regulations that are consistent with the relevant CPSS-IOSCO Principles for Financial Market Infrastructures, issued from time to time; and
- (d) that complies with such further requirements or criteria as may be specified from time to time in these Regulations;

“rating system” in relation to the IRB approach includes all methods, processes, controls, data collection and information-technology systems that support the assessment of credit risk, the assignment of internal risk ratings, and the quantification of default and loss estimates;

"realisable value" in relation to a bank’s trading activities means a fair estimate of the market value at which a position could be sold without unduly affecting the market price of the instrument;

“reference asset” means a financial asset in respect of which payments in terms of a credit-derivative contract or instrument are linked, which reference asset may be a bond or a security, but it may also be a loan or another form of obligation, irrespective whether or not the said asset is held by a protection buyer;

“reference entity” means a legal entity, the associated credit risk of which is transferred by means of a credit-derivative transaction. In the case of a multiple-name product, the reference entity is not a single legal entity, but a basket or portfolio of reference entities;

“repossessed” asset, object or property, unless specifically otherwise provided in these Regulations or specified in writing by the Registrar, includes the taking back, or taking over control, by a bank of any moveable or immovable asset, object or property that was either used as collateral or rented or leased in terms of a purchase or credit contract, or a similar agreement or transaction, concluded between the bank and any other person, that is-

- (a) any action in which, or agreement in terms of which, a bank or an institution within a banking group having right of ownership of an asset, object or property in question takes back, or takes control over, the said asset, object or property from the person having right of possession to that asset, object or property;
- (b) any agreement in terms of which a person agrees that the bank may take back, or take control of, the said asset, object or property when that person is past the grace period that may have been contractually agreed between the bank and that person; or
- (c) any other contract, agreement or transaction specified in writing by the Registrar,

shall be included in the bank’s relevant category of repossessed assets, objects or property;

“repo-style transaction” includes-

- (a) any securities lending transaction;
- (b) any securities borrowing transaction;
- (c) any repurchase transaction;
- (d) any resale transaction;

“repurchase agreement or transaction” includes any transaction subject to further commitment in terms of which transaction or agreement money is obtained from a person, which money shall for the purposes of these Regulations be deemed to have been so obtained by way of a loan, through the sale of an asset to any other person subject to an agreement in terms of which the seller undertakes to purchase from the buyer, at a future date, the asset so sold or any other asset issued by the issuer of, and which has been so issued subject to the same conditions regarding term, interest rate and price as, the asset so sold, irrespective whether or not the transaction or agreement is being referred to as a securities lending transaction, an outward carry transaction, a sell-buy-back transaction or any other market term that may be used from time to time;

“reputational risk” for the purposes of these Regulations, unless specifically otherwise stated or directed by the Registrar, means the risk arising from the negative perception of customers, counterparties, shareholders, investors, debt-holders, market analysts, regulators or other relevant persons or stakeholders, that may adversely affect a bank’s ability to maintain existing, or establish new, business relationships and continued access to sources of funding, such as the interbank or securitisation market, which risk-

- (a) is essentially influenced by and largely a function of confidence and trust in the bank, which in turn is essentially influenced by and largely a function of the adequacy or robustness of the bank’s internal governance and risk management processes, and the manner and efficiency with which the board of directors and the senior

management of the bank respond to external influences;

(b) may, for example, arise from-

- (i) a bank's sponsorship of securitisation structures, such as ABCP conduits and special-purpose vehicles or trusts;
- (ii) the sale of credit exposure to securitisation vehicles or trusts;
- (iii) a bank's involvement in asset or funds management,
- (iv) the incorrect pricing of risk or inadequate disclosure,

particularly when financial instruments are subsequently issued by owned or sponsored entities, and distributed to customers of the relevant bank.

(c) may give rise to other risks, such as credit risk, liquidity risk, market risk and legal risk, all of which may negatively impact a bank's earnings and liquidity, and/or capital positions;

"resale agreement or transaction" includes any transaction subject to further commitment in terms of which transaction or agreement money is provided to a person, which money shall for the purposes of these Regulations be deemed to have been so provided in the form of a loan, through the purchase of an asset from any other person subject to an agreement in terms of which the buyer undertakes to sell to the seller, at a future date, the asset so purchased or any other asset issued by the issuer of, and which has been so issued subject to the same conditions regarding term, interest rate and price as, the asset so purchased, irrespective whether or not the transaction or agreement is being referred to as a securities borrowing transaction, an inward carry transaction, a buy-sell-back transaction or any other market term that may be used from time to time;

"resecuritisation exposure" includes-

- (a) any securitisation exposure in which the risk associated with underlying assets or an underlying pool of exposures is tranching, and at least one of the underlying assets or exposures is a securitisation exposure;
- (b) any collateralised debt obligation (CDO) of asset-backed securities (ABS), including, for example, a CDO backed by residential mortgage-backed securities (RMBS);
- (c) any securitisation exposure where the relevant pool of exposures contains many individual mortgage loans and a single RMBS, that is, even when only one of the underlying assets or exposures is a securitisation exposure, any tranching ABS position, whether senior or subordinated, exposed to the said pool of exposures, shall constitute a resecuritisation exposure;
- (d) any instrument, the performance of which is linked to one or more resecuritisation exposure;
- (e) any credit derivative instrument that provides credit protection for a CDO² tranche;

- (f) any credit protection or enhancement covering all or some of the losses above the seller-provided protection across various pools;
- (g) any exposure to one or more resecuritisation exposures;
- (h) any securitisation exposure specified in writing by the Registrar;

"**resident**" means-

- (a) a person (that is, a natural person or legal entity) whether of South African or any other nationality, that has taken up residence, is domiciled or incorporated in the Republic of South Africa.
- (b) a South African citizen attached to an embassy or consulate in a foreign country,

but does not include any citizen of another country attached to a foreign diplomatic or military mission or representative office in the Republic;

"**residual maturity**" means the remaining period to the maturity of a contract;

"**restructured credit exposure**" in relation to a bank's exposure to credit risk includes any loan, advance or facility in respect of which the bank granted a concession to the obligor owing to a deterioration in the obligor's financial condition, that is, owing to a financial distressed situation of the relevant obligor,

- (a) which financial distressed situation results or is likely to result in the relevant obligor no longer being able to meet the terms or conditions originally agreed;
- (b) which restructuring agreement-
 - (i) may include a modification of terms or conditions such as, for example-
 - (A) a reduction in the relevant interest rate from that originally agreed;
 - (B) a reduction in the relevant interest amount due;
 - (C) a reduction in the relevant principal amount due;
 - (D) an amendment to the originally agreed contractual maturity or payment frequency;
 - (E) any forgiveness, deferral or postponement of a principle amount, interest amount or fee due;
 - (F) any subsequent increase in the relevant level of working capital or revolving facility;
 - (ii) may include the transfer from the obligor to the bank of real estate, receivables from third parties, other assets, or an equity interest in the obligor in full or partial satisfaction of the said loan, advance or facility;

- (iii) may include the substitution or addition of a new debtor for the original obligor;
- (iv) shall be in writing,

provided that no loan, advance, increased credit limit or facility extended or renewed by the reporting bank in its ordinary course of business at a stated interest rate or on terms or conditions equivalent to the current interest rate or terms or conditions for new debt with similar risk shall constitute a restructured loan or credit exposure for purposes of these Regulations;

“revocable undrawn commitment or facility” in relation to a bank’s off-balance sheet exposure includes any commitment, facility or obligation that, at any time and at the sole discretion of the reporting bank, is revocable and unconditionally cancellable by the bank without the bank incurring any cost or penalty;

“risk-neutral distribution” in relation to a bank’s exposure to counterparty credit risk means the distribution of market values or exposures in respect of a particular future time period, which distribution is calculated based on market implied values such as implied volatilities;

“risk position” in relation to the standardised method for the measurement of a bank’s exposure to counterparty credit risk means the risk amount assigned to a particular transaction in accordance with the relevant directives specified in these Regulations, which risk amount is derived from a specific algorithm;

“rollover risk” in relation to a bank’s exposure to counterparty credit risk means the amount by which the expected positive exposure amount is understated due to ongoing future transactions expected to be concluded with a particular counterparty, which additional exposure amounts relating to the said ongoing future transactions are not included in the calculation of the said expected positive exposure amount;

“securities financing transaction” in relation to a bank’s exposure to counterparty credit risk includes-

- (a) any repurchase or resale agreement or transaction;
- (b) any securities lending agreement or transaction;
- (c) any securities borrowing agreement or transaction;
- (d) any securities margin lending agreement or transaction,

the value of which agreement or transaction depends on market valuations from time to time and which agreement or transaction may be subject to a margin agreement;

"securitisation exposure" in relation to a securitisation scheme includes-

- (a) asset-backed commercial paper issued by a special-purpose institution;
- (b) mortgage-backed commercial paper issued by a special-purpose institution;
- (c) a credit-enhancement facility;
- (d) a liquidity facility;
- (e) an interest rate or a currency swap transaction;
- (f) a credit-derivative instrument; and
- (g) a reserve account, such as a cash collateral account, irrespective whether or not the reserve account is recorded as an asset by an originator;

"short position" in relation to a bank's trading activities means the position when a person sold a financial instrument in order to establish a market position and such market position has not been closed out by means of a matching purchase;

"short-term liability", in relation to any date, unless specifically otherwise stated, means a liability (including a loan from or a deposit by another bank) that is payable on or before the thirty-first day as from that date, or that on that date is subject to notice that makes it payable on or before the thirty-first day as from that date;

"social security fund" in relation to the institutional and maturity breakdown of liabilities and assets means any autonomous fund that manages and operates a social security scheme;

"special-mention category" in relation to the standardised approach for the measurement of a bank's exposure to credit risk means on-balance-sheet or off-balance-sheet items that are subject to conditions that, if left uncorrected, could raise concerns about timely and full repayment of the principal amount and related interest or other income and, as such, require more than normal attention;

"special-purpose entity, -institution or -vehicle" means a company or trust, insolvency remote, incorporated, created or used solely for the purpose of the implementation and operation of a traditional or synthetic securitisation scheme, as envisaged in the exemption notice relating to securitisation schemes;

"specific impairment or allowance for doubtful debt" means any impairment, allowance or provision made against losses on a debt that has been specifically identified as bad or doubtful, and any impairment, allowance or provision made against groups of debt on the basis of their age;

"specific impairment or allowance in respect of investments" means any impairment, allowance or provision made in respect of the anticipated or actual diminution in the value of securities or equities held by the reporting bank or branch;

“specific risk” in relation to a bank’s trading activities means the risk of loss due to an adverse price movement in an underlying instrument owing to factors related to the issuer of the instrument or in the case of a derivative instrument the issuer of the underlying instrument, which risk includes idiosyncratic risk and event or default risk;

“specific wrong-way risk” in relation to a bank’s exposure to counterparty credit risk means an exposure to a particular counterparty is positively correlated with the probability of default of the said counterparty due to transactions concluded with the said counterparty;

"standard or current category" in relation to the standardised approach for the measurement of a bank’s exposure to credit risk means on-balance sheet and off-balance sheet items that are fully current in terms of both the repayment of the principal amount and related interest or other income, the continued repayment of which are without doubt and for which full repayment is expected;

"stock position" in relation to a bank’s trading activities includes-

- (a) commodities when the full contract price has been paid;
- (b) work-in-progress and finished goods resulting from the processing of commodities; or
- (c) raw materials that will be combined with commodities to produce a finished processed commodity;

"substandard category" in relation to the standardised approach for the measurement of a bank’s exposure to credit risk means on-balance sheet or off-balance sheet items that show weaknesses that could lead to probable loss if not corrected or where full repayment is in doubt owing to the primary sources of repayment being insufficient;

"suspensive sale transaction" means a sale subject to a suspensive condition;

“total-return swap” means a bilateral agreement between a protection buyer and a protection seller in terms of which agreement the protection buyer swaps the total return on a reference asset or underlying asset, including all contractual payments and any appreciation in the value of the reference asset or underlying asset, with the protection seller in exchange for payment of a variable or fixed reference interest and compensation for losses in the value of the reference asset or underlying asset.

The terms total-return swap and total rate-of-return swap are often used interchangeably by market participants;

“trade exposure” in relation to counterparty credit risk includes the current exposure and the potential future exposure of a clearing member or a client to a central counterparty, arising from-

- (a) transactions in OTC derivative instruments;

- (b) transactions in exchange traded derivative instruments;
- (c) securities financing transactions, or
- (d) initial margin,

Provided that for purposes of this definition, the current exposure of a clearing member shall include any variation margin due to the clearing member but not yet received;

“trading book, portfolio or activity” includes all positions in financial instruments and commodities held by a bank-

- (a) with trading intent, including such instruments or positions held with the intent of benefiting in the short term from actual or expected movements in prices or to secure profits arising from arbitrage opportunities, which positions, for example, may include proprietary positions, positions arising from client servicing such as matched principal broking, or market making; or
- (b) in order to hedge other elements of the trading book,

which instruments or positions-

- (i) shall be free of any restrictive covenants in respect of tradability;
- (ii) shall be available to be completely or substantially hedged;
- (iii) shall be valued on a frequent and accurate basis;
- (iv) shall be actively managed,

but excludes such positions, instruments or commodities as may be specified in writing by the Registrar from time to time;

“trust companies” in relation to the institutional and maturity breakdown of liabilities and assets means financial corporations of which the main function is the administration of trust assets and the investments of funds on behalf of the relevant beneficiaries;

“uncommitted undrawn facility or loan commitment” in relation to a bank’s off-balance sheet exposure includes any revocable undrawn commitment or facility;

“underlying asset” means an asset that is protected in terms of a credit-derivative contract, which underlying asset-

- (a) may not necessarily be identical to a reference asset;
- (b) is usually an asset that is already held by the protection buyer;

“unfunded credit-derivative instrument” means a contract in terms of which the protection seller does not provide collateral to a protection buyer for the settlement of the protection seller's potential future obligations;

“unincorporated business enterprises of households” in relation to the institutional and maturity breakdown of liabilities and assets mean households engaged in market production as single person businesses or sole proprietorship, and partnerships, that is, legal persons not organised in the form of a company, in respect of which person the household and business accounts in most cases cannot be separated, and which single person business or sole proprietorship can be with or without employees;

“unit trusts” in relation to the institutional and maturity breakdown of liabilities and assets mean collective investment schemes involving the collection of funds from individual investors for investment in a spread of assets such as money-market instruments, bonds, shares and units of other unit trusts, which unit trusts may be divided into non-money market unit trusts, that is, unit trusts primarily investing in long-term fixed-interest securities or shares, and money-market unit trusts, that is, unit trusts primarily investing in money-market instruments;

“variation margin” in relation to counterparty credit risk means a clearing member’s or client’s funded collateral posted or provided to a central counterparty on a daily or intraday basis, based upon price movements in respect of their relevant transactions.

68. Borrowing of money by co-operatives

(1) For the purposes of paragraph (bb) of the definition of "the business of a bank" in section 1(1) of the Act, a co-operative may borrow money from its members subject to the conditions specified below:

- (a) No loan from any individual member shall amount to less than R1 000, and, for the purposes of this paragraph, every successive loan from any particular member shall be regarded as a separate loan;
- (b) a loan shall not be repaid within 12 months after receipt;
- (c) the co-operative shall in respect of each loan issue an acknowledgement of debt;
- (d) every loan shall be negotiated on one or other of the conditions specified below, which conditions shall be recorded in the relevant acknowledgement of debt.
 - (i) The member shall not have the right to demand repayment, but the co-operative may at any time, after it has held the loan for not less than 12 months, repay such loan upon giving not less than 30 days' prior notice of its intention to repay such loan; or
 - (ii) The loan shall be repayable at a fixed date to be specified in the acknowledgement of debt, but the board of directors of the co-operative shall have the power to defer the repayment if the circumstances of the co-operative as at that date render such deferment necessary, subject to the condition that if the decision of such board is not confirmed at the first succeeding general meeting of the co-operative, the loan shall be repaid within seven days of the date of such meeting.

69. Short title and commencement

These Regulations shall be called the Regulations relating to Banks and shall come into operation on 1 January 2016.