

**CAPITAL REQUIREMENTS DIRECTIVE (HANDBOOK AMENDMENTS NO 5)
INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 150(2) (Actions for damages); and
 - (3) section 156 (General supplementary powers).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 November 2012.

Amendments to the Handbook

- D. The Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Capital Requirements Directive (Handbook Amendments No 5) Instrument 2012.

By order of the Board
31 October 2012

Annex

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

In this Annex, underlining indicates new text and striking through indicates deleted text.

13 **The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions**

...

Conditions for recognition

13.7.6 R A *firm* may treat contractual netting as risk-reducing only under the following conditions:

...

(2) the *firm* must be in a position to provide to the *FSA*, if requested, written and reasoned legal opinions to the effect that, in the event of a legal challenge, the relevant courts and administrative authorities would, in the cases described under (1), find that the *firm's* claims and obligations would be limited to the net sum, as described in (1), under:

- (a) the law of the jurisdiction in which the counterparty is incorporated and, if a foreign *branch* of an *undertaking* is involved, also under the law of the jurisdiction in which the *branch* is located; ~~or~~
- (b) the law that governs the individual transactions included; ~~or~~ and
- (c) the law that governs any contract or agreement necessary to effect the contractual netting;

...