**Reprint**
**as at 1 May 2014**

# Deposit Takers (Credit Ratings, Capital Ratios, and Related Party Exposures) Regulations 2010

(SR 2010/167)

Anand Satyanand, Governor-General

## Order in Council

At Wellington this 21st day of June 2010

Present:
His Excellency the Governor-General in Council

Pursuant to sections 24, 33, 36, and 74 of the Non-bank Deposit Takers Act 2013, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and on the advice of the Minister of Finance given in accordance with a recommendation of the Reserve Bank of New Zealand made after consultation in accordance with section 76 and taking into account the principles in section 8 of that Act, makes the following regulations.

Enacting statement: amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

**These regulations are administered by the Reserve Bank of New Zealand.**

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# Regulations

## 1 Title

These regulations are the Deposit Takers (Credit Ratings, Capital Ratios, and Related Party Exposures) Regulations 2010.

## 2 Commencement

These regulations come into force on 1 December 2010.

# Part 1
# Preliminary provisions

## 3 Interpretation

(1) In these regulations, unless the context otherwise requires,—

**Act** means the Non-bank Deposit Takers Act 2013

**asset sale with recourse**, in relation to a deposit taker or guaranteeing subsidiary, means an asset sale where, under the terms of the sale, the deposit taker or guaranteeing subsidiary has an obligation to assume or retain a risk in relation to the asset sold

**book value**, in relation to an item, means—

(a) the amount shown for that item in the statement of financial position of a deposit taker; or

(b) in a calculation required to be made on a consolidated basis, the amount shown for that item in the consolidated statement of financial position for the borrowing group in accordance with regulation 5

**consolidated basis** means the basis set out in regulation 5

**credit rating** means a rating of a deposit taker's creditworthiness that complies with section 23 of the Act

**deposit taker** means a licensed NBDT as defined in the Act

**direct credit substitute**, in relation to a deposit taker or guaranteeing subsidiary,—

(a) means an off-balance sheet exposure that carries the same credit risk to the deposit taker or guaranteeing subsidiary as a direct extension of credit by the deposit taker or guaranteeing subsidiary; and

(b) includes (without limitation)—

 (i) a bill of exchange; and

 (ii) a letter of credit serving as a financial guarantee for a loan; and

 (iii) a guarantee of a financial obligation given by the deposit taker or guaranteeing subsidiary; but

(c) does not include a loan commitment

**exchange rate contract** has the meaning set out in regulation 27(3)

**forward asset purchase**, in relation to a deposit taker or guaranteeing subsidiary, means a commitment by the deposit taker or guaranteeing subsidiary to purchase on a specified future date a loan, security, or other asset from another party

**generally accepted accounting practice** has the same meaning as in section 3 of the Financial Reporting Act 1993

**holding company** means a company that has subsidiaries; and a company is another company's holding company if, but only if, that other company is its subsidiary

**independent valuer** means a person who is not associated (whether directly or indirectly) with a person who has an interest in the property for which a valuation is made and who is—

(a) a registered valuer (as defined in section 2 of the Valuers Act 1948); or

(b) another person approved to provide valuation services by rules made under the Rating Valuations Act 1998

**interest rate contract** has the meaning set out in regulation 27(3)

**market-related contract** has the meaning set out in regulation 27(3)

**ordinary shares** means shares that—

(a) have full voting rights; and

(b) have no preferential or predetermined rights to distributions of capital or income; and

(c) are not redeemable within the meaning of section 68 of the Companies Act 1993

**original maturity** has the meaning set out in regulation 27(3)

**personal loan** means a loan to an individual not exceeding $40,000

**property development loan** means a loan made for the purpose of financing the development of real property

**property valuation policy**,—

(a) in relation to a residential mortgage loan, property development loan, or other loan secured over land, buildings (including buildings that are not yet complete), or both, means a policy governing how property value is determined for a loan against that type of property that—
  (i) is approved by the deposit taker's governing body; and
  (ii) includes guidance on the use of—
    (A) a valuation produced by an independent valuer; and
    (B) the purchase price of the property; and

(b) in relation to a loan secured over qualifying moveable machinery, means a policy governing how the value of the security is determined that—
  (i) is approved by the deposit taker's governing body; and
  (ii) includes guidance on the appropriate value of the security over the lifetime of the loan

**public sector entity** means a local authority (as defined in section 5 of the Local Government (Rating) Act 2002)

**qualifying insured residential mortgage loan** means a residential mortgage loan that is fully covered by lenders' mortgage insurance provided by the Housing New Zealand Corporation

**qualifying moveable machinery**—

(a) has the same meaning as that given to motor vehicle by section 57 of the Personal Property Securities Act 1999; but

(b) includes an aircraft

**qualifying mutual** means—

(a) a co-operative company as defined in section 2 of the Co-operative Companies Act 1996:

(b) a credit union as defined in section 2 of the Friendly Societies and Credit Unions Act 1982

**related party** has the meaning set out in section 6 of the Act

**residential mortgage loan** means a loan secured by a mortgage over a residential property used primarily for residential purposes either by the mortgagor or by a tenant of the mortgagor

**sub-participation** has the meaning set out in regulation 20(2)

(2) In these regulations, unless the context otherwise requires, a reference to a financial statement means a financial statement prepared in accordance with generally accepted accounting practice.

(3) Any term or expression that is defined in the Act and used, but not defined, in these regulations has the same meaning as in the Act.

(4) Any term or expression that is used in these regulations, but not defined in the Act or these regulations, and that has a meaning according to generally accepted accounting practice has the same meaning in these regulations.

Regulation 3(1) **Act**: replaced, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Regulation 3(1) **asset sale with recourse**: amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Regulation 3(1) **credit rating**: amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Regulation 3(1) **deposit taker**: inserted, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Regulation 3(1) **direct credit substitute**: amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Regulation 3(1) **direct credit substitute** paragraph (a): amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Regulation 3(1) **direct credit substitute** paragraph (b)(iii): amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Regulation 3(1) **forward asset purchase**: amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Regulation 3(1) **group member**: repealed, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Regulation 3(1) **holding company**: inserted, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Regulation 3(1) **related party**: amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Regulation 3(1) **substantial interest**: repealed, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

## 4 Definition of related party

*[Revoked]*

Regulation 4: revoked, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

## 5 All calculations to be on consolidated basis if deposit taker is member of borrowing group

(1) If a deposit taker is a member of a borrowing group, every calculation that these regulations require the deposit taker to make must be made on a consolidated basis for the deposit taker’s borrowing group.

(2) If a calculation is made on a consolidated basis for a borrowing group, then—

(a) no member of that borrowing group is a related party of the relevant deposit taker for the purposes of the calculation (despite the definition of related party); and

(b) the calculation is only required to be made on the consolidated basis specified in subclause (1) (rather than on a solo basis for the deposit taker as well as on that consolidated basis).

Regulation 5(2)(a): amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

# Part 2
# Requirements relating to credit ratings

## 6 Requirements for credit ratings

For the purposes of section 23(1)(a) of the Act, the current rating of a deposit taker's creditworthiness given by an approved rating agency must be a local currency (New Zealand dollar), long-term, issuer rating.

Regulation 6: amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

# Part 3
# Requirements relating to maintenance of minimum capital ratio

## 7 Overview

(1) This regulation is intended only as a guide to the general scheme and effect of this Part.

(2) The capital ratio of a deposit taker is the ratio of the deposit taker's capital to an amount representing the degree of the following types of risk to which the deposit taker is exposed:

(a) credit risk:

(b) market risk:

(c) operational risk.

(3) This Part sets out what a trust deed must include about the capital ratio (*see* regulation 8) and how the capital ratio must be calculated.

(4) Calculation of the capital ratio requires determination of—

(a) the deposit taker's capital (*see* regulation 10); and

(b) the deposit taker's risk-weighted amount for credit risk (*see* regulation 11); and

(c) the deposit taker's aggregate amount for market risk and operational risk (*see* regulation 21).

### 8 Trust deed must include minimum capital ratio that deposit taker must maintain

(1) Every deposit taker and trustee must ensure that the trust deed includes the minimum capital ratio that the deposit taker must maintain.

(2) The deposit taker and the trustee must ensure that the minimum capital ratio that is included in the trust deed is—

(a) not less than 8%, if the deposit taker has a credit rating; and

(b) not less than 10%, if the deposit taker does not have a credit rating.

### 9 How to calculate capital ratio

(1) The capital ratio must be calculated as the ratio, expressed as a percentage, of the deposit taker's capital to the sum of—

(a) the deposit taker's risk-weighted amount for credit risk, calculated in accordance with regulation 11; and

(b) the deposit taker's aggregate amount for market risk and operational risk, calculated in accordance with regulation 21.

(2) The deposit taker's capital, referred to in subclause (1), must be calculated in accordance with regulation 10 using book values as at the date of calculation.

(3) If the deposit taker is part of a borrowing group, the capital ratio must be calculated on a consolidated basis (*see* regulation 5).

(4) If accounting standards require a securitisation special purpose vehicle to be consolidated for the purposes of group financial statements, the special purpose vehicle must be consolidated with the deposit taker or the borrowing group for the purposes of the calculations under this Part.

## *Calculation of capital*

### 10 How to calculate capital

(1) Capital must be calculated in accordance with the following formula:

$$\text{gross capital} - \text{deductions}$$

(2) In the formula in subclause (1), **gross capital** is—

(a) issued and fully paid-up ordinary shares:

(b) retained earnings:

(c) fully paid-up perpetual non-cumulative preference shares that meet the requirements in subclause (4), up to the limits set out in subclause (5):

(d) revenue and other reserves, including the following, but not including reserves that are earmarked on account of any assessed likelihood of loss:

(i) capital redemption reserves:

(ii) other reserves that are created or increased by appropriations of retained earnings net of tax and dividends payable:

(iii) share premium reserves arising from the issue of ordinary shares:

(iv) each of the following types of reserves that are reflected in the statement of financial position:

(A) reserves arising from a revaluation of tangible fixed assets, including owner-occupied property:

(B) foreign currency translation reserves:

(C) reserves arising from the revaluation of investments:

(e) minority interests.

(3) In the formula in subclause (1), **deductions** are—

(a) goodwill and other intangible assets:

(b) future tax benefits and deferred tax assets:

(c) share capital in, and subordinated loans to, related parties:

(d) share capital in, and subordinated loans to, other financial institutions or holding companies of other financial institutions (whether held directly or indirectly):

(e) unrealised gains and losses on liabilities designated at fair value through profit and loss that arise from changes in the deposit taker's or guaranteeing subsidiary's own credit risk:

(f) any fair value gain that relates to a financial instrument where—

(i) fair value is determined in whole or in part using a valuation technique based on assumptions that are not supported by prices from observable current market transactions in the same instrument; or

(ii) fair value is not based on observable market data; or

(iii) fair value is based on prices in a market that is not active:

(g) any surplus, net of any associated deferred tax liabilities, in any defined benefit superannuation fund sponsored by the deposit taker as employer.

(4) Perpetual non-cumulative preference shares may be included in capital if they meet the following requirements:

(a) the payment of dividends on shares is able to be withheld if the financial condition of the deposit taker or borrowing group would not support payment of those dividends; and

(b) dividends that are withheld in accordance with paragraph (a) are not cumulative; and

(c) the dividend rate for the shares must be set—

(i) as a fixed percentage rate; or

(ii) as a fixed margin above a benchmark floating rate (for example, a bank bill rate); and

(d) the shares are not—

(i) subject to any arrangement for resetting the dividend rate; or

(ii) redeemable within the meaning of section 68 of the Companies Act 1993; or

(iii) repayable or redeemable at the option of the holder.

(5) Perpetual non-cumulative preference shares without full voting rights may not constitute more than—

(a) 25% of capital, if a deposit taker is not a qualifying mutual; and

(b) 50% of capital, if a deposit taker is a qualifying mutual.

Regulation 10(3)(e): amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

*Calculation of risk-weighted amount for credit risk*

### 11 Calculation of risk-weighted amount for credit risk

A deposit taker must calculate its risk-weighted amount for credit risk by aggregating—

(a) its risk-weighted amount for on-balance sheet exposures, calculated in accordance with regulation 12; and

(b) the following off-balance sheet exposures, measured as the principal or notional principal amount of the exposure as at the date of calculation, risk-weighted at 100%:

(i) direct credit substitutes:

(ii) asset sales with recourse:

(iii) forward asset purchases.

### 12 Calculation of risk-weighted amount for on-balance sheet exposures

(1) To calculate its risk-weighted amount for on-balance sheet exposures, a deposit taker must—

(a) classify each on-balance sheet asset into its appropriate class in table 1 of the Schedule in accordance with regulations 13 to 20,—

(i) including any transferred loan, unless that loan meets the requirements for exclusion set out in regulation 19; and

(ii) including any loan or part of a loan in respect of which there is a sub-participation, unless that sub-participation meets the requirements for exclusion set out in regulation 20; but

(iii) excluding any asset that must be deducted from the deposit taker's capital under regulation 10; and

(b) multiply the book value of each asset as at the date of calculation (measured net of any allowances for impairment loss and unearned income) by the risk weight that applies to that class of asset set out in table 1 of the Schedule; and

(c) aggregate the resulting amounts.

(2) However, if the asset is a loan for which the deposit taker holds a deposit as security, the deposit taker may deduct the deposit from the book value of the loan before carrying out the multiplication under subclause (1)(b) if there is a written contractual agreement between the deposit taker and the depositor that provides that the deposit taker has direct, unconditional, and irrevocable recourse to the deposit security.

### 13 Classification of on-balance sheet exposures for purpose of determining applicable risk weight

(1) The deposit taker must classify each on-balance sheet asset according to the first numbered class into which it falls in the first column of table 1 of the Schedule.

(2) However, if a loan is made against more than 1 form of security, it must be classified into the numbered class that refers to one of those forms of security and that has the highest risk weight.

### 14 When assets may be classified as rated short-term or long-term claim

(1) An asset may only be classified as—

(a) a rated short-term claim if there is a short-term credit assessment of that claim and the credit assessment meets the requirements in subclause (3); and

(b) a rated long-term claim if there is a long-term credit assessment of that claim or a credit assessment of the issuer or the counterparty and the credit assessment meets the requirements in subclause (3).

(2) However, in the case of a subordinated claim,—

(a) subclause (1)(b) does not apply; and

(b) the asset may only be classified as a rated long-term claim if there is a long-term credit assessment of that claim and the credit assessment meets the requirements in subclause (3).

(3) The credit assessment must—

(a) be solicited from, and issued by, an approved rating agency; and

(b) be paid for by the issuer or rated counterparty or a commercial associate of the issuer or rated counterparty.

(4) For the purposes of subclause (3)(b), a person is a **commercial associate** in relation to the issuer or rated counterparty if—

(a) the person and the issuer or rated counterparty are in the same group of companies; or

(b) the person and the issuer or rated counterparty are directly or indirectly under the control of the same persons.

(5) In subclause (4)(a), **group of companies** means a holding company and its subsidiaries.

Regulation 14(5): amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

### 15 How to determine applicable rating grade for purpose of classifying rated claims

(1) For the purpose of classifying a rated short-term claim, the rating grade that applies to the claim is the rating grade that corresponds to the rating agency's assessment according to table 2 of the Schedule.

(2) For the purpose of classifying a rated long-term claim, the rating grade that applies to the claim is the rating grade that corresponds to the rating agency's credit assessment according to table 3 of the Schedule.

(3) If there are different credit assessments for a particular claim, the credit assessment that must be used is the credit assessment that results in the higher (less favourable) rating grade according to table 2 or 3 of the Schedule (as applicable).

### 16 How to determine loan-to-valuation ratio for purpose of classifying residential mortgage loans and certain other loans

(1) For the purpose of classifying a residential mortgage loan or other loan secured by first mortgage over land, buildings, or both (to avoid doubt, not including a property development loan, *see* regulation 17), the loan-to-valuation ratio must be calculated using the formula—

$$(\text{loan value} \div \text{property value}) \times 100$$

(2) In the formula in subclause (1), **loan value**,—

(a) in relation to a residential mortgage loan, is the total amount of—

(i) all claims secured by way of first mortgage over the residential property; and

(ii) subsequent claims of the deposit taker or guaranteeing subsidiaries (if the deposit taker is part of a borrowing group) that are secured over the residential property:

(b) in relation to other loans secured by first mortgage over land, buildings, or both, is the total amount of—

(i) all claims secured by way of first mortgage over the land, buildings, or both; and

(ii) subsequent claims of the deposit taker or guaranteeing subsidiaries (if the deposit taker is part of a borrowing group) that are secured over the same land, buildings, or both.

(3) In the formula in subclause (1), **property value**,—

(a) in relation to a residential mortgage loan, is the value of the residential property determined under a deposit taker's property valuation policy:

(b) in relation to other loans secured by first mortgage over land, buildings, or both, is the value of the land, buildings, or both, determined under a deposit taker's property valuation policy.

Regulation 16(2)(a)(ii): amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Regulation 16(2)(b)(ii): amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

### 17 How to determine loan-to-valuation ratio for purpose of classifying property development loans

(1) For the purpose of classifying a property development loan, the loan-to-valuation ratio must be calculated using the formula—

$$(\text{loan value} \div \text{present value of the property}) \times 100$$

(2) In the formula in subclause (1),—

(a) **loan value** is the total amount of—

(i) all claims secured by way of first mortgage over the land, buildings, or both; and

(ii) subsequent claims of the deposit taker or guaranteeing subsidiaries (if the deposit taker is part of a borrowing group) that are secured over the same land, buildings, or both:

(b) **present value of the property** is calculated using the formula—

$$\text{value} \times (1 - \text{time to maturity} \times 0.12)$$

(3) In the formula in subclause (2)(b),—

(a) **value** is the net realisable value of the land and buildings at completion as determined by an independent valuer in accordance with the deposit taker's property valuation policy:

(b) **time to maturity** is the expected time to maturity of the credit exposure, in years (including part-years, expressed as a decimal), as at the date of calculation.

Regulation 17(2)(a)(ii): amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

### 18 How to determine loan-to-valuation ratio for purpose of classifying loans secured over qualifying moveable machinery

(1) For the purpose of classifying a first ranking loan secured over qualifying moveable machinery in respect of which a financing statement has been registered and perfected under the Personal Property Securities Act 1999, the loan-to-valuation ratio must be calculated using the formula—

$$(\text{loan value} \div \text{property value}) \times 100$$

(2) In the formula in subclause (1),—

(a) **loan value** is the total amount of the first ranking loan secured over the qualifying moveable machinery:

(b) **property value** is the value of the qualifying moveable machinery determined under the deposit taker's property valuation policy.

### 19 Requirements for transferred loans to be excluded from calculation of risk-weighted amount for on-balance sheet exposures

(1) A deposit taker may only exclude a transferred loan from the calculation of its amount for risk-weighted on-balance sheet exposures under regulation 12 if the transfer meets the following requirements:

(a) the loan is transferred by novation or assignment; and

(b) the transfer does not contravene the terms and conditions of the underlying loan agreement and all necessary consents have been obtained; and

(c) the seller has no residual beneficial interest in the principal amount of the loan (or that part which has been transferred), and the buyer has no formal recourse to the seller for losses; and

(d) the seller has no obligation to repurchase the loan, or any part of it, at any time; and

(e) the seller has given notice to the buyer that it is under no obligation to repurchase the loan or support any losses suffered by the buyer, and the buyer has provided written acknowledgement of the absence of those obligations; and

(f) the documented terms of the transfer are such that if the loan is rescheduled or renegotiated, the buyer, and not the seller, will be subject to the rescheduled or renegotiated terms; and

(g) if payments are routed through the seller, the seller is under no obligation to remit funds to the buyer unless and until they are received from the borrower; and

(h) if the buyer is subject to a trust arrangement, the trustees of that trust are independent of the seller or companies related to the seller both during and after the sale negotiations; and

(i) a clean transfer within the meaning of subclause (2) is achieved.

(2) A clean transfer is achieved if, as a result of the transfer, the deposit taker or guaranteeing subsidiary (as applicable)—

(a) would incur no loss (of interest or principal) in the event of non-performance by the borrower; and

(b) reasonably believes that it is not, in any circumstances, required to support the loan.

Regulation 19(2): amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

### 20 Requirements for loans subject to sub-participations to be excluded from calculation of risk-weighted amount for on-balance sheet exposures

(1) A deposit taker may only exclude a loan, or any part of a loan, in respect of which the deposit taker (or guaranteeing subsidiary, as applicable) has entered into a sub-participation from the calculation of its risk-weighted amount for on-balance sheet exposures under regulation 12 if the following requirements are met:

(a) there are no terms or conditions in the underlying loan agreement that would prevent the deposit taker or guaranteeing subsidiary from entering into the sub-participation and all necessary consents have been obtained; and

(b) the deposit taker or guaranteeing subsidiary, whether under the terms of the sub-participation agreement or any other agreement or arrangement,—

(i) is not under an obligation to assume all or any part of the risk of the sub-participant under the sub-participation in any circumstances; and

(ii) has no liability for any losses suffered by the sub-participant under the sub-participation as a result of default by the borrower under the underlying loan agreement; and

(c) the sub-participant must have given written acknowledgement to the deposit taker or guaranteeing subsidiary, confirming the matters in paragraph (b); and

(d) the deposit taker or guaranteeing subsidiary is not under an obligation to repay any amount to the sub-participant unless and until an equivalent amount is received by the deposit taker or guaranteeing subsidiary under the underlying loan agreement, including if payments under the underlying loan agreement are rescheduled; and

(e) if the sub-participation does not apply to the whole of the underlying loan, the parts of the loan that are subject to the sub-participation must rank equally with the parts of the loan that are not subject to the sub-participation in the event of default by the borrower.

(2) In this regulation, **sub-participation** means a transaction in which a person (the **sub-participant**) places a deposit with the deposit taker or the guaranteeing subsidiary (**A**) in the amount of its participation in respect of a loan (the **underlying loan**) by A to a third party (the **borrower**) on terms under which A's obligation to repay the sub-participant depends on the borrower repaying A under the underlying loan agreement; and **sub-participation agreement** has a corresponding meaning.

Regulation 20(1): amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Regulation 20(1)(a): amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Regulation 20(1)(b): amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Regulation 20(1)(c): amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Regulation 20(1)(d): amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Regulation 20(2): amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

*Calculation of amount for market risk and operational risk*

### 21 How to calculate amount for market risk and operational risk

A deposit taker must calculate its aggregate amount for market risk and operational risk by applying the book value for its total assets as at the date of calculation and its risk-weighted amount for credit risk, calculated in accordance with regulation 11, in the following formula:

[(total assets + deposit takers' risk-weighted amount for credit risk) ÷ 2] × 0.175

## Part 4
## Restrictions on related party exposures

### 22 Overview

(1) This regulation is intended only as a guide to the general scheme and effect of this Part.

(2) The limit on related party exposures is a limit, expressed as a ratio, on the exposures that a deposit taker may have to related parties, relative to the deposit taker's capital base.

(3) The limit applies to all exposures to related parties, in aggregate (and is not a limit on exposures to individual related parties), and, if the deposit taker is part of a borrowing group,—

- (a) applies to exposures to related parties of all members of the borrowing group (by virtue of the definition of related party); and
- (b) is relative to the capital of that borrowing group.

(4) This Part sets out what a trust deed must include about the maximum limit on related party exposures (*see* regulation 23) and how the maximum limit must be calculated.

### 23 Trust deed must include maximum limit on aggregate related party exposures of no more than 15% of capital

(1) Every deposit taker and trustee must ensure that the trust deed includes a maximum limit on aggregate exposures to related parties that the deposit taker must not exceed.

(2) The maximum limit must be fixed by agreement between the deposit taker and the trustee (but *see* section 79 of the Act for provisions that apply if there is no agreement).

(3) The maximum limit must be expressed as a ratio that—

(a) must be calculated in accordance with regulation 24; and

(b) must not exceed 15%.

Regulation 23(2): amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

### 24 How to calculate maximum limit ratio

(1) A deposit taker must calculate the maximum limit (and measure whether or not it is exceeding that maximum limit) by—

(a) determining the amount of the aggregate exposures as follows:

(i) identifying the exposures as set out in regulation 25; and

(ii) measuring those exposures as set out in regulations 26 and 27; and

(iii) adding together all of those exposures; and

(b) determining the amount of capital under regulation 10, using the book values most recently reported to the trustee; and

(c) applying those amounts in the following formula:

$$(\text{aggregate exposures} \div \text{capital}) \times 100$$

(2) If the deposit taker is part of a borrowing group, both the aggregate exposures and the capital must be calculated on a consolidated basis (*see* regulation 5).

(3) If accounting standards require a securitisation special purpose vehicle to be consolidated for the purposes of group financial statements, the special purpose vehicle must be consolidated with the deposit taker or the borrowing group for the purposes of the calculations under this Part.

### 25 Identifying related party exposures

(1) The deposit taker must identify, for the purposes of regulation 24(1)(a)(i), all actual, potential, or contingent exposures to loss for the deposit taker (or a guaranteeing subsidiary) under a contract or arrangement if a related party fails to discharge its obligations (whether or not the related party is a counterparty to the contract or arrangement).

(2) In identifying those exposures, the deposit taker must—

(a) include those not recorded in the statement of financial position (for example, commitments, contingencies, stand-by lines, letters of credit); and

(b) exclude those that are share capital or subordinated loans.

Regulation 25(1): amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

### 26 Measuring related party exposures

(1) An exposure identified under regulation 25 (other than a market-related contract) must then be measured on the following basis:

(a) if it is included in the statement of financial position, the exposure is the book value most recently reported to the trustee:

(b) if it is not included in the statement of financial position, the exposure is the maximum loss that the deposit taker (or guaranteeing subsidiary) would incur, as at the date of calculation, as a result of the related party failing to discharge its obligations.

(2) In each case, however, the exposure must be measured net of allowances for impairment loss and without taking into account any credit risk mitigation arrangements.

Regulation 26(1)(b): amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

### 27 Measuring related party exposures that are market-related contracts

(1) If an exposure identified under regulation 25 is a market-related contract, the exposure must be measured as the notional principal amount of the contract, as at the date of calculation, multiplied by the credit conversion factor that applies under subclauses (2) and (3).

(2) The credit conversion factor must be determined under the following table according to the type of contract and its original maturity:

| Type of contract | Original maturity | Credit conversion factor |
|---|---|---|
| Interest rate contract | less than 1 year | 0.5% |
| | 1 year or more | aggregate of 1% for each year (or part of a year) of maturity |
| Exchange rate contract | less than 1 year | 2% |
| | 1 year or more | aggregate of 2% for 1st year and 4% for each additional year (or part of year) of maturity |
| Equity or commodity contract | less than 1 year | 5% |
| | 1 year or more, but less than 2 years | 7% |
| | 2 years or more | 10% |

(3) In this regulation and regulation 26,—

(a) a **market-related contract** means a contract that is settled on a future date and the value of which is determined by reference to the price of an underlying equity or commodity, to an interest rate or exchange rate, to changes in any of those rates or prices, or to an index of any of them (the **underlying market**); and

(b) a market-related contract is—

(i) an **interest rate contract** if the underlying market is an interest rate, changes in an interest rate, or an index of interest rates:

(ii) an **exchange rate contract** if the underlying market is an exchange rate, changes in an exchange rate, or an index of exchange rates:

(iii) an **equity or commodity contract** if the underlying market is an equity or commodity, or changes in the prices of an equity or commodity, or an index of equity or commodity prices; but

(c) if a market-related contract is more than 1 type of market-related contract under paragraph (b), it must be classified as being the type of those market-related contracts that has the highest credit conversion factor under the table in subclause (2); and

(d) **original maturity** means the maturity of the contract under its terms as at the date it takes effect (rather than the residual maturity at the time of the calculation).

# Part 5
# Revocation

## 28 Revocation

The Deposit Takers (Credit Ratings) Regulations 2009 (SR 2009/420) are revoked.

# Schedule
# Tables 1 to 3

rr 12,13,15

## Table 1
## Risk-weighted exposures for on-balance sheet assets

| Item | Class | Risk weight |
|---|---|---|
| 1 | Cash (notes, coin, and gold bullion held by deposit taker or borrowing group member (as applicable) on site) | 0% |

| Item | Class | | Risk weight |
|---|---|---|---|
| 2 | Claims on Crown and Reserve Bank | | 0% |
| 3 | Claims on public sector entities | | 20% |
| 4 | Claims on New Zealand registered banks | | 20% |
| | **Rated short-term claims** (*see* regulations 14 and 15) | | |
| 5 | | – with a rating grade of 1 | 20% |
| 6 | | – with a rating grade of 2 | 50% |
| 7 | | – with a rating grade of 3 | 100% |
| 8 | | – with a rating grade of 4 | 150% |
| | **Rated long-term claims** (*see* regulations 14 and 15) | | |
| 9 | | – with a rating grade of 1 | 20% |
| 10 | | – with a rating grade of 2 | 50% |
| 11 | | – with a rating grade of 3 | 100% |
| 12 | | – with a rating grade of 4 | 100% |
| 13 | | – with a rating grade of 5 | 150% |
| 14 | | – with a rating grade of 6 | 150% |
| 15 | Qualifying insured residential mortgage loans | | 20% |
| | **Residential mortgage loans** (*see* regulation 16) | | |
| 16 | | – first ranking with a loan-to-valuation ratio not exceeding 70% | 35% |
| 17 | | – first ranking with a loan-to-valuation ratio exceeding 70% but not exceeding 80% | 50% |
| 18 | | – first ranking with a loan-to-valuation ratio exceeding 80% but not exceeding 90% | 100% |
| 19 | | – first ranking with a loan-to-valuation ratio exceeding 90% but not exceeding 100% | 125% |
| 20 | | – first ranking with a loan-to-valuation ratio exceeding 100% | 150% |
| 21 | | – second or subsequent ranking | 150% |
| | **Property development loans** (*see* regulation 17) | | |
| 22 | | – first ranking security with a loan-to-valuation ratio not exceeding 60% | 150% |
| 23 | | – first ranking security with a loan-to-valuation ratio exceeding 60% but not exceeding 100% | 200% |
| 24 | | – any other property development loans, including those with second or subsequent ranking security, no security, and first ranking security with a loan-to-valuation ratio exceeding 100% | 300% |

| Item | Class | | Risk weight |
|---|---|---|---|
| | **Other loans with qualifying security over land and/or buildings** (*see* regulation 16) | | |
| 25 | | – first mortgage over land and/or buildings with a loan-to-valuation ratio not exceeding 70%, excluding property development loans and residential mortgage loans | 100% |
| 26 | | – first mortgage over land and/or buildings with a loan-to-valuation ratio exceeding 70% but not exceeding 100%, excluding property development loans and residential mortgage loans | 150% |
| 27 | Loans secured over qualifying moveable machinery) (*see* regulation 18) | – first ranking in respect of which a financing statement has been registered and perfected under the Personal Property Securities Act 1999 and when an identification number is used to describe the collateral with a loan-to-valuation ratio not exceeding 70% | 100% |
| | **Personal loans** | | |
| 28 | | – in respect of which a financing statement has been registered and perfected under the Personal Property Securities Act 1999 | 100% |
| 29 | | – in respect of which a financing statement has not been registered under the Personal Property Securities Act 1999 | 150% |
| | **Other loans (not within classes 15 to 29, except in a case to which regulation 13(2) applies)** | | |
| 30 | | – where a financing statement has been registered and perfected under the Personal Property Securities Act 1999 | 150% |
| 31 | | – where a financing statement has not been registered and perfected under the Personal Property Securities Act 1999 | 200% |
| 32 | Assets in respect of which deposit taker or other borrowing group member (as applicable) is lessor under an operating lease (excluding operating leases over assets that are land and buildings) | | 175% |
| 33 | Equity holdings (not deducted from capital) | | 600% |
| 34 | Other assets | | 350% |

## Table 2
## Rating grades for short-term credit assessments

| Rating grade | Rating agency credit assessments | | |
|---|---|---|---|
| | Standard & Poor's Ratings Services | Moody's Investors Service | Fitch Ratings |
| 1 | A-1 | P-1 | F1 |
| 2 | A-2 | P-2 | F2 |
| 3 | A-3 | P-3 | F3 |
| 4 | Other | Other | Other |

## Table 3
## Rating grades for long-term or issuer credit assessments

| Rating grade | Rating agency credit assessments | | |
|---|---|---|---|
| | Standard & Poor's Ratings Services | Moody's Investors Service | Fitch Ratings |
| 1 | AAA | Aaa | AAA |
| | AA+ | Aa1 | AA+ |
| | AA | Aa2 | AA |
| | AA− | Aa3 | AA− |
| 2 | A+ | A1 | A+ |
| | A | A2 | A |
| | A− | A3 | A− |
| 3 | BBB+ | Baa1 | BBB+ |
| | BBB | Baa2 | BBB |
| | BBB− | Baa3 | BBB− |
| 4 | BB+ | Ba1 | BB+ |
| | BB | Ba2 | BB |
| | BB− | Ba3 | BB− |
| 5 | B+ | B1 | B+ |
| | B | B2 | B |
| | B− | B3 | B− |
| 6 | CCC+ | Caa1 | CCC+ |
| | CCC | Caa2 | CCC |
| | CCC− | Caa3 | CCC− |
| | CC | Ca | CC |
| | C | C | C |
| | D | | D |

Michael Webster,
for Clerk of the Executive Council.

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## Reprints notes

### *1 General*

This is a reprint of the Deposit Takers (Credit Ratings, Capital Ratios, and Related Party Exposures) Regulations 2010 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

### *2 Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### *3 Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also http://www.pco.parliament.govt.nz/editorial-conventions/.

### *4 Amendments incorporated in this reprint*

Non-bank Deposit Takers Act 2013 (2013 No 104): section 92(2)

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