COMMISSION REGULATION (EC) No 1171/2009

of 30 November 2009

amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Interpretations Committee's (IFRIC) Interpretation 9 and International Accounting Standard (IAS) 39

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards [1], and in particular Article 3(1) thereof,

Whereas:

(1) By Commission Regulation (EC) No 1126/2008 [2] certain international standards and interpretations that were in existence on 15 October 2008 were adopted.

(2) On 12 March 2009, the International Accounting Standard Board (IASB) published amendments to International Financial Reporting Interpretations Committee's (IFRIC) Interpretation 9 *Reassessment of Embedded Derivatives* and International Accounting Standard 39 *Financial Instruments: Recognition and Measurement* hereinafter 'amendments to IFRIC 9 and IAS 39'. The amendments to IFRIC 9 and IAS 39 clarify the treatment of derivative financial instruments embedded in other contracts when a hybrid financial asset is reclassified out of the fair value through profit or loss category.

(3) The consultation with the Technical Expert Group (TEG) of the European Financial Reporting Advisory Group (EFRAG) confirms that the amendments to IFRIC 9 and IAS 39 meet the technical criteria for adoption set out in Article 3(2) of Regulation (EC) No 1606/2002. In accordance with Commission Decision 2006/505/EC of 14 July 2006 setting up a Standards Advice Review Group to advise the Commission on the objectivity and neutrality of the European Financial Reporting Advisory Group's (EFRAG's) opinions [3], the Standards Advice Review Group considered EFRAG's opinion on endorsement and advised the Commission that it is well-balanced and objective.

(4) Regulation (EC) No 1126/2008 should therefore be amended accordingly.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Accounting Regulatory Committee,

HAS ADOPTED THIS REGULATION:

Article 1

In the Annex to Regulation (EC) No 1126/2008 International Financial Reporting Interpretations Committee's (IFRIC) Interpretation 9 *Reassessment of Embedded Derivatives* and International Accounting Standard (IAS) 39 *Financial Instruments: Recognition and Measurement* are amended as set out in the Annex to this Regulation.

Article 2

Each company shall apply the amendments to IFRIC 9 and IAS 39, as set out in the Annex to this Regulation, at the latest, as from the commencement date of its first financial year starting after 31 December 2008.

[1] OJ L 243, 11.9.2002, p. 1.
[2] OJ L 320, 29.11.2008, p. 1.
[3] OJ L 199, 21.7.2006, p. 33.

Article 3

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 November 2009.

For the Commission

Charlie McCREEVY

Member of the Commission

ANNEX

INTERNATIONAL ACCOUNTING STANDARDS

IFRIC 9	Amendments to IFRIC Interpretation 9 *Reassessment of Embedded Derivatives*
IAS 39	Amendments to International Accounting Standard 39 *Financial Instruments: Recognition and Measurement*

Amendments to IFRIC Interpretation 9

Reassessment of Embedded Derivatives

Paragraph 7 is amended. Paragraphs 7A and 10 are added.

CONSENSUS

7 An entity shall assess whether an embedded derivative is required to be separated from the host contract and accounted for as a derivative when the entity first becomes a party to the contract. Subsequent reassessment is prohibited unless there is either (a) a change in the terms of the contract that significantly modifies the cash flows that otherwise would be required under the contract or (b) a reclassification of a financial asset out of the fair value through profit or loss category, in which cases an assessment is required. An entity determines whether a modification to cash flows is significant by considering the extent to which the expected future cash flows associated with the embedded derivative, the host contract or both have changed and whether the change is significant relative to the previously expected cash flows on the contract.

7A The assessment whether an embedded derivative is required to be separated from the host contract and accounted for as a derivative on reclassification of a financial asset out of the fair value through profit or loss category in accordance with paragraph 7 shall be made on the basis of the circumstances that existed on the later date of:

(a) when the entity first became a party to the contract; and

(b) a change in the terms of the contract that significantly modified the cash flows that otherwise would have been required under the contract.

For the purpose of this assessment paragraph 11(c) of IAS 39 shall not be applied (ie the hybrid (combined) contract shall be treated as if it had not been measured at fair value with changes in fair value recognised in profit or loss). If an entity is unable to make this assessment the hybrid (combined) contract shall remain classified as at fair value through profit or loss in its entirety.

EFFECTIVE DATE AND TRANSITION

10 *Embedded Derivatives* (Amendments to IFRIC 9 and IAS 39) issued in March 2009 amended paragraph 7 and added paragraph 7A. An entity shall apply those amendments for annual periods ending on or after 30 June 2009.

Amendments to International Accounting Standard 39

Financial Instruments: Recognition and Measurement

Paragraph 12 is amended. Paragraph 103J is added.

EMBEDDED DERIVATIVES

12 If an entity is required by this Standard to separate an embedded derivative from its host contract, but is unable to measure the embedded derivative separately either at acquisition or at the end of a subsequent financial reporting period, it shall designate the entire hybrid (combined) contract as at fair value through profit or loss. Similarly, if an entity is unable to measure separately the embedded derivative that would have to be separated on reclassification of a hybrid (combined) contract out of the fair value through profit or loss category, that reclassification is prohibited. In such circumstances the hybrid (combined) contract remains classified as at fair value through profit or loss in its entirety.

EFFECTIVE DATE AND TRANSITION

103J An entity shall apply paragraph 12, as amended by *Embedded Derivatives* (Amendments to IFRIC 9 and IAS 39), issued in March 2009, for annual periods ending on or after 30 June 2009.