Commission Regulation (EU) No 1375/2013 of 19 December 2013 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 Accounting Standard 39 (Text with EEA relevance)

COMMISSION REGULATION (EU) No 1375/2013

of 19 December 2013

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 Accounting Standard 39

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 at 15 October 2008 were adopted.

(2) On 27 June 2013 the International Accounting Standards Board published amendments to International Accounting Standard (IAS) 39 *Financial Instruments: Recognition and Measurement* entitled *Novation of Derivatives and Continuation of Hedge Accounting*. The objective of the amendments is to provide relief in situations where a derivative, which has been designated as a hedging instrument, is novated from one counterparty to a central counterparty as a consequence of laws or regulations. Such a relief means that hedge accounting can continue irrespective of the novation which, without the amendment, would not be permitted.

(3) Regulation (EU) No 648/2012 of the European Parliament and of the Council[(3)] requires central clearing of certain classes of OTC derivatives. As a consequence, counterparties of certain hedging instruments should agree to replace their original counterparty of the hedging transaction by a central counterparty that is compliant with the requirements of that Regulation.

(4) In order to avoid a financial reporting burden arising from the novation of OTC derivatives to a central counterparty as a consequence of laws or regulations or the introduction of laws or regulations, it is necessary to provide for an exception to the existing requirements for discontinuation of hedge accounting in IAS 39.

(5) The consultation with the Technical Expert Group of the European Financial Reporting Advisory Group confirms that the amendments to IAS 39 meet the technical criteria for adoption set out in Article 3(2) of Regulation (EC) No 1606/2002.

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

(7) 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 Accounting Standard (IAS) 39 *Financial Instruments: Recognition and Measurement* is amended as set out in the Annex to this Regulation.

Article 2

Each company shall apply the amendments referred to in Article 1, at the latest, as from the commencement date of its first financial year starting on or after 1 January 2014.

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, 19 December 2013.

For the Commission

The President

José Manuel BARROSO

ANNEX

INTERNATIONAL ACCOUNTING STANDARDS

IAS 39	**IAS 39** ***Financial Instruments: Recognition and Measurement***

Amendments to IAS 39 Financial Instruments: Recognition and Measurement ***Novation of Derivatives and Continuation of Hedge Accounting***

Paragraphs 91 and 101 are amended.

Fair value hedges

…

91 **An entity shall discontinue prospectively the hedge accounting specified in paragraph 89 if:**

(a) **the hedging instrument expires or is sold, terminated or exercised. For this purpose, the replacement or rollover of a hedging instrument into another hedging instrument is not an expiration or termination if such replacement or rollover is part of the entity's documented hedging strategy. Additionally, for this purpose there is not an expiration or termination of the hedging instrument if:**

(i) **as a consequence of laws or regulations or the introduction of laws or regulations, the parties to the hedging instrument agree that one or more clearing counterparties replace their original counterparty to become the new counterparty to each of the parties. For this purpose, a clearing counterparty is a central counterparty (sometimes called a 'clearing organisation' or 'clearing agency') or an entity or entities, for example, a clearing member of a clearing organisation or a client of a clearing member of a clearing organisation, that are acting as counterparty in order to effect clearing by a central counterparty. However, when the parties to the hedging instrument replace their original counterparties with different counterparties this paragraph shall apply only if each of those parties effects clearing with the same central counterparty.**

(ii) **other changes, if any, to the hedging instrument are limited to those that are necessary to effect such a replacement of the counterparty. Such changes are limited to those that are consistent with the terms that would be expected if the hedging instrument were originally cleared with the clearing counterparty. These changes include changes in the collateral requirements, rights to offset receivables and payables balances, and charges levied.**

(b) …

…

Cash flow hedges

…

101 **In any of the following circumstances an entity shall discontinue prospectively the hedge accounting specified in paragraphs 95–100:**

(a) **The hedging instrument expires or is sold, terminated or exercised. In this case, the cumulative gain or loss on the hedging instrument that has been recognised in other comprehensive income from the period when the hedge was effective (see paragraph 95(a)) shall remain separately in equity until the forecast transaction occurs. When the transaction occurs, paragraph 97, 98 or 100 applies. For the purpose of this subparagraph, the replacement or rollover of a hedging instrument into another hedging instrument is not an expiration or termination if such replacement or rollover is part of the entity's documented hedging strategy. Additionally, for the purpose of this subparagraph there is not an expiration or termination of the hedging instrument if:**

(i) **as a consequence of laws or regulations or the introduction of laws or regulations, the parties to the hedging instrument agree that one or more clearing counterparties replace their original counterparty to become the new counterparty to each of the parties. For this purpose, a clearing counterparty is a central counterparty (sometimes called a 'clearing organisation' or 'clearing agency') or an entity or entities, for example, a clearing member of a clearing organisation or a client of a clearing member of a clearing organisation, that are acting as counterparty in order to effect clearing by a central counterparty. However, when the parties to the hedging instrument replace their original counterparties with different counterparties this paragraph shall apply only if each of those parties effects clearing with the same central counterparty.**

(ii) **other changes, if any, to the hedging instrument are limited to those that are necessary to effect such a replacement of the counterparty. Such changes are limited to those that are consistent with the terms that would be expected if the hedging instrument were originally cleared with the clearing counterparty. These changes include changes in the collateral requirements, rights to offset receivables and payables balances, and charges levied.**

(b) …

Paragraph 108D and, in Appendix A, paragraph AG113A are added.

Effective date and transition

…

108D *Novation of Derivatives and Continuation of Hedge Accounting* (Amendments to IAS 39), issued in June 2013, amended paragraphs 91 and 101 and added paragraph AG113A. An entity shall apply those paragraphs for annual periods beginning on or after 1 January 2014. An entity shall apply those amendments retrospectively in accordance with IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors*. Earlier application is permitted. If an entity applies those amendments for an earlier period it shall disclose that fact.

…

Assessing hedge effectiveness

…

AG113A For the avoidance of doubt, the effects of replacing the original counterparty with a clearing counterparty and making the associated changes as described in paragraphs 91(a)(ii) and 101(a)(ii) shall be reflected in the measurement of the hedging instrument and therefore in the assessment of hedge effectiveness and the measurement of hedge effectiveness.

(**1**) OJ L 243, 11.9.2002, p. 1.

(**2**) OJ L 320, 29.11.2008, p. 1.

(**3**) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).