

COMMISSION REGULATION (EU) No 1256/2012

of 13 December 2012

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 Standard 7 and International Accounting Standard 32

(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 16 December 2011, the International Accounting Standards Board (IASB) published amendments to International Financial Reporting Standard (IFRS) 7 Financial Instruments: Disclosures – Offsetting Financial Assets and Financial Liabilities and to International Accounting Standard (IAS) 32 Financial Instruments: Presentation – Offsetting Financial Assets and Financial Liabilities. The amendment to IFRS 7 aims to require the provision of additional quantitative information in order to allow the users to better compare and reconcile the disclosures under IFRS and the Generally Accepted Accounting Principles (GAAP) of the United States. In addition, the IASB amended IAS 32 to provide additional guidance to reduce inconsistent application of the standard in practice.

(3) The amendments to IFRS 7 Financial Instruments: Disclosures – Transfers of Financial Assets were adopted by Commission Regulation (EU) No 1205/2011 of 22 November 2011 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 Standard (IFRS) 7 ⁽³⁾ after being approved by the Accounting Regulatory Committee in June 2011.

However, the deletion of paragraph 13 of IFRS 7 was inadvertently omitted. This Regulation should remedy this omission. In order for this provision to be efficient, it should apply from 1 July 2011. The provision of retroactivity is necessary with the view to ensure legal certainty for the issuers concerned.

(4) The consultation with the Technical Expert Group (TEG) of the European Financial Reporting Advisory Group (EFRAG) confirms that the amendments to IFRS 7 and IAS 32 meet the technical criteria for adoption set out in Article 3(2) of Regulation (EC) No 1606/2002.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 1126/2008 is amended as follows:

(1) International Financial Reporting Standard (IFRS) 7 *Financial Instruments: Disclosures* is amended as set out in the Annex to this Regulation;

(2) International Accounting Standard (IAS) 32 *Financial Instruments: Presentation* is amended in accordance with the amendments to IFRS 7 as set out in the Annex to this Regulation;

(3) IAS 32 *Financial Instruments: Presentation* is amended as set out in the Annex to this Regulation;

(4) The heading before paragraph 13 and paragraph 13 of IFRS 7 are deleted in accordance with the amendments to IFRS 7 *Financial Instruments: Disclosures – Transfers of Financial Assets* as adopted by Regulation (EU) No 1205/2011.

⁽¹⁾ OJ L 243, 11.9.2002, p. 1.

⁽²⁾ OJ L 320, 29.11.2008, p. 1.

⁽³⁾ OJ L 305, 23.11.2011, p. 16.

Article 2

1. Each company shall apply the amendments referred to in points (1) and (2) of Article 1 as from the commencement date of its first financial year starting on or after 1 January 2013.

2. Each company shall apply the amendments referred to in point (3) of Article 1, at the latest, as from the commencement date of its first financial year starting on or after 1 January 2014.

3. Each company shall apply the amendments referred to in point (4) of Article 1 as from the commencement date of its first financial year starting on or after 1 July 2011.

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, 13 December 2012.

For the Commission
The President
José Manuel BARROSO

ANNEX

INTERNATIONAL ACCOUNTING STANDARDS

IFRS 7	Amendments to IFRS 7 <i>Financial Instruments: Disclosures – Offsetting Financial Assets and Financial Liabilities</i>
IAS 32	Amendments to IAS 32 <i>Financial Instruments: Presentation – Offsetting Financial Assets and Financial Liabilities</i>

Amendments to IFRS 7 *Financial Instruments: Disclosures*

After paragraph 13, a heading and paragraphs 13A–13F are added.

Offsetting financial assets and financial liabilities

- 13A The disclosures in paragraphs 13B–13E supplement the other disclosure requirements of this IFRS and are required for all recognised financial instruments that are set off in accordance with paragraph 42 of IAS 32. These disclosures also apply to recognised financial instruments that are subject to an enforceable master netting arrangement or similar agreement, irrespective of whether they are set off in accordance with paragraph 42 of IAS 32.
- 13B An entity shall disclose information to enable users of its financial statements to evaluate the effect or potential effect of netting arrangements on the entity's financial position. This includes the effect or potential effect of rights of set-off associated with the entity's recognised financial assets and recognised financial liabilities that are within the scope of paragraph 13A.
- 13C To meet the objective in paragraph 13B, an entity shall disclose, at the end of the reporting period, the following quantitative information separately for recognised financial assets and recognised financial liabilities that are within the scope of paragraph 13A:
- (a) the gross amounts of those recognised financial assets and recognised financial liabilities;
 - (b) the amounts that are set off in accordance with the criteria in paragraph 42 of IAS 32 when determining the net amounts presented in the statement of financial position;
 - (c) the net amounts presented in the statement of financial position;
 - (d) the amounts subject to an enforceable master netting arrangement or similar agreement that are not otherwise included in paragraph 13C(b), including:
 - (i) amounts related to recognised financial instruments that do not meet some or all of the offsetting criteria in paragraph 42 of IAS 32; and
 - (ii) amounts related to financial collateral (including cash collateral); and
 - (e) the net amount after deducting the amounts in (d) from the amounts in (c) above.
- The information required by this paragraph shall be presented in a tabular format, separately for financial assets and financial liabilities, unless another format is more appropriate.
- 13D The total amount disclosed in accordance with paragraph 13C(d) for an instrument shall be limited to the amount in paragraph 13C(c) for that instrument.
- 13E An entity shall include a description in the disclosures of the rights of set-off associated with the entity's recognised financial assets and recognised financial liabilities subject to enforceable master netting arrangements and similar agreements that are disclosed in accordance with paragraph 13C(d), including the nature of those rights.
- 13F If the information required by paragraphs 13B–13E is disclosed in more than one note to the financial statements, an entity shall cross-refer between those notes.

EFFECTIVE DATE AND TRANSITION

Paragraph 44R is added.

- 44R *Disclosures—Offsetting Financial Assets and Financial Liabilities* (Amendments to IFRS 7), issued in December 2011, added paragraphs IN9, 13A–13F and B40–B53. An entity shall apply those amendments for annual periods beginning on or after 1 January 2013 and interim periods within those annual periods. An entity shall provide the disclosures required by those amendments retrospectively.

After paragraph B39, headings and paragraphs B40–B53 are added.

Offsetting financial assets and financial liabilities**(paragraphs 13A–13F)***Scope (paragraph 13A)*

- B40 The disclosures in paragraphs 13B–13E are required for all recognised financial instruments that are set off in accordance with paragraph 42 of IAS 32. In addition, financial instruments are within the scope of the disclosure requirements in paragraphs 13B–13E if they are subject to an enforceable master netting arrangement or similar agreement that covers similar financial instruments and transactions, irrespective of whether the financial instruments are set off in accordance with paragraph 42 of IAS 32.
- B41 The similar agreements referred to in paragraphs 13A and B40 include derivative clearing agreements, global master repurchase agreements, global master securities lending agreements, and any related rights to financial collateral. The similar financial instruments and transactions referred to in paragraph B40 include derivatives, sale and repurchase agreements, reverse sale and repurchase agreements, securities borrowing, and securities lending agreements. Examples of financial instruments that are not within the scope of paragraph 13A are loans and customer deposits at the same institution (unless they are set off in the statement of financial position), and financial instruments that are subject only to a collateral agreement.

Disclosure of quantitative information for recognised financial assets and recognised financial liabilities within the scope of paragraph 13A (paragraph 13C)

- B42 Financial instruments disclosed in accordance with paragraph 13C may be subject to different measurement requirements (for example, a payable related to a repurchase agreement may be measured at amortised cost, while a derivative will be measured at fair value). An entity shall include instruments at their recognised amounts and describe any resulting measurement differences in the related disclosures.

Disclosure of the gross amounts of recognised financial assets and recognised financial liabilities within the scope of paragraph 13A (paragraph 13C(a))

- B43 The amounts required by paragraph 13C(a) relate to recognised financial instruments that are set off in accordance with paragraph 42 of IAS 32. The amounts required by paragraph 13C(a) also relate to recognised financial instruments that are subject to an enforceable master netting arrangement or similar agreement irrespective of whether they meet the offsetting criteria. However, the disclosures required by paragraph 13C(a) do not relate to any amounts recognised as a result of collateral agreements that do not meet the offsetting criteria in paragraph 42 of IAS 32. Instead, such amounts are required to be disclosed in accordance with paragraph 13C(d).

Disclosure of the amounts that are set off in accordance with the criteria in paragraph 42 of IAS 32 (paragraph 13C(b))

- B44 Paragraph 13C(b) requires that entities disclose the amounts set off in accordance with paragraph 42 of IAS 32 when determining the net amounts presented in the statement of financial position. The amounts of both the recognised financial assets and the recognised financial liabilities that are subject to set-off under the same arrangement will be disclosed in both the financial asset and financial liability disclosures. However, the amounts disclosed (in, for example, a table) are limited to the amounts that are subject to set-off. For example, an entity may have a recognised derivative asset and a recognised derivative liability that meet the offsetting criteria in paragraph 42 of IAS 32. If the gross amount of the derivative asset is larger than the gross amount of the derivative liability, the financial asset disclosure table will include the entire amount of the derivative asset (in accordance with paragraph 13C(a)) and the entire amount of the derivative liability (in accordance with paragraph 13C(b)). However, while the financial liability disclosure table will include the entire amount of the derivative liability (in accordance with paragraph 13C(a)), it will only include the amount of the derivative asset (in accordance with paragraph 13C(b)) that is equal to the amount of the derivative liability.

Disclosure of the net amounts presented in the statement of financial position (paragraph 13C(c))

- B45 If an entity has instruments that meet the scope of these disclosures (as specified in paragraph 13A), but that do not meet the offsetting criteria in paragraph 42 of IAS 32, the amounts required to be disclosed by paragraph 13C(c) would equal the amounts required to be disclosed by paragraph 13C(a).
- B46 The amounts required to be disclosed by paragraph 13C(c) must be reconciled to the individual line item amounts presented in the statement of financial position. For example, if an entity determines that the

aggregation or disaggregation of individual financial statement line item amounts provides more relevant information, it must reconcile the aggregated or disaggregated amounts disclosed in paragraph 13C(c) back to the individual line item amounts presented in the statement of financial position.

Disclosure of the amounts subject to an enforceable master netting arrangement or similar agreement that are not otherwise included in paragraph 13C(b) (paragraph 13C(d))

B47 Paragraph 13C(d) requires that entities disclose amounts that are subject to an enforceable master netting arrangement or similar agreement that are not otherwise included in paragraph 13C(b). Paragraph 13C(d)(i) refers to amounts related to recognised financial instruments that do not meet some or all of the offsetting criteria in paragraph 42 of IAS 32 (for example, current rights of set-off that do not meet the criterion in paragraph 42(b) of IAS 32, or conditional rights of set-off that are enforceable and exercisable only in the event of default, or only in the event of insolvency or bankruptcy of any of the counterparties).

B48 Paragraph 13C(d)(ii) refers to amounts related to financial collateral, including cash collateral, both received and pledged. An entity shall disclose the fair value of those financial instruments that have been pledged or received as collateral. The amounts disclosed in accordance with paragraph 13C(d)(ii) should relate to the actual collateral received or pledged and not to any resulting payables or receivables recognised to return or receive back such collateral.

Limits on the amounts disclosed in paragraph 13C(d) (paragraph 13D)

B49 When disclosing amounts in accordance with paragraph 13C(d), an entity must take into account the effects of over-collateralisation by financial instrument. To do so, the entity must first deduct the amounts disclosed in accordance with paragraph 13C(d)(i) from the amount disclosed in accordance with paragraph 13C(c). The entity shall then limit the amounts disclosed in accordance with paragraph 13C(d)(ii) to the remaining amount in paragraph 13C(c) for the related financial instrument. However, if rights to collateral can be enforced across financial instruments, such rights can be included in the disclosure provided in accordance with paragraph 13D.

Description of the rights of set-off subject to enforceable master netting arrangements and similar agreements (paragraph 13E)

B50 An entity shall describe the types of rights of set-off and similar arrangements disclosed in accordance with paragraph 13C(d), including the nature of those rights. For example, an entity shall describe its conditional rights. For instruments subject to rights of set-off that are not contingent on a future event but that do not meet the remaining criteria in paragraph 42 of IAS 32, the entity shall describe the reason(s) why the criteria are not met. For any financial collateral received or pledged, the entity shall describe the terms of the collateral agreement (for example, when the collateral is restricted).

Disclosure by type of financial instrument or by counterparty

B51 The quantitative disclosures required by paragraph 13C(a)–(e) may be grouped by type of financial instrument or transaction (for example, derivatives, repurchase and reverse repurchase agreements or securities borrowing and securities lending agreements).

B52 Alternatively, an entity may group the quantitative disclosures required by paragraph 13C(a)–(c) by type of financial instrument, and the quantitative disclosures required by paragraph 13C(c)–(e) by counterparty. If an entity provides the required information by counterparty, the entity is not required to identify the counterparties by name. However, designation of counterparties (Counterparty A, Counterparty B, Counterparty C, etc) shall remain consistent from year to year for the years presented to maintain comparability. Qualitative disclosures shall be considered so that further information can be given about the types of counterparties. When disclosure of the amounts in paragraph 13C(c)–(e) is provided by counterparty, amounts that are individually significant in terms of total counterparty amounts shall be separately disclosed and the remaining individually insignificant counterparty amounts shall be aggregated into one line item.

Other

B53 The specific disclosures required by paragraphs 13C–13E are minimum requirements. To meet the objective in paragraph 13B an entity may need to supplement them with additional (qualitative) disclosures, depending on the terms of the enforceable master netting arrangements and related agreements, including the nature of the rights of set-off, and their effect or potential effect on the entity's financial position.

Appendix

Amendment to IAS 32 *Financial Instruments: Presentation*

Paragraph 43 is amended.

- 43 This Standard requires the presentation of financial assets and financial liabilities on a net basis when doing so reflects an entity's expected future cash flows from settling two or more separate financial instruments. When an entity has the right to receive or pay a single net amount and intends to do so, it has, in effect, only a single financial asset or financial liability. In other circumstances, financial assets and financial liabilities are presented separately from each other consistently with their characteristics as resources or obligations of the entity. An entity shall disclose the information required in paragraphs 13B–13E of IFRS 7 for recognised financial instruments that are within the scope of paragraph 13A of IFRS 7.

Offsetting Financial Assets and Financial Liabilities**Amendments to IAS 32 *Financial Instruments: Presentation***

EFFECTIVE DATE AND TRANSITION

Paragraph 97L is added.

- 97L *Offsetting Financial Assets and Financial Liabilities* (Amendments to IAS 32), issued in December 2011, deleted paragraph AG38 and added paragraphs AG38A–AG38F. An entity shall apply those amendments for annual periods beginning on or after 1 January 2014. An entity shall apply those amendments retrospectively. Earlier application is permitted. If an entity applies those amendments from an earlier date, it shall disclose that fact and shall also make the disclosures required by *Disclosures—Offsetting Financial Assets and Financial Liabilities* (Amendments to IFRS 7) issued in December 2011.

Application Guidance

Immediately after the heading 'Offsetting a financial asset and a financial liability (paragraphs 42–50)', paragraph AG38 is deleted. Headings and paragraphs AG38A–AG38F are added.

Criterion that an entity 'currently has a legally enforceable right to set off the recognised amounts' (paragraph 42(a))

AG38A A right of set-off may be currently available or it may be contingent on a future event (for example, the right may be triggered or exercisable only on the occurrence of some future event, such as the default, insolvency or bankruptcy of one of the counterparties). Even if the right of set-off is not contingent on a future event, it may only be legally enforceable in the normal course of business, or in the event of default, or in the event of insolvency or bankruptcy, of one or all of the counterparties.

AG38B To meet the criterion in paragraph 42(a), an entity must currently have a legally enforceable right of set-off. This means that the right of set-off:

- (a) must not be contingent on a future event; and
- (b) must be legally enforceable in all of the following circumstances:
 - (i) the normal course of business;
 - (ii) the event of default; and
 - (iii) the event of insolvency or bankruptcyof the entity and all of the counterparties.

AG38C The nature and extent of the right of set-off, including any conditions attached to its exercise and whether it would remain in the event of default or insolvency or bankruptcy, may vary from one legal jurisdiction to another. Consequently, it cannot be assumed that the right of set-off is automatically available outside of the normal course of business. For example, the bankruptcy or insolvency laws of a jurisdiction may prohibit, or restrict, the right of set-off in the event of bankruptcy or insolvency in some circumstances.

AG38D The laws applicable to the relationships between the parties (for example, contractual provisions, the laws governing the contract, or the default, insolvency or bankruptcy laws applicable to the parties) need to be considered to ascertain whether the right of set-off is enforceable in the normal course of business, in an event of default, and in the event of insolvency or bankruptcy, of the entity and all of the counterparties (as specified in paragraph AG38B(b)).

Criterion that an entity ‘intends either to settle on a net basis, or to realise the asset and settle the liability simultaneously’ (paragraph 42(b))

AG38E To meet the criterion in paragraph 42(b) an entity must intend either to settle on a net basis or to realise the asset and settle the liability simultaneously. Although the entity may have a right to settle net, it may still realise the asset and settle the liability separately.

AG38F If an entity can settle amounts in a manner such that the outcome is, in effect, equivalent to net settlement, the entity will meet the net settlement criterion in paragraph 42(b). This will occur if, and only if, the gross settlement mechanism has features that eliminate or result in insignificant credit and liquidity risk, and that will process receivables and payables in a single settlement process or cycle. For example, a gross settlement system that has all of the following characteristics would meet the net settlement criterion in paragraph 42(b):

- (a) financial assets and financial liabilities eligible for set-off are submitted at the same point in time for processing;
 - (b) once the financial assets and financial liabilities are submitted for processing, the parties are committed to fulfil the settlement obligation;
 - (c) there is no potential for the cash flows arising from the assets and liabilities to change once they have been submitted for processing (unless the processing fails—see (d) below);
 - (d) assets and liabilities that are collateralised with securities will be settled on a securities transfer or similar system (for example, delivery versus payment), so that if the transfer of securities fails, the processing of the related receivable or payable for which the securities are collateral will also fail (and vice versa);
 - (e) any transactions that fail, as outlined in (d), will be re-entered for processing until they are settled;
 - (f) settlement is carried out through the same settlement institution (for example, a settlement bank, a central bank or a central securities depository); and
 - (g) an intraday credit facility is in place that will provide sufficient overdraft amounts to enable the processing of payments at the settlement date for each of the parties, and it is virtually certain that the intraday credit facility will be honoured if called upon.
-