

Wayne Upton
Chair
IFRS Interpretations
Committee
30 Cannon Street
London, EC4M 6XH L
United Kingdom

The IFRS Interpretations Committee’s tentative agenda decision on IAS 39 Financial Instruments: *Recognition and Measurement* – Accounting for term-structured repo transaction

Dear Mr. Upton,

The European Securities and Markets Authority (ESMA) is an independent EU Authority that contributes to enhancing the protection of investors and promoting stable and well-functioning financial markets in the European Union (EU). ESMA achieves this aim by building a single rule book for EU financial markets and ensuring its consistent application across the EU. ESMA contributes to the regulation of financial services firms with a pan-European reach, either through direct supervision or through the active co-ordination of national supervisory activity.

ESMA has considered the IFRS Interpretations Committee’s tentative decision not to add to its agenda the request for clarification it received on accounting for term-structured repo transactions with reference to paragraphs B.6 and C.6 of Guidance on Implementing IAS 39 and paragraph AG39 of IAS 32 *Financial Instruments: Presentation*.

ESMA agrees with the IFRS Interpretations Committee’s conclusion that application of requirements in paragraph B.6 of Guidance on Implementing of IAS 39 requires judgement. However, ESMA is concerned that the ambiguity related to these criteria creates incentives for issuers to use structuring opportunities that would have a significant impact on the financial statements, not only related to the absolute size of the statement of financial position, but also related to the statement of comprehensive income (e.g. as in the case referred to by the submission, accounting for credit risk in profit or loss or in other comprehensive income).



As a result of the review of financial statements carried out by accounting enforcers and ESMA's coordination activities, we are concerned that the lack of specific guidance related to accounting for synthetic derivatives and the articulation of detailed indicators mentioned in paragraph B.6 of Guidance on Implementing IAS 39, notably related to the existence of '*apparent economic need of substantive business purpose for structuring the transactions separately*' would lead to lack of consistent application in this area. For example, different views might arise in assessing whether a decrease in the regulatory capital requirement or a saving in the income tax payable could be considered as a situation of '*substantive business purpose*'.

Moreover, ESMA agrees with the IFRS Interpretation Committee that '*the presence or absence of any single specific indicator alone may not be conclusive*'. However, ESMA would prefer that this clarification is made directly in the Guidance on Implementing IAS 39. We believe that in absence of such clarification, current divergence in practice would continue raising enforceability issues.

Consequently, ESMA does not agree with the IFRS Interpretations Committee's conclusion neither to add this issue to its active agenda nor to recommend the IASB to address the issue. We believe that there is a need to address the accounting for synthetic derivatives in order to ensure consistent application of IFRS and limit structuring opportunities, directly within the standards. At the same time, ESMA acknowledges that the IFRS Interpretations Committee might not be best placed to address this issue given that the detailed guidance is included only in the Guidance on Implementing IAS 39. ESMA notes that the IASB is currently revisiting the guidance on financial instruments and thus it might not be possible to propose timely amendments to IAS 39. Therefore, in order to promote transparency, to achieve consistent application of IFRS and to improve the enforceability of the standard, ESMA would encourage the IFRS Interpretations Committee to consider the abovementioned concerns and recommend the IASB to define specific requirements related to accounting for synthetic derivatives directly within IFRS 9 – *Financial Instruments*.

We would be happy to discuss all or any of these issues further with you.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'S/M', is written over a light blue horizontal line.

Steven Maijoor

Chair

European Securities and Markets Authority

CC: Hans Hoogervorst, Chairman International Accounting Standards Board (IASB)