European Securities and Markets Authority

The Chair

23 April 2014
ESMA/2014/429

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

Re: The IFRS Interpretations Committee's tentative agenda decision on IAS 32 – *Financial Instruments: Presentation* - accounting for a financial instrument that is mandatorily convertible into a variable number of shares subject to a cap and a floor

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 coordination of national supervisory activity.

ESMA has considered the IFRS Interpretations Committee's (IFRS IC) tentative decision not to add to its agenda the request for clarification it received on the accounting for a financial instrument that is mandatorily convertible into a variable number of shares subject to a cap and a floor, as in the light of its analysis of the existing IFRS requirements, no interpretation or amendment to the Standard was required. ESMA fully supports the conclusion expressed by the IFRS IC that it is inappropriate to consider that there are separate conversion features for each of the scenarios in which the issuer will deliver a different number of its own equity instruments because the conversion outcomes are mutually exclusive.

ESMA strongly believes that IAS 32 – *Financial Instruments: Presentation* does not permit an issuer to divide a conversion feature into multiple outcomes for the purposes of evaluating whether the instrument contains a component that meets the definition of an equity instrument. ESMA is of the view that the analysis provided in the tentative agenda decision is useful for preparers and could contribute to a more consistent application of the IFRS requirements for the classification of this kind of instruments.

Furthermore, ESMA noted that during the January 2014 meeting, the IFRS IC decided not to finalise the agenda decision analysing the accounting requirements related to the classification of a financial instrument that is mandatorily convertible into a variable number of shares upon a contingent 'non viability' event. The IFRS IC indicated that the scope of the issue raised is too broad and cannot be addressed in an efficient manner through an agenda decision.

ESMA understands that the IFRS IC concluded that IAS 32 is not sufficiently clear to finalise the tentative agenda decision published in July 2013 and that the tentative decision stating that the equity component is nil could have had unintended consequences (for instance in the case of a convertible bond with reimbursement if there is a change of control). However, in light of the economic environment and the expected issuance of contingent convertible instruments to meet the regulatory capital requirements, ESMA is concerned that the failure to finalise the agenda decision or to provide any additional guidance in this regard could lead to further diversity in practice.

As ESMA understands that the IFRS IC considers the issue to be too broad to be addressed, we believe that in light of its importance it would be appropriate for the IFRS IC to refer it to the International Accounting Standard Board (IASB). Considering the elements mentioned above, ESMA urges the IASB to deal with this matter as soon as possible.

We would be happy to discuss these issues further with you.

Yours sincerely,

Steven Maijoor
Chair
European Securities and Markets Authority

Cc: Hans Hoogervorst, Chairman, International Accounting Standards Board