Commission Regulation (EU) 2016/1703 of 22 September 2016 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 Standards 10 and 12 and International Accounting Standard 28 (Text with EEA relevance)

COMMISSION REGULATION (EU) 2016/1703

of 22 September 2016

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 Standards 10 and 12 and International Accounting Standard 28

(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 18 December 2014, the International Accounting Standards Board (IASB) published amendments to International Financial Reporting Standard (IFRS) 10 *Consolidated Financial Statements* and IFRS 12 *Disclosure of Interests in Other Entities* and International Accounting Standard (IAS) 28 *Investments in Associates and Joint Ventures* entitled *Investment Entities: Applying the Consolidation Exception*. The amendments aim to clarify the requirements when accounting for investment entities and provide relief in particular circumstances.

(3) The amendments to IFRS 10 contain some references to IFRS 9 that at present cannot be applied as IFRS 9 has not been adopted by the Union. Therefore, any reference to IFRS 9 as laid down in the Annex to this Regulation should be read as a reference to IAS 39 *Financial Instruments: Recognition and Measurement*.

(4) The consultation with the European Financial Reporting Advisory Group confirms that the amendments to IFRS 10 and 12 and IAS 28 meet the 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,

Changes to legislation: *There are outstanding changes not yet made to Commission Regulation (EU) 2016/1703. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

HAS ADOPTED THIS REGULATION:

Article 1

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

a International Financial Reporting Standard (IFRS) 10 *Consolidated Financial Statements* is amended as set out in the Annex to this Regulation;

b IFRS 12 *Disclosure of Interests in Other Entities* is amended as set out in the Annex to this Regulation;

c International Accounting Standard (IAS) 28 *Investments in Associates and Joint Ventures* is amended as set out in the Annex to this Regulation.

2 Any reference to IFRS 9 as laid down in the Annex to this Regulation shall be read as a reference to IAS 39 *Financial Instruments: Recognition and Measurement*.

Article 2

Each company shall apply the amendments referred to in Article 1(1), at the latest, as from the commencement date of its first financial year starting on or after 1 January 2016.

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, 22 September 2016.

For the Commission

The President

Jean-Claude JUNCKER

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ANNEX

Investment Entities: Applying the Consolidation Exception(Amendments to IFRS 10, IFRS 12 and IAS 28)

Amendments to IFRS 10 ***Consolidated Financial Statements***

Paragraphs 4 and 32 are amended and paragraphs 4A–4B are added. Paragraphs 31 and 33 are not amended, but have been included for ease of reference.
SCOPE

4. An entity that is a parent shall present consolidated financial statements. This IFRS applies to all entities, except as follows:

(a) a parent need not present consolidated financial statements if it meets all the following conditions:

(i) it is a wholly-owned subsidiary or is a partially-owned subsidiary of another entity and all its other owners, including those not otherwise entitled to vote, have been informed about, and do not object to, the parent not presenting consolidated financial statements;

(ii) its debt or equity instruments are not traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local and regional markets);

(iii) it did not file, nor is it in the process of filing, its financial statements with a securities commission or other regulatory organisation for the purpose of issuing any class of instruments in a public market; and

(iv) its ultimate or any intermediate parent produces financial statements that are available for public use and comply with IFRSs, in which subsidiaries are consolidated or are measured at fair value through profit or loss in accordance with this IFRS.

(b) [deleted]

(c) [deleted]

4A This IFRS does not apply to post-employment benefit plans or other long-term employee benefit plans to which IAS 19 *Employee Benefits* applies.

4B A parent that is an investment entity shall not present consolidated financial statements if it is required, in accordance with paragraph 31 of this IFRS, to measure all of its subsidiaries at fair value through profit or loss.

…
INVESTMENT ENTITIES: EXCEPTION TO CONSOLIDATION

31. Except as described in paragraph 32, an investment entity shall not consolidate its subsidiaries or apply IFRS 3 when it obtains control of another entity. Instead, an investment entity shall measure an investment in a subsidiary at fair value through profit or loss in accordance with IFRS 9.

32. Notwithstanding the requirement in paragraph 31, if an investment entity has a subsidiary that is not itself an investment entity and whose main purpose and activities are providing services that relate to the investment entity's investment activities (see paragraphs

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B85C–B85E), it shall consolidate that subsidiary in accordance with paragraphs 19–26 of this IFRS and apply the requirements of IFRS 3 to the acquisition of any such subsidiary.

33. A parent of an investment entity shall consolidate all entities that it controls, including those controlled through an investment entity subsidiary, unless the parent itself is an investment entity.

In Appendix B, paragraphs B85C and B85E are amended. Paragraphs B85A–B85B and B85D are not amended, but have been included for ease of reference.

DETERMINING WHETHER AN ENTITY IS AN INVESTMENT ENTITY

B85A An entity shall consider all facts and circumstances when assessing whether it is an investment entity, including its purpose and design. An entity that possesses the three elements of the definition of an investment entity set out in paragraph 27 is an investment entity. Paragraphs B85B–B85M describe the elements of the definition in more detail.

Business purpose

B85B The definition of an investment entity requires that the purpose of the entity is to invest solely for capital appreciation, investment income (such as dividends, interest or rental income), or both. Documents that indicate what the entity's investment objectives are, such as the entity's offering memorandum, publications distributed by the entity and other corporate or partnership documents, will typically provide evidence of an investment entity's business purpose. Further evidence may include the manner in which the entity presents itself to other parties (such as potential investors or potential investees); for example, an entity may present its business as providing medium-term investment for capital appreciation. In contrast, an entity that presents itself as an investor whose objective is to jointly develop, produce or market products with its investees has a business purpose that is inconsistent with the business purpose of an investment entity, because the entity will earn returns from the development, production or marketing activity as well as from its investments (see paragraph B85I).

B85C An investment entity may provide investment-related services (eg investment advisory services, investment management, investment support and administrative services), either directly or through a subsidiary, to third parties as well as to its investors, even if those activities are substantial to the entity, subject to the entity continuing to meet the definition of an investment entity.

B85D An investment entity may also participate in the following investment-related activities, either directly or through a subsidiary, if these activities are undertaken to maximise the investment return (capital appreciation or investment income) from its investees and do not represent a separate substantial business activity or a separate substantial source of income to the investment entity:

(a) providing management services and strategic advice to an investee; and

(b) providing financial support to an investee, such as a loan, capital commitment or guarantee.

B85E If an investment entity has a subsidiary that is not itself an investment entity and whose main purpose and activities are providing investment-related services or activities that relate to the investment entity's investment activities, such as those described in paragraphs B85C–B85D, to the entity or other parties, it shall consolidate that subsidiary in accordance with paragraph 32. If the subsidiary that provides the investment-related services or activities is itself an investment entity, the investment entity parent shall measure that subsidiary at fair value through profit or loss in accordance with paragraph 31.

In Appendix C, paragraph C1D is added and paragraph C2A is amended.