Commission Regulation (EC) No 1261/2008 of 16 December 2008 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) 2 (Text with EEA relevance)

COMMISSION REGULATION (EC) No 1261/2008

of 16 December 2008

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(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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 accounting standards and interpretations that were extant at 15 October 2008 were adopted.

(2) On 17 January 2008, the International Accounting Standards Board (IASB) published Amendments to International Financial Reporting Standard (IFRS) 2 Share-based payment, hereinafter 'amendment to IFRS 2'. The amendment to IFRS 2 provides clarification on what are vesting conditions, how to account for non-vesting conditions and how to account for cancellations of a share-based payment arrangement by the entity or the counterparty.

(3) The consultation with the Technical Expert Group (TEG) of the European Financial Reporting Advisory Group (EFRAG) confirms that the amendment to IFRS 2 meets the technical criteria for adoption set out in Article 3(2) of Regulation (EC) No 1606/2002. In accordance with Commission Decision 2006/505/EC of 14 July 2006 setting up a Standards Advice Review Group to advise the Commission on the objectivity and neutrality of the European Financial Reporting Advisory Group's (EFRAG's) opinions[(3)], the Standards Advice Review Group considered EFRAG's opinion on endorsement and advised the European Commission that it is well balanced and objective.

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

Changes to legislation: *There are outstanding changes not yet made to Commission Regulation (EC) No 1261/2008. 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*

(5) 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 Financial Reporting Standard IFRS 2 Share-based payment is amended in accordance with the Amendments to International Financial Reporting Standard IFRS 2 Share-based payment, hereinafter 'amendment to IFRS 2', as set out in the Annex to this Regulation.

Article 2

Each company shall apply the amendment to IFRS 2, as set out in the Annex to this Regulation, at the latest, as from the commencement date of its first financial year starting after 31 December 2008.

Article 3

This Regulation shall enter into force on the third day following 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, 16 December 2008.

For the Commission

Charlie McCREEVY

Member of the Commission

***Changes to legislation:** There are outstanding changes not yet made to Commission Regulation (EC) No 1261/2008. 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*

ANNEX

INTERNATIONAL ACCOUNTING STANDARDS

IFRS 2	'Amendment to IFRS 2 Share-based payment'

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AMENDMENTS TO IFRS 2
Share-based Payment

This document sets out amendments to IFRS 2 *Share-based Payment*. The amendments finalise the proposals that were contained in the exposure draft of proposed amendments to IFRS 2 — *Vesting Conditions and Cancellations* published in February 2006.

Entities shall apply these amendments to all share-based payments within the scope of IFRS 2 for annual periods beginning on or after 1 January 2009. Earlier application is permitted.

NON-VESTING CONDITIONS

In the Standard, after paragraph 21, a heading and paragraph 21A are added as follows.

Treatment of non-vesting conditions

21A Similarly, an entity shall take into account all non-vesting conditions when estimating the fair value of the equity instruments granted. Therefore, for grants of equity instruments with non-vesting conditions, the entity shall recognise the goods or services received from a counterparty that satisfies all vesting conditions that are not market conditions (e.g. services received from an employee who remains in service for the specified period of service), irrespective of whether those non-vesting conditions are satisfied.

CANCELLATIONS

In the Standard, paragraph 28 is amended as follows.

28 If a grant of equity instruments is cancelled or settled during the vesting period (other than a grant cancelled by forfeiture when the vesting conditions are not satisfied) …

In the Standard, paragraph 28(b) is amended as follows.

28

In the Standard, after paragraph 28, paragraph 28A is added as follows.

28A If an entity or counterparty can choose whether to meet a non-vesting condition, the entity shall treat the entity's or counterparty's failure to meet that non-vesting condition during the vesting period as a cancellation.

EFFECTIVE DATE

In the Standard, paragraph 62 is added as follows.

62 An entity shall apply the following amendments retrospectively in annual periods beginning on or after 1 January 2009:

(a) the requirements in paragraph 21A in respect of the treatment of non-vesting conditions;