Commission Regulation (EC) No 53/2009 of 21 January 2009 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 Accounting Standard (IAS) 32 and IAS 1 (Text with EEA relevance)

COMMISSION REGULATION (EC) No 53/2009

of 21 January 2009

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 Accounting Standard (IAS) 32 and IAS 1

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

(2) On 14 February 2008, the International Accounting Standards Board (IASB) published amendments to International Accounting Standard (IAS) 32 Financial Instruments: Presentation and IAS 1 Presentation of Financial Statements — Puttable Financial Instruments and Obligations Arising on Liquidation, hereinafter 'amendments to IAS 32 and IAS 1'. The amendments require certain instruments issued by companies that are currently classified as liabilities despite having characteristics similar to ordinary shares, to be classified as equity. Additional disclosures are required relating to those instruments and new rules should apply to their reclassification.

(3) The consultation with the Technical Expert Group (TEG) of the European Financial Reporting Advisory Group (EFRAG) confirms that the amendments to IAS 32 and IAS 1 meet 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 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 53/2009. 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

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

1. International Accounting Standard (IAS) 32 Financial Instruments: Presentation is amended as set out in the Annex to this Regulation;

2. IAS 1 Presentation of Financial Statements is amended as set out in the Annex to this Regulation;

3. International Reporting Financial Standard (IFRS) 7, IAS 39 and International Financial Reporting Interpretations Committee's (IFRIC) Interpretation 2 are amended in accordance with the amendments to IAS 32 and IAS 1 as set out in the Annex to this Regulation.

Article 2

Each company shall apply the amendments to IAS 32 and to IAS 1, 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 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.

***Changes to legislation:** There are outstanding changes not yet made to Commission Regulation (EC) No 53/2009. 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

IAS 32	Amendments to IAS 32 *Financial Instruments: Presentation*
IAS 1	Amendments IAS 1 *Presentation of Financial Statements*

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AMENDMENTS TO IAS 32 FINANCIAL INSTRUMENTS: PRESENTATION AND IAS 1 PRESENTATION OF FINANCIAL STATEMENTS
Amendments to IFRSs

This document sets out amendments to IAS 32 *Financial Instruments: Presentation* and IAS 1 *Presentation of Financial Statements* (as revised in 2007) and consequential amendments to IFRS 7 *Financial Instruments: Disclosures*, IAS 39 *Financial Instruments: Recognition and Measurement* and IFRIC 2 *Members' Shares in Co-operative Entities and Similar Instruments*. This document also contains amendments to the Basis for Conclusions on IAS 32 and IAS 1 and the illustrative examples accompanying IAS 32. The amendments result from proposals that were contained in an exposure draft of proposed amendments to IAS 32 and IAS 1—*Financial Instruments Puttable at Fair Value and Obligations Arising on Liquidation* published in June 2006.

Entities shall apply these amendments for annual periods beginning on or after 1 January 2009. Earlier application is permitted. If entities apply these amendments for an earlier period, they shall disclose that fact.

Amendments to IAS 32 Financial Instruments: Presentation

In paragraph 11 of the Standard, the definitions of a financial asset and a financial liability are amended and the definition of a puttable instrument is added after the definition of fair value.
DEFINITIONS (SEE ALSO PARAGRAPHS AG3–AG23)

11 The following terms are used in this Standard with the meanings specified:

…

A *financial asset* is any asset that is:

(a) …

(d) a contract that will or may be settled in the entity's own equity instruments and is:

(i) …

(ii) a derivative that will or may be settled other than by the exchange of a fixed amount of cash or another financial asset for a fixed number of the entity's own equity instruments. For this purpose the entity's own equity instruments do not include puttable financial instruments classified as equity instruments in accordance with paragraphs 16A and 16B, instruments that impose on the entity an obligation to deliver to another party a pro rata share

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of the net assets of the entity only on liquidation and are classified as equity instruments in accordance with paragraphs 16C and 16D, or instruments that are contracts for the future receipt or delivery of the entity's own equity instruments.

A *financial liability* is any liability that is:

(a) a contractual obligation:

(i) to deliver cash or another financial asset to another entity; or

(ii) to exchange financial assets or financial liabilities with another entity under conditions that are potentially unfavourable to the entity; or

(b) a contract that will or may be settled in the entity's own equity instruments and is:

(i) a non-derivative for which the entity is or may be obliged to deliver a variable number of the entity's own equity instruments; or

(ii) a derivative that will or may be settled other than by the exchange of a fixed amount of cash or another financial asset for a fixed number of the entity's own equity instruments. For this purpose the entity's own equity instruments do not include puttable financial instruments that are classified as equity instruments in accordance with paragraphs 16A and 16B, instruments that impose on the entity an obligation to deliver to another party a pro rata share of the net assets of the entity only on liquidation and are classified as equity instruments in accordance with paragraphs 16C and 16D, or instruments that are contracts for the future receipt or delivery of the entity's own equity instruments.

As an exception, an instrument that meets the definition of a financial liability is classified as an equity instrument if it has all the features and meets the conditions in paragraphs 16A and 16B or paragraphs 16C and 16D.

…

A *puttable instrument* is a financial instrument that gives the holder the right to put the instrument back to the issuer for cash or another financial asset or is automatically put back to the issuer on the occurrence of an uncertain future event or the death or retirement of the instrument holder.

The heading before paragraph 15 and paragraph 16 is amended. After paragraph 16, a heading, paragraphs 16A and 16B, another heading, paragraphs 16C and 16D, another heading and paragraphs 16E and 16F are added.

PRESENTATION Liabilities and equity (see also paragraphs AG13-AG14J and AG25–AG29A)

…

16 When an issuer applies the definitions in paragraph 11 to determine whether a financial instrument is an equity instrument rather than a financial liability, the instrument is an equity instrument if, and only if, both conditions (a) and (b) below are met.

(a) …

(b) If the instrument will or may be settled in the issuer's own equity instruments, it is:

(i) …

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(ii) a derivative that will be settled only by the issuer exchanging a fixed amount of cash or another financial asset for a fixed number of its own equity instruments. For this purpose the issuer's own equity instruments do not include instruments that have all the features and meet the conditions described in paragraphs 16A and 16B or paragraphs 16C and 16D, or instruments that are contracts for the future receipt or delivery of the issuer's own equity instruments.

A contractual obligation, including one arising from a derivative financial instrument, that will or may result in the future receipt or delivery of the issuer's own equity instruments, but does not meet conditions (a) and (b) above, is not an equity instrument. As an exception, an instrument that meets the definition of a financial liability is classified as an equity instrument if it has all the features and meets the conditions in paragraphs 16A and 16B or paragraphs 16C and 16D.
Puttable instruments

16A A puttable financial instrument includes a contractual obligation for the issuer to repurchase or redeem that instrument for cash or another financial asset on exercise of the put. As an exception to the definition of a financial liability, an instrument that includes such an obligation is classified as an equity instrument if it has all the following features:

(a) It entitles the holder to a pro rata share of the entity's net assets in the event of the entity's liquidation. The entity's net assets are those assets that remain after deducting all other claims on its assets. A pro rata share is determined by:

(i) dividing the entity's net assets on liquidation into units of equal amount; and

(ii) multiplying that amount by the number of the units held by the financial instrument holder.

(b) The instrument is in the class of instruments that is subordinate to all other classes of instruments. To be in such a class the instrument:

(i) has no priority over other claims to the assets of the entity on liquidation, and

(ii) does not need to be converted into another instrument before it is in the class of instruments that is subordinate to all other classes of instruments.

(c) All financial instruments in the class of instruments that is subordinate to all other classes of instruments have identical features. For example, they must all be puttable, and the formula or other method used to calculate the repurchase or redemption price is the same for all instruments in that class.

(d) Apart from the contractual obligation for the issuer to repurchase or redeem the instrument for cash or another financial asset, the instrument does not include any contractual obligation to deliver cash or another financial asset to another entity, or to exchange financial assets or financial liabilities with another entity under conditions that are potentially unfavourable to the entity, and it is not a contract that will or may be settled in the entity's own equity instruments as set out in subparagraph (b) of the definition of a financial liability.

(e) The total expected cash flows attributable to the instrument over the life of the instrument are based substantially on the profit or loss, the change in the recognised net assets or the change in the fair value of the recognised and unrecognised net assets of the entity over the life of the instrument (excluding any effects of the instrument).