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ED Amendments IAS 39: The Fair Value Option

Comments provided by the Federal Financial Supervisory Authority, Germany

Dear Chairman,

We appreciate the opportunity to comment on the proposed amendments to IAS 39 Financial Instruments: Recognition and Measurement, The Fair Value Option.

In the light of intense debate amongst regulators and supervisors we already participated actively in the discussion of the relevant standard setting bodies, IOSCO, IAIS and BCBS. Hence, we like to restrict our comments directly to you to a few particular issues:

1. Valuation affected by changes in own creditworthiness

   From our point of view it cannot be accepted that a change in one's own creditworthiness will lead to profits or losses arising through the adaption of the Fair Value Option. We strongly suggest that if own liabilities are measured at fair value, valuation changes must be limited to market changes, excluding factors only relevant for the reporting entity. The current draft is not very clear regarding this particular issue. Therefore, I would prefer a clear guideline on that matter.

2. Fair Value Option Constraints

   The IAS 39 foresees five constraints towards the Fair Value option measurement:

A financial asset or liability may be held at Fair Value through P&L only if

1. It contains one or more embedded derivative

2. It is a financial liability whose cash flows are contractually linked to the performance of assets which are measured at fair value

3. It's exposure to changes in fair value are substantially offset by changes in fair value of another asset or liability (incl. derivatives)

4. The financial asset is not otherwise classified as a loan or receivable

5. The instrument is otherwise required to be held at FV by IAS 39 or another standard (e.g., a derivative)

Currently stated, assets or liabilities shall only be measured on Fair Value if one of these constraints is applicable. Hence, it should be stated that loans do not intended to fall under constraint no. 1. even if they are escorted by or hosting embedded derivatives.

3. Verifiability

The use of the criteria of verifiability as an alternative evaluation concept is not desirable. That would lead to two Fair Value approaches. There is a potential for misleading interpretation and confusion about the application of fair value measurement. Whilst in the absence of liquid markets, verifiable fair value measurement will apply in relation to items designated for the fair value option; the treatment for items of the categories “available for sale” and “held for trading” will differ. There, the concept of reliable fair value measurement will be applicable. Hence, we suggest using the verifiability test as required for all fair value measurements where a liquid market is absent.

Yours sincerely,

Andreas Kunze-Neugebauer