

# Swedish Bankers' Association

Svenska Bankföreningen

POSITION PAPER

6 October 2004

IASB

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## **EXPOSURE DRAFT OF PROPOSED AMENDMENTS TO IAS 39 AND IFRS 4: Financial Guarantee Contracts and Credit Insurance**

Swedish Bankers' Association welcomes the invitation to comment on the above mentioned Exposure Draft.

### **Question 1 – Form of contract**

See our response to question 2 below.

### **Question 2 – Scope**

We are of the opinion that the scope not is appropriate with regards to contracts of indemnity.

A contract of indemnity is a form of guarantee in which the issuer gets a liability as for his own debt. The holder of a contract of indemnity can require payment from the issuer of such a contract even if a loss has not occurred. Consequently it is questionable if contracts of indemnity meet the definition of a financial guarantee contract in IAS 39, since this definition says that "a financial guarantee contract is a contract that requires the issuer to make specified payments to reimburse the holder for a loss it incurs because a specified debtor fails to make payments when due in accordance with the original or modified terms of a debt instrument". It is therefore a risk that contracts of indemnity should be regarded as derivative contracts under IAS 39.

Swedish Bankers' Association is of the opinion that contracts of indemnity should not be regarded as derivative contracts under IAS 39, since their legal form cannot be compared with derivatives and since after initial recognition it is very problematic to fair value such contracts. As we see it there are two ways in which this issue can be solved.

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**Alternative 1:** The definition of a financial guarantee contract in IAS 39 can be modified in a way that contracts of indemnity are covered by it. The definition should then read as follows: A financial guarantee contract is a contract that requires the issuer to make specified payments to reimburse the holder in accordance with the original or modified terms of a debt instrument.

**Alternative 2:** Contracts of indemnity could be regarded as contingent liabilities and accounted for under IAS 37. That standard defines a contingent liability as:

- (a) a possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the enterprise; or
- (b) a present obligation that arises from past events but is not recognised because:
  - (i) it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation; or
  - (ii) the amount of the obligation cannot be measured with sufficient reliability

Swedish Bankers' Association is of the opinion that a contract of indemnity normally meets this definition since it is a present obligation that arises from past events and it is not probable that an outflow of resources embodying economic benefits will be required to settle it.

SWEDISH BANKERS' ASSOCIATION



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