

EFRAG  
35 Square Meeûs  
B-1000 Brussels  
Belgium

**Date** 24 February 2012

**Reference** BR1578

Regarding: EFRAG endorsement advice amendments to IAS 32  
and IFRS 7

Dear Mr. Labat,

The Dutch Banking Association<sup>1</sup> welcomes the opportunity to comment on EFRAG's Assessment of the amendments to IAS 32 and IFRS 7.

We agree with the technical assessments on the amendments made by EFRAG with regard to providing the Commission with a positive advice for endorsement.

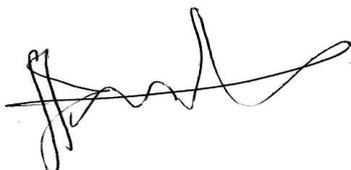
We would like to point out one crucial element, which we think EFRAG might have overlooked, but should be taken into consideration when providing the Commission with endorsement advice. This relates to the right to set-off.

In the application guidance and the basis for conclusions of the amendments a new element is made mandatory. Banks now only seem to have the right to right to set-off, when the counterparties/clients have the right to set-off. Before the adjustment of IAS 32 and IFRS 7 only banks would have the right to set-off. This new obligation seems to stem from AG38B and BC80 (see attachment).

The way the obligation is currently worded has a significant impact on the contracts used by banks. Unchanged implementation of the current proposal, would create the necessity for re-negotiation of existing contracts, allowing the counterparty the right to set-off as well. This would carry high associated legal costs and would also require significant operational adjustments. We are unsure whether this was intended by the IASB when the text for the amendments was drafted.

We hope that EFRAG will take this issue into consideration when finalising the endorsement advice. If you have any further questions, please don't hesitate to contact me.

Kind regards,



Koen Holdtgrefe  
Advisor Prudential Supervision

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<sup>1</sup> The Nederlandse Vereniging van Banken (NVB) is the representative voice of the Dutch banking community with over 90 member firms, large and small, domestic and international, carrying out business in the Dutch market and overseas. The NVB strives towards a strong, healthy and internationally competitive banking industry in the Netherlands, whilst working towards wider single market aims in Europe.

#### **Attachment AG38B and BC80**

*AG38B To meet the criterion in paragraph 42(a), an entity must currently have a legally enforceable right of set-off. This means that the right of set-off:*

- (a) must not be contingent on a future event; and*
- (b) must be legally enforceable in all of the following circumstances:*
  - (i) the normal course of business;*
  - (ii) the event of default; and*
  - (iii) the event of insolvency or bankruptcy of the entity and all of the counterparties.*

*BC80 The Board believes that the net amounts of financial assets and financial liabilities presented in the statement of financial position should represent an entity's exposure in the normal course of business and its exposure if one of the parties will not or cannot perform under the terms of the contract. The Board therefore clarified in paragraph AG38B that to meet the criterion in paragraph 42(a) of IAS 32 a right of set-off is required to be legally enforceable in the normal course of business, the event of default and the event of insolvency or bankruptcy of the entity and all of the counterparties. The right must exist for all counterparties so that if an event occurs for one of the counterparties, including the entity, the other counterparty or parties will be able to enforce the right of set-off against the party that has defaulted or gone insolvent or bankrupt.*