



February 15, 2012

Ms. Leslie Seidman
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Financial Accounting Standards Board
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P.O. Box 5116
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Mr. Hans Hoogervorst
Chairman
International Accounting Standards Board
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Re: FASB File Reference No. 2011-200, Proposed ASU—*Financial Services—Investment Companies (Topic 946): Amendments to the Scope, Measurement, and Disclosure Requirements*, FASB File Reference No. 2011-210, Proposed ASU, *Real Estate – Investment Property Entities (Topic 973)*, IASB ED/2011/4, Exposure Draft, *Investment Entities*

Dear Ms. Seidman and Mr. Hoogervorst:

The Clearing House Association L.L.C. (“The Clearing House”), an association of major commercial banks,¹ appreciates the opportunity to comment on the above-referenced documents (the “Investment Companies Proposal” and the “Investment Property Entities Proposal”, respectively).

Executive Summary

The Clearing House supports the efforts of the Financial Accounting Standards Board (the “FASB”) and the International Accounting Standards Board (the “IASB”, and together with

¹ Established in 1853, The Clearing House is the oldest banking association and payments company in the United States. It is owned by the world’s largest commercial banks, which collectively employ over 2 million people and hold more than half of all U.S. deposits. The Clearing House Association L.L.C. is a nonpartisan advocacy organization representing—through regulatory comment letters, amicus briefs and white papers—the interests of its owner banks on a variety of systemically important banking issues. Its affiliate, The Clearing House Payments Company L.L.C., provides payment, clearing, and settlement services to its member banks and other financial institutions, clearing almost \$2 trillion daily and representing nearly half of the automated-clearing-house, funds-transfer, and check-image payments made in the U.S. See The Clearing House’s web page at www.theclearinghouse.org.

the FASB, the “Boards”) to develop consistent criteria for determining whether an entity is an investment company. In addition, we support the FASB’s efforts to develop criteria to determine whether an entity that holds real estate investments is an investment property entity. A summary of The Clearing House’s recommendations follows.

Regarding the Investment Companies Proposal:

- We *recommend* that the standard be based on the overall principle that an entity is an investment company if the nature of the entity’s activities is investing in an investment (or investments) for returns from capital appreciation, investment income or both; and that the additional specified criteria should be set forth as indicators, rather than detailed requirements, as to whether this principle is met. We also *recommend* that if an entity invests for strategic operating purposes or to receive benefits that are not available to unrelated third parties, such entity should not qualify as an investment company, and we propose several indicators to determine when an entity should qualify as an investment company; the existence or absence of any of the indicators should not, in isolation, however, be determinative that an entity is or is not an investment company;
- If the above recommendations are not accepted, we *recommend* that the criterion regarding pooling-of-funds be eliminated as a requirement and instead be included as an indicator of whether an entity can be considered an investment company. If left unchanged, a significant difference in investment company entity accounting could exist between some financial and non-financial institutions and between U.S. and some non-U.S. financial institutions due to the proposed “Volcker Rule” of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.² Financial institutions subject to the proposed “Volcker Rule” may be required to source 97% of the capital structure of certain funds from third parties, a requirement we believe is excessive to achieve investment company accounting;
- We *recommend* that financial institutions be permitted to provide equity financing and investment management services to investment companies in which they invest, as long as they are provided on an arm’s-length basis, as we believe such activity is not inconsistent with the overall principle of the nature of an investment company’s activities to make investments for returns from capital appreciation, investment income or both;
- We *recommend* that the specialized investment company accounting be retained in all instances by the parent of an investment company, as we believe this would provide more useful information to investors; and

² Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ([Pub.L. 111-203](#), [H.R. 4173](#)) Section 619 available at <http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/html/PLAW-111publ203.htm>.

- We *recommend* that, for entities that no longer qualify as investment companies under the new standard, implementation of the standard be prospective in nature, as it will be impracticable to obtain the information required to adjust opening retained earnings as though the entity had always accounted for its investments in conformity with other aspects of U.S. generally accepted accounting principles (“U.S. GAAP”).

Regarding the Investment Property Entities Proposal:

- We *recommend* that the FASB converge its standard with International Accounting Standards 40, Investment Property (“IAS 40”), whereby entities would have the option to carry investment properties at fair value, rather than develop a separate set of criteria specifically for investment property entities;
- If the immediately above recommendation is not accepted, we *recommend* that the Investment Companies Proposal be extended to include investment property entities as well, so that there is only a single standard for both investment companies and investment property entities; and
- We *recommend* that the Boards complete the project on lease accounting before the finalization of the Investment Property Entities Proposal as there is significant interplay between those standards.

A. Our detailed comments on the Investment Companies Proposal follow.

I. The Investment Companies standard should be principles-based with the proposed factors as indicators.

As an overall matter, we believe that the Boards should develop a single, high-quality standard for investment companies. The Boards’ proposals are similar enough at this point that we believe convergence is highly achievable and, without it, the result could be extremely confusing to both investors and users alike. We believe that the standard for investment companies should be principles-based, with various factors to consider in determining whether the facts and circumstances indicate, in principle, that an entity is an investment company. We are opposed to a standard that provides a list of requirements that must be met in order to apply investment company accounting. We believe that such an approach is antithetical to the direction that the Boards have consistently stated that they wish to take in terms of adopting principles-based accounting standards.³

In that regard, we believe that the underlying principle on which the Investment Companies Proposal should be based is that an entity is an investment company if the nature of the entity’s only substantive activities is investing in an investment (or investments) for returns

³ Principles-Based Approach to Standard Setting, available at http://www.fasb.org/project/principles-based_approach.shtml.

from capital appreciation, investment income or both. All of the other criteria that are currently proposed, in ASU 946-10-15-2, as requirements that must be met, subject to the modifications suggested below, should instead be considered as *indicators* as to whether this general principle is met, with no particular weight given to any indicator. We strongly recommend that all of the indicators be considered, but the existence or absence of any one indicator should not be determinative.

We also support including a principle to distinguish entities which would **not** qualify as investment companies. We suggest that if an entity invests for strategic operating purposes or invests to receive benefits that are not available to unrelated third parties, it should not qualify as an investment company. We propose the following indicators be considered to determine when an entity does not qualify as an investment company. Again, the existence or absence of any of the following indicators should not, in isolation, be determinative that an entity is not an investment company:

- The acquisition, use, exchange or exploitation of the processes or intangible assets of the investee;
- Significant purchases and sales of assets between investor and investee;
- Joint ventures or similar arrangements between investor and investee;
- Other arrangements to jointly develop, produce, market or provide products or services; and
- The parent company or equity method investor's right to acquire direct ownership interests, assets, technology, products or services of the investees.

If our recommendation that an investment companies standard should be principles-based with factors as indicators is not accepted, we propose, at a minimum, eliminating pooling-of-funds for determining qualification as an investment company. In particular, requiring the pooling-of-funds may put financial institution parent investors subject to the proposed "Volcker Rule" at a significant disadvantage. As we understand it currently, the proposed "Volcker Rule" may require an institution to hold not more than 3% of the ownership interests of certain "covered funds." The "Volcker Rule," if finalized as proposed, combined with the pooling-of-funds criterion in the Investment Companies Proposal, would mean that financial institutions may automatically be required to source 97% of the capital structure of certain funds from third parties, a requirement we believe is excessive to achieve investment company accounting. This requirement would also put financial institutions covered by the "Volcker Rule" at a significant competitive disadvantage as compared to some non-financial institutions and non-U.S. financial institutions that are not subject to the requirements of the "Volcker Rule."

In addition, we do not think that, in order to be considered an investment company, an entity must hold *multiple* investments at the same time. Often, an entity will pool its funds with other investors to invest in a single major investment such as a real estate property. Nevertheless, the objective of the entity is still to make an investment for returns from capital appreciation, investment income or both. Accordingly, we believe this factor should be an indicator, rather than a requirement, for investment company accounting.

Finally, we request that the Boards clarify that if a financial institution provides equity financing or other similar services to an entity on an arm's-length basis, then such activities would not violate the nature-of-the-investment-activities principle. Financial institutions often provide equity financing to investment companies for the purpose of returns from capital appreciation, investment income or both, as opposed to for strategic operating purposes. Accordingly, we believe this type of activity should not disqualify an entity from investment company accounting.

II. Specialized accounting should be retained in consolidation.

We strongly support the FASB's approach whereby a non-investment company parent of an investment company would retain the specialized accounting for investment companies when preparing consolidated financial statements, and we believe the IASB should adopt this approach as well. We believe that reversing the specialized accounting in consolidation defeats the purpose of having specialized accounting in the first place, and would produce less decision-useful information for the parent company's investors. For example, a financial institution that owns a controlling financial interest in an investment company would, under the IASB's proposal, be required to consolidate many types of investments unrelated to its primary activity, which we believe would be confusing for analysts.

We believe that retaining the specialized accounting in consolidation would be consistent with the approach today whereby financial institutions retain the specialized accounting of their broker-dealer and insurance company subsidiaries in their consolidated financial statements. We believe it is important for the Boards to converge on this point, as it is fundamental to the overall proposal.

In addition, we believe that fund-of-funds structures should not be treated differently from master feeder structures in this regard. Fund-of-funds structures are similar to master feeder structures, only with more levels of entities that are established for a variety of business purposes. Managers of fund-of-funds structures are judged on their ability to select subordinate funds, not on the individual instruments within a fund. Therefore, we believe that an investment company should not be required to consolidate a controlling financial interest in another investment company in a fund-of-funds structure, as it is our experience that investors in these structures are principally interested in the net asset value, rather than detailed information regarding the underlying investments.

III. Entities should apply the proposed amendments on a prospective basis upon adoption.

We believe that an entity that no longer meets the principle to be an investment company upon adoption of the new standard should not be required to implement the standard via a cumulative-effect adjustment to opening retained earnings as though it had always accounted for its investments in conformity with other aspects of U.S. GAAP, as we believe that it will be too difficult to obtain the necessary information to do so. Instead, we

recommend that entities should apply the proposed amendments on a prospective basis upon adoption.

In addition, with respect to the proposed disclosures, we agree with the proposed financial support disclosures, except that we believe any statement of intent should be limited to the financial institution's intent ***as of the reporting date***. Accordingly, we suggest paragraph ASC 946-20-50-15 be modified to state:

An investment company shall disclose whether it has provided financial support during the periods presented to any of its investments that it was not previously contractually required to provide support to or whether it intends to provide such support as of the reporting date, including the following: . . .

B. Our detailed comments on the Investment Property Entities Proposal follow.

I. Accounting for investment property entities should converge with international accounting standards.

Instead of developing a separate framework for investment property entities, we suggest that the FASB adopt the IASB's approach in IAS 40 to permit entities to elect to apply fair value accounting to (i) entities that qualify as investment property entities and (ii) other investment properties. We believe this is preferable because it achieves additional convergence between U.S. GAAP and International Financial Reporting Standards, and it avoids creating additional industry-specific generally accepted accounting principles, given the FASB's stated goal that industry topics should contain only incremental industry-specific guidance.⁴ We would object to the investment property entities fair value accounting requirement being mandated for all investment properties that are not held in an investment property entity, as determining fair values quarterly for each investment property would be costly and burdensome, particularly for properties held by diversified non-real estate businesses that do not have valuation experts on staff.

However, if the FASB does not agree with The Clearing House's recommendation above to adopt the IASB's approach in IAS 40, we strongly suggest that the Investment Property Entities Proposal be fully conformed to the Investment Companies Proposal, so that there is only one set of criteria that applies equally to investment companies and investment property entities. We believe that it would be too confusing for investors to have two distinct frameworks that are almost, but not quite, the same. In addition, we believe that if the Investment Property Entities Proposal is modified in this regard to become part of the Investment Companies Proposal, the Boards should consider re-exposing the new proposal.

⁴ FASB Accounting Standards Codification, available at page 13: <https://asc.fasb.org/imageRoot/10/5724610.pdf>.

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II. Guidance on investment property entities should be finalized in conjunction with the Leasing Exposure Drafts.⁵

We recommend that the new guidance on investment property entities be finalized in conjunction with the Boards' finalization of the Leasing Exposure Drafts, so that companies are able to understand the combined impact of these interrelated standards on their businesses and plan accordingly.

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Thank you for considering the comments provided in this letter. If you have any questions or are in need of any further information, please contact me at (212) 613-9883 (email: david.wagner@theclearinghouse.org) or Gail Haas at (212) 612-9233 (email: gail.haas@theclearinghouse.org).

Sincerely yours,



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⁵ FASB Proposed Accounting Standards Update—*Leases (Topic 840)*, available at <http://www.fasb.org/cs/BlobServer?blobcol=urldata&blobtable=MungoBlobs&blobkey=id&blobwhere=1175823559205&blobheader=application%2Fpdf>, IFRS Exposure Draft 2010/9, Leases, available at <http://www.iasb.co.uk/>.

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