



MANAGED FUNDS ASSOCIATION
The Voice of the Global Alternative Investment Industry
WASHINGTON, DC | NEW YORK

July 9, 2009

Via Electronic Mail: director@fasb.org

Technical Director
FASB
401 Merrit 7
PO Box 5116
Norwalk, CT 06856-5116

Re: Proposed FSP FAS 157-g

Dear Sir or Madam:

Managed Funds Association (“MFA”)¹ welcomes the opportunity to comment on proposed Financial Accounting Standards Board (“FASB”) Staff Position FAS 157-g (the “Proposed FSP”), which provides application guidance for estimating the fair value of investments in investment companies² that have calculated net asset value per share in accordance with the AICPA Audit and Accounting Guide, *Investment Companies* (the “Guide”). MFA and its members share the Board’s objectives of promoting a fair and consistent approach to valuation by reporting entities, along with clear and meaningful disclosure to end users of financial statements. In general, MFA supports the

¹ MFA is the voice of the global alternative investment industry. Its members are professionals in hedge funds, funds of funds and managed futures funds, as well as industry service providers. Established in 1991, MFA is the primary source of information for policy makers and the media and the leading advocate for sound business practices and industry growth. MFA members include the vast majority of the largest hedge fund groups in the world who manage a substantial portion of the approximately \$1.5 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York.

² Footnote 2 of the Proposed FSP cites to paragraph 1.06 of the AICPA Audit and Accounting Guide, *Investment Companies* in defining “investment company” for purposes of the Proposed FSP. Paragraph 1.06 of the AICPA’s guide provides the following:

Investment companies discussed in this guide are required to report their investment assets at fair value, as defined by Financial Accounting Standards Board (FASB) Statement No. 157, *Fair Value Measurements*, and have the following attributes:

- a. *Investment activity.* The investment company’s primary business activity involves investing its assets, usually in the securities of other entities not under common management, for current income, appreciation, or both.
- b. *Unit ownership.* Ownership in the investment company is represented by units of investments, such as shares of stock or partnership interests, to which proportionate shares of net assets can be attributed.
- c. *Pooling of funds.* The funds of the investment company’s owners are pooled to avail owners of professional investment management.
- d. *Reporting entity.* The investment company is the primary reporting entity. [Footnote reference omitted.]

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practical expedient approach set out in the Proposed FSP. We believe that this approach accomplishes the objective of promoting a fair, consistent approach to the valuation of investments in privately offered investment funds, such as hedge funds, private equity funds and venture capital funds, among others.

The Proposed FSP requests comments on five specific questions. In the next section, we have set out the questions in italics, with our comments following each question. Our additional comments to the Proposed FSP, which we believe would help clarify certain aspects of the proposed guidance, are in the section following our responses to the specific questions.

QUESTIONS RAISED IN THE PROPOSED FSP

1. *This proposed FSP would apply to an investment in an entity that meets the definition of an investment company in the investment companies Guide for which its net asset value per share (or its equivalent, for example, partners' capital per share for an investment in a partnership) has been calculated in accordance with that Guide. However, this proposed FSP would not apply if the fair value of the investment is readily determinable as defined in paragraph 3 of FASB Statement No. 115, Accounting for Certain Investments in Debt and Equity Securities (with one exception described in paragraph 13 of this proposed FSP). Do you believe there are other investments that should be within the scope of this proposed FSP? If so, what principle should be used to determine which investments are within the scope of the proposed FSP? Do you agree that the Board should not permit the application of the proposed FSP to investments in entities that have readily determinable fair values as defined in paragraph 3 of Statement 115? Are there other investments that the Board should exclude from the scope of this proposed FSP?*

MFA broadly supports the scope of the Proposed FSP as applying to investments in investment companies, which do not have a readily determinable fair value as defined in paragraph 3 of FASB Statement No. 115 ("Private Investment Funds").³ Paragraph 13 of the Proposed FSP (and amended paragraph 31C of FASB Statement No. 157 ("FAS 157")) sets out an exception to this general definition (for purposes of this guidance) by providing that a restriction of greater than one year on a reporting entity's ability to sell an investment should not be considered when determining whether the fair value of the investment is readily determinable. The policy rationale for this exception to the definition in FASB Statement No. 115 is unclear. An explanation of the rationale for this exception would be beneficial, as it would allow comment as to whether other exceptions from the definition of "readily determinable fair value" are also appropriate.

Because the definition of investment companies with readily determinable fair value is determined by whether an investment company is listed on an SEC registered securities exchange or has the price or quotations publicly reported by the National Association of Securities Dealers Automated Quotations systems, it is unclear how this proposal should be applied to investments

³ Paragraph 3 of FASB Statement No. 115 provides:

The fair value of an equity security is readily determinable if sales prices or bid-and-asked quotations are currently available on a securities exchange registered with the Securities and Exchange Commission (SEC) or in the over-the-counter market, provided that those prices or quotations for the over-the-counter market are publicly reported by the National Association of Securities Dealers Automated Quotations systems or by Pink Sheets LLC. Restricted stock meets that definition if the restriction terminates within one year.

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in non-U.S. investment companies.⁴ In particular, it is unclear whether the Proposed FSP should be applied to investments in non-U.S. investment companies that are traded on a non-U.S. exchange or other similar markets. We believe that FASB should clarify the scope of the FSP with respect to a reporting entity's investments in non-U.S. investment companies that are traded on a non-U.S. exchange or similar market.

In addition, in light of the increased globalization of Private Investment Funds, we believe that the scope of the FSP should be broadened to include not only Private Investment Funds that calculate net asset value per share (or its equivalent) in accordance with the Guide, but also to include Private Investment Funds that calculate net asset value per share in accordance with International Financial Reporting Standards ("IFRS") or other similar accounting standards. We recommend revising the scope in the final FSP to apply to investments in Private Investment Funds that calculate net asset value per share (or its equivalent) in accordance with U.S. Generally Accepted Accounting Principles, IFRS or other similar accounting standards.

2. *Are there circumstances in which an investment might initially have a readily determinable fair value and in a subsequent period not have a readily determinable fair value (and thus arguably become eligible for the practical expedient)? If so, please describe those circumstances. In those circumstances, should the investment be eligible for the practical expedient even though the investor may not be able to transact with the investee (fund) at net asset value per share?*

It is not possible to say definitively that there could not be such a circumstance; however, we believe that, in general, it is unlikely that investment companies would fluctuate between having a readily determinable fair value and not having a readily determinable fair value.

3. *The Board also considered alternative approaches to the scope of this proposed FSP. One approach would have indicated that a condition to using the practical expedient is that the primary means to enter and exit the investment is transactions (for example, redemptions or distributions) between the investor and the investee (that is, the fund) at net asset value per share. Another approach would have indicated that a condition to using the practical expedient is that the principal or most advantageous market for the investment is transactions (for example, redemptions or distributions) between the investor and the fund at net asset value per share. Do you believe the Board should pursue one of the alternative approaches instead of the approach taken in this proposed FSP? If so, why?*

We recommend that the Board not adopt the alternative approaches discussed in question 3. We believe that the objective standard set out in the Proposed FSP establishes the appropriate scope. Market participants and their auditors may reach different determinations of "the primary means to enter and exit the investment" or "the principal or most advantageous market for the investment", particularly with respect to investments in Private Investment Funds that are subject to gates, lock-ups, or suspended redemptions. Adoption of the alternatives suggested in this question, therefore, likely would reduce comparability across investments, as the suggested conditions introduce an element of subjectivity in the determination of whether an investment in a Private Investment Fund is within the scope of the guidance.

⁴ We also believe that, instead of referring to specific entities that publicly report prices or bid-and-asked quotations for over-the-counter markets, FASB guidance should refer to prices or bid-and-asked quotations that are available on securities exchanges registered with the SEC or in over-the-counter markets provided that those prices or quotations for the over-the-counter market are publicly reported.

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4. *The Board recognizes that permitting rather than requiring the application of this proposed FSP for entities within its scope potentially reduces comparability. The Board decided to permit rather than require that reporting entities apply this proposed FSP to investments within its scope, in part, to avoid potential conflicts with the “good faith” requirements of the Investment Company Act of 1940 and Accounting Series Releases No. 113, Statement Regarding “Restricted Securities,” and No. 118, Accounting for Investment Securities by Registered Investment Companies. Do you agree with the Board’s decision to permit rather than require the application of this proposed FSP? Are there any other unintended consequences of requiring the application of this proposed FSP to investments within its scope?*

We believe that the practical expedient approach should be permissive, rather than required. While a permissive approach could potentially reduce comparability, there may be circumstances in which an alternative approach would better achieve the objective of determining the fair value of an investment (and avoid the potential conflicts noted in the question). For this reason, we recommend keeping the practical expedient approach in the FSP permissive, rather than mandatory.

It is not entirely clear from the Proposed FSP whether a reporting entity can choose whether to implement the practical expedient on an investment-by-investment basis. We recommend that the final FSP clarify that a reporting entity may elect whether to use the practical expedient on an investment-by-investment basis. We believe it would also be helpful for the final guidance to state that a reporting entity which elects not to use the practical expedient with respect to an investment within the scope of the guidance is required to fair value that investment.

5. *Are the disclosure requirements of this proposed FSP operational? Should the Board require all of the disclosure by major category (or should it permit some of them on a more aggregated basis)? If the final FSP is effective upon issuance (for example, assume issuance is July 31, 2009), can the disclosures be provided for prior periods for which financial statements have not been issued? Are there other disclosures that the Board should consider requiring?*

MFA and its members support the objective of requiring appropriate disclosure to enable users of financial statements to understand the nature and risks associated with the reporting entity’s investments. We recommend that the final guidance permit reporting entities to disclose information about their investments on an aggregated basis for each major category, rather than on an investment-by-investment basis. This disclosure would achieve the intended objective, without raising confidentiality and other legitimate business issues or imposing significant burdens on reporting entities, which would be the result if disclosure is required on an investment-by-investment basis.

To the extent that the Board determines that disclosure should be made on an investment-by-investment basis, we believe that the disclosure requirements should be subject to a materiality threshold (such as investments that represent 5% or more of the reporting entity’s total investments) before a specific investment would have to be disclosed. Moreover, to the extent that the Board determines individual investments should be disclosed, we believe that the disclosure should not require the specific name of the underlying fund.

Paragraph 16 of the Proposed FSP (and paragraph 33A of amended FAS 157) provides that the required disclosures must be made for each interim and annual period. Privately offered funds of hedge funds typically provide annual, audited financial statements to investors and also provide periodic reports, which may include estimates of performance, net asset value and other

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information relevant to investors. These periodic reports are not audited, and we do not believe that they should be deemed interim period reports, within the scope of the guidance. We recommend that the final FSP clarify that these types of periodic reports are not within the scope of this guidance.

We also encourage the Board to consider modifying the specific disclosures called for in sub-paragraph 16(d) (33A.d. of amended FAS 157, which calls for disclosure of the terms and conditions for redeeming an investment) and the first sentence of sub-paragraph 16(e) (33A.e. of amended FAS 157, which calls for disclosure of the circumstances in which an otherwise redeemable investment might not be redeemable). Redemption terms for investments in Private Investment Funds often cover a variety of possible scenarios and can be very complex. We believe that the detailed disclosure set out in the Proposed FSP would make the financial statement overly complex, thereby reducing its value to end users. We believe that disclosure about the overall liquidity profile of the reporting entity's investments would be more useful to end users in determining the liquidity risks associated with the reporting entity's investments and we recommend that the Board consider this disclosure in lieu of the disclosures set out in subparagraph (d) and the first sentence of sub-paragraph (e).

Finally, we believe that if the final FSP is made effective upon issuance, then it should be made applicable only to financial statements for future periods. Market participants and their auditors will need time to interpret and implement the final FSP, particularly with respect to the disclosures required under the guidance. Making the guidance applicable on a forward-looking basis will help ensure that market participants and their auditors have a reasonable period of time to implement the guidance, which will promote greater consistency in the application of the guidance.

ADDITIONAL COMMENTS

In addition to our above responses to the questions specifically asked in the Proposed FSP, we would like to make a few further comments, which we believe will help clarify the application of the guidance.

The Proposed FSP does not provide guidance regarding the standard that a reporting entity must meet in determining whether an investee fund determines its net asset value in accordance with the Guide. While the Proposed FSP provides references to other guidance that a reporting entity might consider in developing procedures to make this determination, we believe that it would be beneficial for the final FSP to provide a standard that must be met by reporting entities. We recommend that the final FSP include a statement that a reporting entity should have a reasonable belief that the investee fund determines its net asset value in accordance with the Guide for the reporting entity to use the practical expedient approach. The final FSP does not need to provide specific guidance as to how a reporting entity should meet this standard, but we believe it is important for the guidance to provide a clear standard.

Paragraph 15 of the Proposed FSP (and amended paragraph 31D of FAS 157) uses the introductory language "In circumstances in which net asset value per share of an investment is not determinative of fair value," in setting the scope of the application of the practical expedient. It is not clear whether this language is intended to further limit the scope of the guidance beyond the limitations set out in paragraph 12 of the Proposed FSP (amended paragraph 31B of FAS 157), or is intended to restate the scope. As noted above, paragraph 12 (amended paragraph 31B) limits the scope of the guidance to investments in investment companies which do not have a

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readily determinable fair value. Because the current language in paragraph 15 (amended paragraph 31D) differs from the language in paragraph 12 (amended paragraph 31B), it could be interpreted as saying that, in circumstances in which net asset value is not fair value, reporting entities should use net asset value as fair value. If the introductory language in paragraph 15 (amended paragraph 31D) is intended to further narrow the scope of the guidance beyond the scope set out in paragraph 12 (amended paragraph 31B), we recommend that the final FSP clarify the meaning of the language.

To the extent this introductory language is intended to restate the scope of the guidance as set out in paragraph 12 (amended paragraph 31B), we suggest deleting the language in the final FSP. In the alternative, we recommend that the final FSP replace the introductory language in paragraph 15 (and amended paragraph 31D of FAS 157) quoted above to instead state, “With respect to an investment within the scope of paragraph 31 B,”. We believe this change will clarify the intended meaning of the paragraph.

CONCLUSION

MFA appreciates the opportunity to provide comments to the Board with respect to the Proposed FSP. MFA supports the approach of permitting entities which invest in Private Investment Funds to use the practical expedient approach in estimating the fair value of those investments. We believe that the Proposed FSP sets an appropriate scope for the types of investments that should be subject to the guidance. MFA also supports appropriate disclosure to enable users of financial statements to understand the nature and risks associated with the reporting entity’s investment.

We would be pleased to meet with the Board or its staff to further discuss our comments. If the staff has questions or comments, please do not hesitate to call Benjamin Allensworth or the undersigned at (202) 367-1140.

Respectfully submitted,

/s/ Richard H. Baker

Richard H. Baker

President and CEO