

February 15, 2012

Ms. Susan M. Cosper Technical Director Financial Accounting Standards Board 401 Merrit 7 P.O. Box 5116 Norwalk, CT 06856-5116

Re: File Reference No. 2011-200; Financial Services-Investment Companies (Topic 946), Amendments to the Scope, Measurement, and Disclosure Requirements

Dear Ms. Cosper:

The Bank of New York Mellon Corporation (BNY Mellon) appreciates the opportunity to comment on the FASB's Proposed Accounting Standard Update, Financial Services-Investment Companies (Topic 946), Amendments to the Scope, Measurement, and Disclosure Requirements (Proposed Update). BNY Mellon is a global financial institution operating in 36 countries with \$325 billion of assets and \$1.2 trillion in assets under management as of December 31, 2011. BNY Mellon is supportive of a single set of high quality global accounting standards, and we welcome each opportunity to participate in the standards setting process with the FASB and IASB.

We strongly agree that a noninvestment company parent entity should retain the specialized accounting of an investment company subsidiary in the parent entity's consolidated financial statements.

We believe it appropriate that certain entities or structures be permitted to apply the specialized fair value accounting that currently exists in Topic 946, Financial Services- Investment Companies. We support the FASB's efforts to establish a principles based approach to clarify the criteria used to determine if an entity is an investment company. However, we do not agree that the six criteria in paragraph 946-10-15-2 should be determinative when evaluating whether an entity qualifies as an investment company. We believe that the six criteria should be considered indicators in an assessment of a potential investment company and that a thorough principles based assessment should be performed to determine if an entity qualifies for the specialized fair value accounting afforded to investment companies that invest for returns from capital appreciation, investment income or both.

We do not agree with the FASB's requirement that investment companies must consolidate other investment companies in which they have a controlling financial interest. Consolidation of a fund of funds entity does not provide investors with the clear information they require to assess their fund of funds' investments.

In addition, we will be requesting participation in the FASB/IASB roundtable to be held in Norwalk on March 16, 2012.

Our specific responses and comments to the questions in the Proposed Update are included in the **Appendix** to this letter.

If you have any questions or are in need of further information please contact Robert Hitchings at (212) 635-7083 or me at (212) 635-7080.

Sincerely,

John Park

Corporate Controller

cc: Leslie F. Seidman, Chairman, Financial Accounting Standards Board

Hans Hoogervorst, Chairman, International Accounting Standards Board

Dr. Alan Teixeira, Director of Technical Activities, International Accounting Standards Board

Appendix

Question 1: The proposed amendments would require an entity to meet all six of the criteria in paragraph 946-10-15-2 to qualify as an investment company. Should an entity be required to meet all six criteria, and do the criteria appropriately identify those entities that should be within the scope of Topic 946 for investment companies? If not, what changes or additional criteria would you propose and why?

Response: We generally agree that an assessment of the criteria in the Proposed Update is appropriate to identify investment entities that are required to measure their investments in controlled entities at fair value through profit or loss. We do not agree that all six criteria must be met to determine that an entity is an investment company. We believe the six criteria should not be determinative in the assessment and instead should be considered indicators of an entity, when its substantive activities are investing for returns from capital appreciation, investment income or both.

Question 2: The definition of an investment company in the proposed amendments includes entities that are regulated under the SEC's Investment Company Act of 1940. Are you aware of any entities that are investment companies under U.S. regulatory requirements that would not meet all of the proposed criteria in paragraph 946-10-15-2? If so, please identify those types of entities and which of the criteria they would not meet.

Response: There are various types of entities that are investment companies in accordance with U.S. regulatory requirements, which would not meet the proposed criteria in paragraph 946-10-15-2. These entities include single investor funds, single investment funds and newly sponsored funds in which the investment manager has invested seed capital as the fund's sole investor.

Question 3: The proposed amendments would remove the scope exception in Topic 946 for real estate investment trusts. Instead, a real estate investment trust that meets the criteria to be an investment property entity under the proposed Update on investment property entities would be excluded from the scope of Topic 946. Do you agree that the scope exception in Topic 946 for real estate investment trusts should be removed? In addition, do the amendments in the proposed Updates on investment companies and investment property entities appropriately identify the population of real estate entities that should be investment companies and investment property entities?

Response: We believe that creating a new class of entities, referred to as Investment Property Entities, as required by the proposed Accounting Standards Update, Real Estate-Investment Property Entities (Topic 973) (Real Estate Proposed ASU), is not necessary, since the criteria in the Real Estate Proposed ASU is effectively the same guidance in the Proposed Update. We believe entities that invest for returns from capital appreciation, investment income or both, regardless of the nature of the entities' investees, are materially the same and should be assessed under one comprehensive standard. The application of two very similar standards that differ solely based on the type of investments held by an entity creates an unnecessarily complex set of standards for financial statement preparers and users.

We agree that the proposed scope exception in Topic 946 for real estate investment trusts should be removed. Real estate investment trusts that meet the proposed criteria would be determined to be investment companies and required to follow the proposed accounting guidance. However, other real estate investment trusts, whose investment objectives are to return an attractive dividend yield by investing in cash-flow producing investments should, under the guidance, not qualify as an investment company.

Question 4: The proposed amendments would require an entity to reassess whether it is as an investment company if there is a change in the purpose and design of the entity. Is this proposed requirement appropriate and operational? If not, why?

Response: We agree that an entity should reassess its status as an investment company when there is a change in the purpose and design of the entity. However, a reassessment should only occur when there is a significant change in the structure or activities of an investment company and not when the number of investors or investments changes.

Question 5: An entity may be an investment company when it performs activities that support its investing activities. As a result, a real estate fund or real estate investment trust (that is not an investment property entity) could be an investment company if the entity (directly or indirectly through an agent) manages only its own properties. However, the entity would be precluded from being an investment company if the other activities were considered more than supporting the entity's investment activities (for example, construction). Is this requirement operational, and could it be consistently applied?

Response: We do not have any direct experience with these types of structures; accordingly, we have no comment.

Question 6: The proposed implementation guidance includes examples of relationships or activities that would indicate that an entity obtains or has the objective of obtaining returns from its investments that are not capital appreciation or investment income. Do you agree with these examples? If not, how would you modify the examples while still addressing the Board's concerns identified in paragraphs BC15 and BC16?

Response: We agree that an investment company entity should not hold investments for strategic purposes. There can be arrangements or relationships between an entity, its affiliates and or its investees that indicate an entity is investing for other than capital appreciation, investment income or both. The establishment of a qualitative, principles based assessment of the six indicators in paragraph 946-10-15-2, along with the implementation guidance in paragraph 946-10-55-7, would ensure entities that invest for strategic business and operation purposes would not be determined to be investment company entities.

Although we agree with the examples provided in paragraph 946-10-55-7, we believe that these examples should not be determinative and should be indicators supporting the overall assessment of the entity.

Question 7: To be an investment company, the proposed amendments would require an entity to have investors that are not related to the entity's parent (if there is a parent) and those investors, in aggregate, must hold a significant ownership interest in the entity. Is this criterion appropriate? If not, why?

Response: No, we do not believe this criterion to be appropriate. It is common for employee benefits trusts, managed by or under the trusteeship of management, and employees of a parent company to invest in a company sponsored investment company. When making investment decisions related to employee benefits trusts, management has a fiduciary responsibility to make decisions in the best interests of the trust's beneficiary. Investment decisions are required to be made in accordance with the investment guidelines and objectives established by the trust. Employee's or management's investments in a company sponsored investment company are generally funded by the employee or management themselves. All risks and rewards of the investment company are for the benefit of the employee or management and are not shared with the investment company's parent.

To the extent the parent company makes loans to employees or management or shares in the risks and rewards of the investment company, we believe these investments would be related parties and treated as a single investor.

Also, investment managers often provide "seed capital" to a sponsored fund, which allows the fund to begin its investment activities and to establish a track record while the fund is marketed and outside investors are identified. We see no substantive reason to disqualify an investment management entity from the specialized fair value accounting rules based solely on the fact that an asset manager or its affiliates have invested in the sponsored fund for the reasons described above.

We suggest the amended language be removed from paragraph 946-10-15-2c.

Question 8: The proposed unit-ownership criterion would require an entity to have ownership interests in the form of equity or partnership interests to be an investment company. The entity would consider only those interests in determining whether it meets the proposed pooling-of-funds criterion. Therefore, a securitization vehicle, such as a collateralized debt obligation, may not qualify as an investment company under the proposed amendments because it may not meet the unit-ownership or the pooling-of-funds criterion. The entity would not consider interests held by its debt holders when evaluating these criteria to be an investment company. For entities that do not have substantive equity interests (for example, those considered variable interest entities under Subtopic 810-10), should the unit-ownership and pooling-of-funds criteria to be an investment company consider interests held by debt holders? Please explain.

Response: Generally, we would not expect securitization vehicles, including collateralized debt obligation funds to be determined to be investment companies as their assets are not managed for capital appreciation or investment income. Assets held by these vehicles are managed for cash flows from principle and interest or dividends. If the securitization vehicle is managed for capital appreciation or investment income, the entity should be permitted to measure and report its asset at fair value. Therefore, we believe the six criteria in paragraph 946-10-15-2 should not

be determinative in an assessment of an entity but should be indicators of an entity, when its substantive activities are investing for returns from capital appreciation, investment income or both.

Question 9: Certain entities may meet all of the other criteria to be an investment company but have only a single investor (for example, a pension plan). The amendments in FASB's proposed Update on investment property entities provides that if the parent of an entity is required to measure its investments at fair value under U.S. GAAP or the parent entity is a not-for-profit entity under Topic 958 that measures its investments at fair value, the entity would not need to meet the unit-ownership and pooling-of-funds criteria to be an investment property entity. Considering the Board's concerns identified in paragraph BC24, should the criteria in this proposed Update be amended to address situations in which the entity has a single investor?

Response: We believe that the amended pooling-of-funds criterion should be eliminated. We do not see the benefits of not allowing a single investor fund to qualify as an investment company. It is quite common for an institutional investor to be the sole investor in an asset management entity. Fair value measurement and reporting of the entity's assets provides the investor with the most practical information it needs to monitor the performance of its investments. As we also indicated in our response to question 7, the amendment to paragraph 946-10-15-2 should be eliminated.

BNY Mellon has over 400 common and collective funds with over \$200 billion in assets under management. Under U.S. Banking Regulations the funds may have a single investor.

Question 10: The unit-ownership and pooling-of-funds criteria in the proposed amendments do not consider the nature of the entity's investors for evaluating if an entity is an investment company. That is, the criteria do not differentiate between passive investors and other types of investors. Do you agree that the nature of the investors should not be considered in evaluating the unit-ownership and pooling-of-funds criteria?

Response: Although the board did not define "passive" and "other types of investors" in an investment entity, we do not believe the nature of an investor(s) is relevant when determining if an entity is an investment company.

Question 11: The proposed amendments would require that substantially all of an investment company's investments are managed, and their performance evaluated, on a fair value basis. Do you agree with this proposal? If not, why? Is this proposed amendment operational and could it be consistently applied? If not, why?

Response: The criteria in paragraph 946-10-15-2cc could be interpreted to exclude money market funds (which generally purchase highly rated, short-term commercial obligations) and short-term government bond funds. The assets purchased by these funds are generally held until maturity with the proceeds reinvested in similar assets; accordingly, they may not otherwise have an exit strategy to realize capital appreciation. The assets are managed for investment income, which is permitted as indicated in paragraph 946-10-55-10, and not based on fair value. This potential issue further supports why we believe the six criteria in paragraph 946-10-15-2 should

not be determinative in the assessment and instead should be considered indicators of an investment entity, when its substantive activities are investing for returns from capital appreciation, investment income or both.

Question 12: The proposed amendments would retain the requirement that an investment company should not consolidate or apply the equity method for an interest in an operating company unless the operating entity provides services to the investment company. However, the proposed amendments would require an investment company to consolidate controlling financial interests in another investment company in a fund-of-funds structure. An investment company would not consolidate controlling financial interests in a master-feeder structure. Do you agree with this proposed requirement for fund-of-funds structures? If not, what method of accounting should be applied and why? Should a feeder fund also consolidate a controlling financial interest in a master fund? Please explain.

Response: No, we do not agree with the proposed amendments requiring an investment company to consolidate controlling financial interests in another investment company in a fund of funds structure. The fund's holdings should be recorded at fair value, which would typically be the pro-rata portion of investee fund's net asset value. Investors are concerned with the fair value of a fund's investments, providing them with the information necessary to analyze a fund's performance and allowing them to make informed investing decisions. Requiring the consolidation of an investment in a controlled entity does not provide investors with the information that is useful to them. All of an investment companies' investments should be measured at fair value.

Additionally, paragraph 946-810-50-1 requires the amounts attributable to noncontrolling interests to be excluded when calculating the fund's financial highlights and expense ratio. A reconciliation of the amounts used to calculate the financial highlights and the amounts in the consolidated financial statements is also required. These exclusions and reconciliations further substantiate that consolidated financial statements are not beneficial to the fund's investors.

Question 13: The proposed amendments would require an investment company to consolidate a controlling financial interest in an investment property entity. Should an investment company be subject to the consolidation requirements for controlling financial interests in an investment property entity? If not, what method of accounting should be applied and why?

Response: We disagree with the proposed amendment's requirement that an investment company consolidate an investment property entity. As previously addressed in Question 12 above, we believe investors are concerned with the fair value of a fund's investments, providing them with the information necessary to analyze the entity's performance and allowing them to make informed investment decisions.

Question 14: The proposed amendments would prohibit an investment company from applying the equity method of accounting in Topic 323 to interests in other investment companies and investment property entities. Rather, such interests would be measured at fair value. Do you agree with this proposal? If not, why?

Response: Yes, we agree. All investments held by an investment company, including their investments in other investment companies and investment property entities, should be measured at fair value. Presenting all investments held by an investment company at fair value reports those investments to users on the same basis on which they are managed.

Question 15: An investment company with a controlling financial interest in a less-than-wholly-owned investment company subsidiary or an investment property entity subsidiary would exclude in its financial highlights amounts attributable to the noncontrolling interest. Do you agree that the amounts attributable to the noncontrolling interest should be excluded from the calculation of the financial highlights? If not, why?

Response: Yes, we agree that amounts attributable to noncontrolling interests should be excluded from the calculation of the financial highlights as they have no relevance to the users of the investment entity's financial statements. Users of an investment entity's financial statements are solely concerned with the fair value of the investments being held, which further demonstrates why the consolidation of investments in controlled entities does not provide meaningful information to the financial statement users.

Question 16: If an investment company consolidates an investment property entity, the proposed amendments require the investment company to disclose an additional expense ratio that excludes the effects of consolidating its investment property entity subsidiaries from the calculation. Do you agree? If not, why?

Response: Yes, we agree that amounts attributable to the consolidation of investment property entities should be excluded from the calculation of the expense ratio as it has no relevance to the users of the investment entity's financial statements.

Question 17: Do you agree with the additional proposed disclosures for an investment company? If not, which disclosures do you disagree with, and why? Would you require any additional disclosures and why?

Response: We agree with the proposed disclosures in paragraphs 946-20-50-15 and 946-20-50-16, which will improve transparency and provide financial statement users with useful information.

Question 18: The proposed amendments would retain the current requirement in U.S. GAAP that a noninvestment company parent should retain the specialized accounting of an investment company subsidiary in consolidation. Do you agree that this requirement should be retained? If not, why?

Response: Yes, we strongly agree that a noninvestment company parent should retain the specialized accounting of an investment company subsidiary in consolidation. Permitting the fair value measurement of investments in controlled entities by investment company entities provides more relevant and useful information to the users of the investment entity's financial statements. We believe that this reasoning should not be altered for a parent that controls a recognized investment entity. Requiring an investment entity to prepare and maintain two sets of

financial records will also result in substantial additional costs, which will ultimately be borne by the investors.

Furthermore, we are not aware of any significant abuses under current U.S. GAAP, which has a long standing practice in the asset management business of retaining investment company accounting in a noninvestment company parent's consolidated financial statements, further supporting that a parent of an investment subsidiary should retain the specialized accounting in consolidation.

Question 19: An entity that no longer meets the criteria to be an investment company would apply the proposed amendments as a cumulative-effect adjustment to retained earnings as of the beginning of the period of adoption by calculating the carrying amounts of its investees as though it had always accounted for its investments in conformity with other applicable U.S. GAAP, unless it is not practicable. If not practicable, the entity would apply the proposed amendments as of the beginning of the period of adoption. Do you agree with this proposal? If not, why?

Response: Yes, we agree with the transition guidance for entities that do not meet the revised investment company criteria. It will be difficult for an investment entity currently applying fair value accounting to switch to another basis of accounting.

Question 20: How much time would be necessary to implement the proposed amendments?

Response: We believe it could take up to 18 months to implement the Proposed Update based on the number of investment fund options offered by an asset manager. Each investment fund offering would need reassessed in accordance with the revised guidance. Changes to the accounting and reporting for entities that no longer qualify for the specialized accounting in the proposed amendment, including fund of fund entities, would be significant and time consuming.

While this Proposed Update should not be implemented until the final Consolidation ASU is implemented; the Consolidation ASU may be implemented prior to this Proposed Update.

Question 21: The proposed amendments would prohibit early adoption. Should early adoption be permitted? If yes, why?

Response: We agree that early adoption of the proposed amendment should be permitted for those who wish to do so.

Question 22: The proposed amendments would apply to both public and nonpublic entities. Should the proposed amendments apply to nonpublic entities? If not, how should the proposed amendments differ for nonpublic entities and why?

Response: We believe the proposed amendment should apply to both public and nonpublic entities, which generally includes nonregistered investment entities. The consistent application of the Proposed Update to both public and nonpublic entities would provide current and potential investors with useful and comparable financial statements when assessing investment funds.